

WSR 22-10-010

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed April 22, 2022, 12:03 p.m., effective May 23, 2022]

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

Purpose: This rule-making order amends chapter 16-439 WAC, Pears, summer and fall, by repealing WAC 16-439-260 Minimum weight for Bartlett pears.

WAC 16-439-260 requires Bartlett pears to be packed in cartons with a net weight of 14 pounds or more and allows, with the director's approval, the use of experimental shipping containers. Due to market changes, such as shippers no longer selling to the public and the increased demand for smaller carton sizes, stakeholders and the agency no longer find value in this requirement. Therefore, the department is repealing this section so Bartlett pears can be packed in any size carton without applying for an exemption.

Citation of Rules Affected by this Order: Repealing WAC 16-439-260.

Statutory Authority for Adoption: RCW 15.17.030, 15.17.050.

Adopted under notice filed as WSR 22-05-056 on February 10, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: April 22, 2022.

Derek I. Sandison
Director

OTS-3574.1REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-439-260 Minimum weight for Bartlett pears.

WSR 22-10-016

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed April 25, 2022, 9:41 a.m., effective May 26, 2022]

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

Purpose: WAC 246-915-120 Foreign educated applicants, the board of physical therapy (board) is eliminating the requirement that passing scores for the internet-based Test of English as a Foreign Language (ibTOEFL) all be earned during the same test sitting. The board received a petition on July 26, 2020, requesting that applicants be allowed to take the ibTOEFL and receive passing scores during multiple test sittings. The petitioner stated multiple sittings for the ibTOEFL would help reduce barriers for foreign educated applicants trying to earn a license in Washington while still providing evidence of proficiency. The board accepted the petition and initiated a rule making. This rule change permits an applicant to retake any failed category until a passing score is earned.

Citation of Rules Affected by this Order: Amending WAC 246-915-120.

Statutory Authority for Adoption: RCW 18.74.023.

Adopted under notice filed as WSR 22-04-083 on January 31, 2022.

A final cost-benefit analysis is available by contacting Allyson McIver, P.O. Box 47877, Olympia, WA 98504, phone 360-236-2878, fax 360-236-2901, TTY 711, email physical.therapy@doh.wa.gov, website doh.wa.gov.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, 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: March 8, 2022.

Kathryn Dale, PT DSc
Board Chair

OTS-3277.2

AMENDATORY SECTION (Amending WSR 18-15-067, filed 7/17/18, effective 8/17/18)

WAC 246-915-120 Foreign educated applicants. (1) An applicant whose first professional degree in physical therapy was awarded from a foreign physical therapy program that is not or was not accredited by the CAPTE shall submit:

(a) An application for review by the board;

(b) A credentials evaluation report of professional education and training prepared by a board-approved credentials evaluation agency. The report must be sent directly from the credentialing agency to the board. It is the responsibility of the applicant to pay the expenses associated with the credentials evaluation:

(i) The report must provide evidence and documentation that the applicant completed education outside a state or territory of the United States that is substantially equivalent to the education of a physical therapist who graduated from a physical therapy education program accredited by CAPTE.

(ii) To be approved as a credentialing agency, the agency must use the appropriate course work tool (CWT) adopted by the Federation of State Boards of Physical Therapy to determine substantial equivalency. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist earned their first professional degree in physical therapy.

(c) Evidence of English language proficiency:

(i) Verification that English is the native language of the country of origin, and the physical therapy program employs English as the language of training; or

(ii) Verification that the applicant has achieved a score of not less than ~~((five hundred sixty))~~ 560 on the paper Test of English as a Foreign Language (TOEFL) or a score of not less than ~~((two hundred twenty))~~ 220 on the computer Test of English as a Foreign Language (TOEFL), a score of not less than ~~((fifty))~~ 50 on the Test of Spoken English (TSE) and a score of not less than four and one-half on the Test of Written English (TWE); or

(iii) Verification that the applicant has achieved an overall score of not less than 89, and the following minimum scores for each category of the internet-based TOEFL (ibTOEFL) examination: Writing, ~~((twenty-four))~~ 24; speaking, ~~((twenty-six))~~ 26; reading, ~~((twenty-one))~~ 21; listening, ~~((eighteen; with an overall score of not less than eighty-nine. These passing scores must all be earned during the same test sitting))~~ 18.

(d) Verification of a valid, unencumbered license or authorization to practice physical therapy in the country in which the physical therapy education was obtained;

(e) Official transcripts from the physical therapy program showing degree date;

(f) Passing scores for the Washington jurisprudence examination;

(g) Passing scores for the National Physical Therapy Examination (NPTE); and

(h) Any additional supporting documentation as requested by the board.

(2) The applicant shall have received a grade of "C" or higher (or equivalent) in all professional education course work;

(3) The applicant may apply for the college-level education program (CLEP) and their scores may be applied toward college credit. The board will consider the conversion of CLEP scores to college credits provided by a board-approved credentialing agency;

(4) The board may allow applicants to correct general education deficiencies by completing board-approved course work. To obtain professional course work preapproval, the applicant shall submit a written request along with the course description/syllabus for the proposed course; and

(5) An applicant whose first professional degree in physical therapy was awarded from a foreign physical therapy program that is or was accredited by the CAPTE shall follow the requirements under WAC 246-915-030 and 246-915-100.

[Statutory Authority: RCW 18.74.023 and chapter 18.74 RCW, RCW 18.340.020. WSR 18-15-067, § 246-915-120, filed 7/17/18, effective 8/17/18. Statutory Authority: RCW 18.74.023. WSR 08-17-026, § 246-915-120, filed 8/13/08, effective 8/13/08; WSR 07-07-066, § 246-915-120, filed 3/15/07, effective 4/15/07; WSR 94-05-014 (Order 403B), § 246-915-120, filed 2/4/94, effective 3/7/94; WSR 93-04-081 (Order 328B), § 246-915-120, filed 2/1/93, effective 3/4/93; WSR 92-08-039 (Order 259B), § 246-915-120, filed 3/24/92, effective 4/24/92; WSR 91-02-011 (Order 103B), recodified as § 246-915-120, filed 12/21/90, effective 1/31/91; WSR 84-13-057 (Order PL 471), § 308-42-125, filed 6/19/84.]

WSR 22-10-021

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed April 25, 2022, 12:21 p.m., effective April 25, 2022, 12:21 p.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 18.74.500, Article IX(2) mandates the board of physical therapy (board) to adopt the physical therapy compact commission rules in order for physical therapists to participate in the compact. Immediate adoption is necessary to stay compliant with the compact commission rules as the compact commission's revised rules became effective October 24, 2021.

Purpose: WAC 246-915A-010 Physical therapy licensure compact—Compact commission rules. The board has updated WAC 246-915A-010 to comply with RCW 18.74.500, Article IX (2), which mandates that in order to participate in the physical therapy compact in the state of Washington, the board must adopt compact rules. The physical therapy compact commission made minor amendments to the compact rules. The adopted rule complies with the statute by incorporating by reference to the compact commission's rules as of October 24, 2021.

Citation of Rules Affected by this Order: Amending WAC 246-915A-010.

Statutory Authority for Adoption: RCW 18.74.023 and 18.74.500, Article IX(2).

Adopted under notice filed as WSR 22-04-084 on January 31, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 8, 2022.

Kathryn L. Dale, PT DSc
Board Chair

OTS-3551.1

AMENDATORY SECTION (Amending WSR 21-11-006, filed 5/7/21, effective 5/7/21)

WAC 246-915A-010 Physical therapy licensure compact—Compact commission rules. (1) The physical therapy licensure compact (compact) is established in Washington under RCW 18.74.500. Its pur-

pose is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services.

(2) The rules of the physical therapy compact commission, in effect as of October (~~(25, 2020)~~) 24, 2021, are adopted and incorporated by reference.

(3) A copy of the rules is available for public inspection from the department of health at <https://www.doh.wa.gov/LicensesPermitsandCertificates/ProfessionsNewReneworUpdate/PhysicalTherapyLicensureCompact/RulesInProgress> or by calling the department of health's office of customer service at 360-236-4700.

(4) A licensee may exercise a compact privilege as provided in RCW 18.74.500, Article IV. Applicable fees are set forth in WAC 246-915A-990.

[Statutory Authority: RCW 18.74.023 and 18.74.500, Article IX(2). WSR 21-11-006, § 246-915A-010, filed 5/7/21, effective 5/7/21; WSR 20-11-063, § 246-915A-010, filed 5/19/20, effective 6/19/20. Statutory Authority: RCW 18.74.500, 18.74.023, and 2017 c 108. WSR 19-12-056, § 246-915A-010, filed 5/31/19, effective 7/1/19.]

WSR 22-10-022
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed April 25, 2022, 1:13 p.m., effective May 26, 2022]

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

Purpose: Explain when certificates of restoration of opportunity (CROP) and certificates of parental improvement (CPI) will be included in criminal history record reports, qualifying letters, or other assessments during a background check and when they will not.

For early learning program background checks:

- Better clarify that the background check process includes requesting information from other states in which an applicant has lived during the five years before their background check;
- More clearly explain which criminal convictions must disqualify an individual from being licensed, contracted, certified, or authorized to have unsupervised access to children and which trigger further review to determine whether the background check results demonstrate that an applicant possesses the character, suitability, and competence to have unsupervised access to children;
- Make fees consistent for manually and electronically submitted applications;
- Clarify that background check decisions are issued within 45 days from the application date.

Citation of Rules Affected by this Order: Repealing WAC 110-04-0100, 110-04-0110 and 110-04-0130; and amending WAC 110-04-0020, 110-04-0030, 110-04-0040, 110-04-0080, 110-04-0090, 110-04-0120, 110-04-0140, 110-04-0160, 110-04-0170, 110-06-0010, 110-06-0020, 110-06-0040, 110-06-0042, 110-06-0043, 110-06-0044, 110-06-0045, 110-06-0046, 110-06-0050, 110-06-0070, 110-06-0080, 110-06-0100, 110-06-0110, 110-06-0115, and 110-06-0120.

Statutory Authority for Adoption: RCW 43.43.832(2), 43.216.065, and 43.216.271.

Adopted under notice filed as WSR 21-22-038 on October 27, 2021.

Changes Other than Editing from Proposed to Adopted Version:

"Pending criminal charge" defined in WAC 110-04-0020 and 110-06-0020, and inserted in WAC 110-04-0080, 110-04-0120, 110-04-0140, 110-04-0160, 110-06-0043, 110-06-0050, 110-06-0070, and 110-06-0110.

Adopted WAC 110-04-0140(2), revised to better clarify the impacts of a CPI or CROP on a background check.

Proposed WAC 110-06-0042(2), deleted and not adopted.

Adopted WAC 110-06-0043(1), contains the phrase, "associated with their services," that was proposed for deletion.

Proposed WAC 110-06-0043 (1)(b), deleted and not adopted.

\$24.00 fee for manually submitted applications removed from WAC 110-06-0044 (1)(b), leaving \$12.00 fee applicable to all applications.

Proposed WAC 110-06-0070 (2) and (3), deleted and not adopted.

WAC 110-06-0070(6), inserted in adopted rule to clarify that department of children, youth, and families issues background check decision within 45 days of receiving applications.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 24, Repealed 3; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental 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: April 25, 2022.

Brenda Villarreal
Rules Coordinator

OTS-2202.8

Chapter 110-04 WAC

BACKGROUND CHECK REQUIREMENTS ((FOR CHILDREN'S ADMINISTRATION))—CHILD WELFARE

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0020 What definitions apply to ((WAC 110-04-0030 through 110-04-0180 of)) this chapter? The following definitions apply to ((WAC 110-04-0030 through 110-04-0180 of)) this chapter:

"**Authorized**" or "**authorization**" means not disqualified by the department to work in a group care facility or have unsupervised access to children. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

"**Certification**" means department or child placing agency (CPA) approval of a person, foster home, or facility that is exempt from licensing but meets the licensing requirements.

"Certificate of parental improvement (CPI)" means a certificate issued under chapter 74.13 RCW.

"Certificate of restoration of opportunity (CROP)" means a certificate issued under chapter 9.97 RCW.

"Child," "children," or "youth" means a person who is one of the following:

- (a) Under ((eighteen)) 18 years ((old)) of age;
- (b) Up to ((twenty-one)) 21 years of age and enrolled in services through the department of social and health services (DSHS) developmental disabilities administration (DDA) the day prior to their 18th birthday and pursuing either a high school or equivalency course of study (GED/HSEC) or vocational program;
- (c) ((Up to twenty-one years of age and)) Participating in the extended foster care program; ((or))
- (d) Up to 21 years of age with intellectual and developmental disabilities; or

(e) Up to (~~twenty-five~~) 25 years of age and under the custody of DCYF in juvenile rehabilitation.

"Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Department" or **"DCYF"** means the department of children, youth, and families.

"I" and **"you"** refers to anyone who has unsupervised access to children in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

"Licensing division" or **"LD"** means the licensing division within DCYF. LD licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"Licensor" means either:

(a) An LD employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies that provide or certify foster family homes or group care facilities under chapters 110-145, 110-147, and 110-148 WAC; or

(b) An employee of a (~~child-placing~~) child placing agency who certifies or monitors foster homes supervised by the (~~child-placing~~) child placing agency.

"Negative action" means a court order, court judgment or an adverse action taken by an agency, in any state, federal, tribal or foreign jurisdiction, which results in a finding against the subject individual reasonably related to the subject individual's character, suitability, and competence to care for or have unsupervised access to children receiving child welfare services. This may include, but is not limited to:

(a) A decision issued by an administrative law judge.

(b) A final determination, decision or finding made by an agency following an investigation.

(c) An adverse agency action, including termination, revocation, or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.

(d) A revocation, denial, or restriction placed on any professional license.

(e) A final decision of a disciplinary board.

"Pending criminal charge" means a criminal charge for a crime that has not yet resulted in a final judgment, acquittal, conviction, plea, dismissal, or withdrawal.

"Secretary's list" means a list of crimes or negative actions that are federally disqualifying or may relate directly to child safety, permanence, or well-being and require DCYF to assess a subject individual's character, suitability, and competence to care for or have unsupervised access to children receiving child welfare services. The

secretary's list is available at <https://www.dcyf.wa.gov/sites/default/files/pdf/secretaryslist.pdf>.

"Unsupervised" means will not or may not be in the presence of:

(a) The licensee, another employee, or volunteer from the same business or organization as the applicant who has not been disqualified by the background check; or

(b) Another individual who has been previously approved by DCYF.

"We" refers to the department, including licensors and caseworkers.

"WSP" refers to the Washington state patrol.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-04-0020, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-04-0020, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0020, filed 1/15/15, effective 2/15/15.]

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0040 Who must have background checks? (1) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified, or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department also requires background checks on other individuals who may have unsupervised access to children in department licensed or contracted homes ~~((7))~~ or facilities that provide care, except for a normal childhood activity that lasts less than 72 hours, as stated in RCW 74.13.710. The department requires background checks on all of the following people:

(a) A volunteer or intern with regular or unsupervised access to children.

(b) Any person who regularly has unsupervised access to a child. ~~((However, a background check is not required when a caregiver approves the unsupervised access for a normal childhood activity that lasts less than seventy-two hours, as stated in RCW 74.13.710.))~~

(c) A relative other than a parent who may be caring for a child.

(d) A person who is at least ~~((sixteen))~~ 16 years old and resides in a foster, relative, or other suitable person's home and is not a foster child.

(e) A person who is younger than ~~((sixteen))~~ 16 years old in situations where it may be warranted to ~~((ensure))~~ promote the safety of children in out-of-home care. ~~((The department may require a background check for persons younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care.))~~

(3) Any person employed at a group care facility, including those not directly working with children.

(4) Under RCW 13.34.138, prior to returning a dependent child home, the department requires a background check on all adults residing in the home, including the parents.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-04-0040, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-04-0040, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.030 and 43.43.832. WSR 18-12-101, § 388-06A-0110, filed 6/5/18, effective 7/6/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0110, filed 1/15/15, effective 2/15/15.]

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0080 What does the background check cover? (1) The department must review criminal convictions and pending criminal charges based on identifying information provided by you. The background check may include, but is not limited to, the following information sources:

- (a) Washington state patrol.
- (b) Washington courts.
- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) Background checks conducted for DCYF also includes:

- (a) A review of child protective services case files information or other applicable information system.
- (b) Administrative hearing decisions related to any DSHS or DCYF license that has been revoked, suspended, or denied.

(3) In addition to the requirements in subsections (1) and (2) of this section, background checks conducted by DCYF for placement of a child in out-of-home care, including foster homes, group care facilities, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over (~~eighteen~~) 18 years of age residing in the home, all staff working in a group care facility, including those not directly working with children, and group care volunteers who provide direct care:

- (a) Child abuse (~~and~~) or neglect registries in each state in which a person has lived (~~in~~) in the five years prior to conducting the background check.
- (b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington state.

(4) Except as required in subsection (3)(b) of this section, DCYF will conduct a fingerprint-based background check on any individual who has resided in the state less than three consecutive years before application.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-04-0080, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-04-0080, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0150, filed 1/15/15, effective 2/15/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0090 Who pays for the background check? (1) (~~Children's administration (CA)~~) DCYF pays the DSHS general administrative costs (~~for background checks for~~) and WSP and FBI fingerprint processing fees for foster home applicants, (~~CA~~) DCYF relative and other suitable caregivers, (~~and CA~~) DCYF adoptive home applicants, and other adults associated with the home requiring clearances under chapter 13.34 RCW.

(2) (~~Children's administration~~) DCYF does not pay WSP and FBI fingerprint processing fees for foster home applicants, ~~CA~~ relative and other suitable caregivers, ~~CA~~ adoptive home applicants, and other adults associated with the home requiring background clearances under chapter 13.34 RCW.

(3) (~~Children's administration~~) DCYF does not pay WSP and FBI fingerprint processing fees or expenses for:

(a) Non-DCYF employees, contractors, or volunteers associated with facilities other than foster homes (~~(r)~~); or

(b) Adoptive (~~homes proposed by the children's administration, or~~), foster, relative, or other suitable caregiver homes that are not proposed by DCYF.

[WSR 18-14-078, recodified as § 110-04-0090, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0160, filed 1/15/15, effective 2/15/15.]

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0120 If I have a pending criminal charge, conviction, or negative action may I ever be authorized to be (~~employed at a group care facility or~~) licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children? (1) (~~In two situations, DCYF may find~~) DCYF must disqualify a person with pending criminal charges or convictions (~~able to be authorized to be employed at a group care facility or have unsupervised access to children~~) on the DCYF secretary's list that are:

(a) (~~If the conviction for any crime listed in WAC 110-04-0110 occurred more than five years ago~~) Permanently disqualifying; or

(b) (~~If the conviction was for a crime other than those listed in WAC 110-04-0100 or 110-04-0110~~) Five-year disqualifying if less than five years have passed since the date of conviction.

(2) (~~In both of these situations~~) DCYF may authorize a person with pending criminal charges, convictions, or negative actions on the DCYF secretary's list that are not listed in subsection (1) of this section. In this situation, DCYF must review your background (~~to determine~~) information and assess your character, suitability, and competence to have unsupervised access to children. In this (~~review~~) assessment, DCYF (~~must~~) will consider the following factors, among others, related to your background information:

(a) The amount of time that has passed since (~~you were convicted~~) the pending criminal charge, conviction information, or negative action;

(b) The seriousness of the crime or incident that led to the pending criminal charge, conviction, or negative action;

(c) The number ((and)), types, and age of other pending criminal charges, convictions, or negative actions in your background;

(d) Your age at the time of pending criminal charge, conviction, or negative action;

(e) ((Documentation indicating you have successfully completed all court-ordered programs and restitution)) Completion of services or other evidence of rehabilitation since the pending criminal charge, conviction, or negative action; and

(f) Your ((behavior since the conviction; and

(g) The vulnerability of those that would be under your care)) role or purpose of the background check.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-04-0120, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-04-0120, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0190, filed 1/15/15, effective 2/15/15.]

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0140 Will you license, contract, authorize my employment at a group care facility, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, ((or)) I have been pardoned for a crime, or I have obtained a CPI or CROP? (1) If you receive a pardon or a court of law acts to expunge or vacate a conviction on your record, the crime will not be considered a conviction for the purposes of licensing, contracting, certification, authorization for employment at a group care facility, or authorization for unsupervised access to children.

(2) When you have obtained a CPI or CROP, DCYF must:

(a) Disqualify if your background information contains a pending criminal charge or conviction of a crime under WAC 110-04-0120(1); or

(b) Assess character, suitability, and competence under WAC 110-04-0120, if the CPI or CROP does not apply to a pending criminal charge, conviction of a crime, or negative action under WAC 110-04-0120(2).

(3) A CROP does not apply to founded findings of child abuse or neglect. No finding of child abuse or neglect may be destroyed based solely on a CROP.

(4) A CROP must be included as part of the criminal history record reports, qualifying letters, or other assessments pursuant to RCW 43.43.830 through 43.43.838.

(5) If you have obtained a CPI, DCYF may still consider the facts that led to the associated founded findings for child abuse or neglect to determine whether you have the character, suitability, and competence to have unsupervised access to children.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-04-0140, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-04-0140, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0210, filed 1/15/15, effective 2/15/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0160 What may I do if I disagree with the department's decision to deny me a license, certification, contract, or authorization to have unsupervised access based on the results of the background check? (1) If you are seeking a license ~~((,))~~ or employment with a home or facility licensed by ~~((the children's administration))~~ DCYF, you may ~~((request))~~ appeal the department's decision by requesting an administrative hearing to dispute a denial of authorization for unsupervised access to children ~~((chapter 34.05 RCW))~~. You cannot contest the pending criminal charge, conviction, or negative action in the administrative hearing.

(2) Prospective volunteers or interns, contractors or their employees, or those seeking certification do not have the right to appeal the department's decision to deny authorization for unsupervised access to children.

(3) The employer or prospective employer cannot ~~((contest))~~ appeal the department's decision on your behalf.

(4) The administrative hearings ~~((will take place before an))~~ are conducted by administrative law judges employed by the office of administrative hearings ~~((chapter 34.05 RCW))~~, pursuant to chapters 34.05 RCW and 110-03 WAC.

[WSR 18-14-078, recodified as § 110-04-0160, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0230, filed 1/15/15, effective 2/15/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0170 Is the background check information released to my employer or prospective employer? (1) ~~((Children's administration))~~ DCYF will share with employers or approved care providers only that:

(a) You are disqualified; or

(b) You have not been disqualified by the background check.

(2) The department will follow laws related to the release of criminal history records (chapters 10.97 and 43.43 RCW) and public disclosure (chapter ~~((42.17))~~ 42.56 RCW) when releasing any information.

[WSR 18-14-078, recodified as § 110-04-0170, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0240, filed 1/15/15, effective 2/15/15.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children?
- WAC 110-04-0110 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children or from working with children?
- WAC 110-04-0130 Will I be disqualified if there are pending criminal charges on my background check?

OTS-3106.14

Chapter 110-06 WAC
((DEL)) BACKGROUND CHECKS—EARLY LEARNING PROGRAMS

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0010 Purpose and scope. (1) The purpose of this chapter is to establish rules for background checks conducted by the department of children, youth, and families (DCYF).

(2) The department conducts background checks on subject individuals who ~~((are authorized to))~~:

(a) Currently have a background clearance and are seeking to renew the authorization; and

(b) Are seeking a background check authorization for the first time.

(3) A background clearance authorizes subject individuals to:

(a) Work at a child care agency;

(b) Care for ~~((or))~~ children receiving early learning services;

(c) Have unsupervised access to children receiving early learning services;

(d) Reside on the premises of a child care agency or certified facility; or

~~((b))~~ (e) Care for children in the child's or provider's home. These providers, also known as family, friends, and neighbors (FFN) or in-home/relative care providers are exempt from licensing and receive ~~((working connections child care (-)))~~ WCCC ~~((+))~~ subsidies.

~~((3))~~ (4) The department conducts background checks to reduce the risk of harm to children from subject individuals who have been convicted of certain crimes or who pose a risk to children.

~~((4) The department's rules and))~~ (5) State law requires the evaluation of background information to determine the character, suitability, ~~((or))~~ and competence of persons who will work at an agency, or care for or have unsupervised access to children receiving early learning services or other agency authorized services.

~~((5))~~ (6) Subject to federal law, if any provision of this chapter conflicts with any substantive provision in any ~~(chapter containing a substantive)~~ rule relating to background checks and qualifications of ~~((persons))~~ individuals who are authorized to care for or have unsupervised access to children receiving early learning services, the provisions in this chapter ~~((shall))~~ will govern.

~~((6) These rules))~~ (7) This chapter implements chapters 43.216 and 43.43 RCW~~((,))~~ including, but not limited to, DCYF responsibilities in RCW 43.216.260, 43.216.270 through 43.216.273, and 43.43.830 through 43.43.832.

~~((7) These rules are amended))~~ (8) This chapter is intended to allow for the increased and continued portability of background check clearances for subject individuals who are authorized to care for or may have unsupervised access to children receiving early learning services.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0010, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0010, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0010, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0010, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0010, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0020 Definitions. The following definitions apply to this chapter:

~~(("Agency" has the same meaning as "agency" in RCW 43.216.010.~~

~~"Appellant" means only those with the right of appeal under this chapter.~~

~~"Applicant" means an individual who is seeking DCYF background check authorization as part of:~~

~~(a) An application for a child care agency license or DCYF certification or who seeks DCYF authorization to care for or have unsupervised access to children receiving early learning services; or~~

~~(b) A continuation of a nonexpiring license or renewal of a certificate, or renewal of DCYF's authorization to care for or have unsupervised access to children receiving early learning services, with respect to an individual who is a currently licensed or certified child care provider.)~~

"Authorized" or "authorization" means approval by DCYF to work at a child care agency, care for ~~((or have unsupervised access to))~~ children receiving early learning services from an agency, have unsupervised access to children receiving early learning services, or to

(~~work in or~~) reside on the premises of a child care agency or certified facility.

"Certificate of parental improvement (CPI)" has the same meaning as "certificate of parental improvement" in RCW 43.216.010.

"Certificate of restoration of opportunity (CROP)" means a certificate issued by a court under chapter 9.97 RCW that may restore an individual's eligibility for a license, certification, or background check authorization issued under chapter 43.216 RCW.

"Certification" or **"certified by DCYF"** means an agency that is legally exempt from licensing that has been certified by DCYF as meeting minimum licensing requirements.

"Child care agency" or **"agency"** has the same meaning as "agency" in RCW 43.216.010.

"Conviction or other disposition adverse to the subject" has the same meaning as "conviction or other disposition adverse to the subject" in RCW 10.97.030.

"Conviction information" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject individual.

(("DCYF")) "Department of children, youth, and families (DCYF)" or **"department"** means the Washington state department of children, youth, and families.

"Department of social and health services (DSHS)" means the Washington state department of social and health services.

"Disqualified" or **"disqualify"** means a DCYF (~~has determined that a person's~~) determination or finding was issued to a subject individual that because of their background information ((prevents that person from being authorized by DCYF to care for or have)) history, they are prohibited from:

(a) Caring for or having unsupervised access to children receiving early learning services;

(b) Working at a child care agency; or

(c) Residing at the premises of a child care agency or certified facility.

"Early learning ((service(s))) services" (~~for purposes of this chapter~~) means programs and services including, but not limited to, the early childhood education and assistance program (ECEAP), head start, licensed child care, and license-exempt child care services.

"FBI" means the Federal Bureau of Investigation.

"In-home/relative provider" or **"family, friends, and neighbors provider"** or **"FFN provider"** means an individual who is exempt from child care licensing standards, meets the requirements of chapter 110-16 WAC, and is approved for working connections child care (WCCC) payments under WAC 110-15-0125.

"Licensee" means the individual, person, organization, or legal entity named on the child care license issued by DCYF and responsible for operating the child care facility or agency.

"Negative action" (~~means~~) has the same meaning as "negative action" in RCW 43.216.010. A negative action includes a court order((r)) or court judgment ((or an adverse action taken by an agency, in any state, federal, tribal or foreign jurisdiction, which results in a finding against the subject individual reasonably related to the subject individual's character, suitability and competence to care for or have unsupervised access to children receiving early learning services. This may include, but is not limited to:

(a) A decision issued by an administrative law judge.

~~(b) A final determination, decision or finding made by an agency following an investigation.~~

~~(c) An adverse agency action, including termination, revocation or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.~~

~~(d) A revocation, denial or restriction placed on any professional license.~~

~~(e) A final decision of a disciplinary board) that finds the subject individual's child dependent and the basis for such finding is RCW 13.34.030(6) or other equivalent state or federal statute.~~

~~"Nonconviction information" ((means arrest, pending charges, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the subject individual)) has the same meaning as "nonconviction information" in RCW 43.216.010.~~

~~"Nonexpiring license" or "nonexpiring full license" means a license authorized under RCW 43.216.305 that is issued to a licensee following the initial licensing period((, as provided in chapter 110-300 WAC, as appropriate)).~~

~~"Pending criminal charge" means a criminal charge for a crime that has not yet resulted in a final judgment, acquittal, conviction, plea, dismissal, or withdrawal.~~

~~"Premises" has the same meaning as "premises" in WAC 110-300-0005.~~

~~"Secretary's list" means ((a list of crimes, the commission of which disqualifies a subject individual from being authorized by DCYF to care for or have unsupervised access to children receiving early learning services,)) the conduct and crimes described in WAC 110-06-0120 and the federal disqualifying crimes and conduct described in 42 U.S.C. Sec. 9858f and C.F.R. Sec. 98.43.~~

~~"Subject individual" means:~~

~~(a) ((Means)) An individual who is 16 years of age or older and is seeking:~~

~~(i) ((Is seeking)) A background check authorization ((or upon whom the department may conduct a background check authorization;~~

~~(ii) Is sixteen years of age or older;~~

~~(iii) Is an in-home/relative provider or is employed, contracted with, or volunteers to provide early learning services; and~~

~~(iv) Will care for or) to have unsupervised access to children receiving early learning services; ((and~~

~~(b) Includes, but is not limited to, the following:~~

~~(i) Personnel, including employees and staff;~~

~~(ii) Contractors, including contracted providers;~~

~~(iii) Temporary workers;~~

~~(iv) Assistants;~~

~~(v) Volunteers;~~

~~(vi) Interns;~~

~~(vii) Each person who is sixteen years of age or older residing on, or moving into, the premises where early learning services are provided;~~

~~(viii) All other individuals who are sixteen years of age or older who will care for or have unsupervised access to children receiving early learning services;~~

~~(ix) All owners, operators, lessees, or directors of the agency or facility, or their designees;~~

~~(x) Applicants;~~

- ~~(xi) Licensees; or~~
~~(xii) In-home/relative providers and their household members who are sixteen years of age or older.)~~
 (ii) A background check authorization to care for children receiving early learning services;
 (iii) A background check authorization to work at a child care agency;
 (iv) A background check authorization to reside at the premises of a child care agency or certified facility;
 (v) A reauthorization of a background check authorization previously issued by DCYF; or
 (vi) A new background check authorization, having been previously issued a background check authorization.
 (b) A person who is 13 through 15 years of age who is seeking or has obtained a background check authorization under WAC 110-06-0045.
 (c) Examples of "subject individual" include, but are not limited to:
- (i) A person who is seeking an application for a child care agency license or a DCYF certification;
 (ii) An individual who is currently a licensed or certified child care provider who is seeking:
 (A) A continuation of a nonexpiring license or renewal of a certificate; or
 (B) A renewal of DCYF's authorization to care for or have unsupervised access to children receiving early learning services;
 (iii) A person who is a relative provider, in-home provider, or is employed by an early learning provider, including assistants and other persons who are temporarily employed by an early learning provider;
 (iv) A person who is a volunteer or intern that provides early learning services;
 (v) A person who contracts with an early learning provider;
 (vi) A person who is 16 years of age or older who:
 (A) Resides at, or will be moving onto, the premises where early learning services will or are provided; or
 (B) Will care for or have unsupervised access to children receiving early learning services;
 (vii) All owners, operators, lessees, or directors of the agency or facility, or their designees; and
 (viii) Licensees.
- "Unsupervised access"** means (~~(=~~
 (a) ~~A subject individual will or may have the opportunity to be alone with a child receiving early learning services at any time and for any length of time; and~~
 (b)) not in the presence of a subject individual who is an employee of a child care agency and is authorized by DCYF to be alone with children receiving early learning services from the same agency. For purposes of this definition, unsupervised access includes, but is not limited to, access to ((a-child)) children receiving early learning services ((that-is)) who are not within constant visual or auditory range of the individual authorized by DCYF to be alone with children receiving early learning services.
- "WCCC"** means working connections child care.
"WSP" means the Washington state patrol.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, §

110-06-0020, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0020, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0020, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0020, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0020, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-21-064, filed 10/11/19, effective 11/11/19)

WAC 110-06-0040 Background clearance requirements. This section applies to all subject individuals (~~other than~~), except for in-home/relative providers.

(1) Subject individuals (~~associated with early learning services applying for a first-time background check~~) must complete the DCYF background check application process (~~including~~) on or before the dates described in WAC 110-06-0041, 110-06-0045, and at least once every three years thereafter. The background check process includes, but is not limited to:

(a) Submitting a completed background check application with the DCYF background check unit;

(b) Completing the required fingerprint process; (~~and~~)

(c) Completing the required interstate background check process for each state the subject individual has lived outside of Washington state in the five years preceding the background check application; and

(d) Paying all required fees as provided in WAC 110-06-0044.

(2) All subject individuals (~~qualified by the department to have unsupervised access to children in care~~) who are (~~renewing their applications~~) seeking renewals of their DCYF authorizations must:

(a) Submit (~~the~~) a new background check application (through) to DCYF;

(b) Submit payment of all required fees (~~as provided~~) described in WAC 110-06-0044; (and)

(c) Complete the required fingerprint process if the subject individual lives or has lived outside of Washington state since the previous background check was completed, or has not previously completed the fingerprint process required by this section; and

(d) Complete the required interstate background check process for each state the subject individual has lived outside of Washington state in the five years preceding the background check application.

(3) (~~Each~~) All subject individuals (completing the DCYF) who submit background check (process) applications and are seeking background check authorizations or reauthorizations must disclose whether they have:

(a) Been convicted of any crime;

(b) Any pending criminal charges; and

(c) Been or are the subject to any negative action (~~, as defined by WAC 110-06-0020~~).

(4) Subject individuals must not have unsupervised access to children in care unless they have obtained DCYF authorization under this chapter.

(5) ((A)) Subject individuals who ((has)) have been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

[Statutory Authority: RCW 43.216.055, 43.216.065, 42 U.S.C. 9858, et seq. and 45 C.F.R. 98.43. WSR 19-21-064, § 110-06-0040, filed 10/11/19, effective 11/11/19. Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0040, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0040, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0040, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0040, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0040, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0042 Departmental investigation and redetermination.

(1) The department will investigate and conduct ((a)) redeterminations of ((the)) background clearances of ((a)) subject individuals if the department receives a complaint or information that causes the department to conclude a background check clearance redetermination is necessary to verify that a subject individual has the appropriate character, suitability, and competence to have unsupervised access to children receiving early learning services. The complaint or information may be received from individuals, ((a)) law enforcement ((agency)) agencies, or other federal, state, or local government ((agency)) agencies.

(2) Subject to the requirements in RCW 43.216.270, and based on a determination that an individual lacks the appropriate character, suitability, or competence to be approved for a background check authorization, the department may ((immediately)):

(a) Invalidate their background check authorization; or

(b) Suspend ((or)), modify ((the subject individual's background clearance)), or revoke any child care license issued by DCYF.

~~((3) Subject to the requirements in RCW 43.216.300 and 43.216.305, and based on a determination that a subject individual lacks the appropriate character, suitability, or competence to provide early learning services to children, the department may disqualify the subject individual from having any unsupervised access to children.))~~

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0042, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0042, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0042, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0042, filed 5/30/12, effective 7/1/12.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0043 ((Failure)) Early learning providers' duty to report ((nonconviction and)) conviction information, negative actions, or pending criminal charges. (1) ((The)) Early learning services providers must report to the department within ((twenty-four)) 24 hours ((if he or she has knowledge of the following with respect to)) of learning that a subject individual associated with their services((,)) who ((has a background check clearance authorization with the department):

~~(a) Any nonconviction and)) is authorized to have unsupervised access to children, has a background that includes any conviction information ((for a crime listed in WAC 110-06-0120;~~

~~(b) Any other nonconviction and conviction information for a crime that could be reasonably related to the subject individual's suitability to provide care for or have unsupervised access to children in care; or~~

~~(c) Any negative action as defined in WAC 110-06-0020)), pending criminal charge, or negative action.~~

(2) ((A)) Subject individuals who ((has)) have been issued ((a)) background check ((clearance)) authorizations ((pursuant to WAC 110-06-0040)) under this chapter must report ((nonconviction and)) to the department within 24 hours after becoming aware that they are the subject of conviction information ((to the department involving a disqualifying crime under WAC 110-06-0120 against that subject individual within twenty-four hours after he or she becomes aware of the event constituting the nonconviction or conviction information)), pending criminal charge, or negative action they have not reported to the department.

(3) ((A subject individual who)) Individuals' background check authorizations may be disqualified if they intentionally or knowingly fail((s)) to report to the department as ((provided in)) required under subsection (1) or (2) of this section ((may have his or her background check clearance suspended)). This ((penalty)) disqualification will be in addition to any other ((penalty)) agency action that may be imposed as a result of a violation of this chapter ((or of the)), applicable provisions ((of any chapter of)) within Title 110 WAC ((that implement the authority and requirements of)), or chapter 43.216 RCW.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0043, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0043, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0043, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0043, filed 5/30/12, effective 7/1/12.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0044 Background check fees. This section applies to all subject individuals other than in-home/relative providers.

(1) Subject individuals (~~(associated with early learning services)~~) must pay for the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by (~~(the Washington state patrol, Federal Bureau of Investigation)~~) WSP, FBI, DSHS, and the DCYF fingerprint contractor; and

(b) The DCYF administrative fee of (~~(:~~

~~(i) Twelve dollars for an electronic submission; or~~

~~(ii) Twenty-four dollars for a paper submission))~~ \$12.00.

(2) DCYF administrative fee payments may be paid by:

(a) (~~(By)~~) Debit or credit card;

(b) (~~(In the form of)~~) Mailing a personal check, cashier's check, or money order (~~(, which shall be sent by mail)~~) to:

Department of Children, Youth, and Families (DCYF)

Attn: PBC

P.O. Box 40971

Olympia, WA 98504-0971; or

(c) (~~(By)~~) Electronic funds transfer that does not involve a debit or credit card. ((As used in)) For purposes of this section, "electronic funds transfer" means ((any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account)) an on-line system that allows for the secure transfer of money from one bank account to an account designated by DCYF.

(3) The department will not issue (~~(a))~~) background check (~~(clearance))~~) authorizations to ((a)) subject individuals (~~(:~~

~~(a))~~) who fail((s)) to pay the required fees in subsection (1) of this section (~~(:~~

~~(b) Whose payment is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.~~

~~An additional))~~.

(4) A processing fee of (~~(twenty-five dollars))~~) \$25 will be charged by (~~(the department))~~) DCYF for any check, money order, or electronic funds transfer that is reported as not having sufficient funds.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0044, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0044, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0044, filed 5/30/12, effective 7/1/12.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0045 Background checks for minor individuals under ((sixteen)) 16 years of age. (1) (~~(When applicable within chapter 110-300 WAC, an agency, licensee, or certified facility must have subject individuals complete the required DCYF minor individual background check application process for subject individuals))~~) All agencies, licensees, and certified facilities must possess a copy of back-

ground check authorizations for minor subject individuals who work or reside at the licensed or certified agency. The requirements described in this subsection apply to minor subject individuals who are:

(a) ~~Fourteen ((to sixteen))~~ through 15 years of age, ((prior to)) before the date ((of hire by)) they begin working for a licensed or certified child care((-)); or

(b) ~~Thirteen ((to sixteen))~~ through 15 years of age ((residing)) on or before the date they begin or continue to reside in a licensed or certified family home child care. ((e) Thirteen to sixteen)) Subject individuals who are 13 through 15 years of age((r)) and who begin to reside in a licensed or certified facility after their 13th birthday, must complete the required DCYF minor individual background check application process within seven days after moving into the licensed family home child care.

(2) ((A)) Subject individuals identified in subsection (1)(a) ((r)) or (b) ((or (e))) of this section must not have unsupervised access to children ((in child care)) receiving early learning services.

(3) ~~((When conducting a))~~ Background check applications for minor subject individuals ((background check, the department:

~~(a) Requires the minor's)) must be signed by them and their parent or guardian ((to sign the noncriminal background check application;~~

~~(b) Does not review convictions or pending charges for immediate disqualification for crimes under WAC 110-06-0050(1), unless the conviction was the result of prosecution of the juvenile as an adult; and~~

~~(c) Does not immediately disqualify an individual for a conviction under WAC 110-06-0070 (1) and (2), unless the conviction was the result of prosecution of the juvenile as an adult)).~~

(4) Minor subject individuals' character, suitability, and competence determinations will be made pursuant to the requirements described in this chapter.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0045, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0045, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0045, filed 5/30/12, effective 7/1/12.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0046 Requirements for license-exempt in-home/relative providers. (1) This section applies to license-exempt in-home/relative providers. The background check process must be completed for individuals described in (a) through (c) of this subsection before they have unsupervised access to children and at least once every three years thereafter:

(a) All license-exempt in-home/relative providers who apply to care for a ((WCCC)) consumer's child who is eligible to receive WCCC benefits; ((and))

(b) ((Any)) Subject individuals ((sixteen)) 16 years of age or older who ((is)) are residing with a license-exempt in-home/relative provider ((when)) if the provider cares for the child eligible to re-

ceive WCCC benefits in the provider's ((own)) home, and the home is not where the child ((does not reside.

~~(2) Additional background checks must be completed for individuals listed in subsection (1)(a) and (b) of this section when an individual sixteen years of age or older is newly residing)~~ resides; and

(c) Subject individuals 16 years of age or older who begin to reside with a license-exempt in-home/relative provider ((when the provider)) after the date the provider begins to care((s)) for the child eligible to receive WCCC benefits in the provider's ((own)) home, and the home is not where the child ((does not)) resides.

~~((3) The background check process for license-exempt in-home/relative providers requires:))~~ (2) Subject individuals who are seeking background check authorizations must complete the background check application process by:

(a) Submitting a completed background check application; ((and))

(b) Completing the required fingerprint process; and

(c) Completing the required interstate background check process for each state they have lived outside of Washington state in the five years preceding the background check application.

~~((4) Each))~~ (3) Subject individuals completing the DCYF background check process must disclose whether they have:

(a) ((Whether he or she has)) Been convicted of any crime;

(b) ((Whether he or she has)) Any pending criminal charges; and

(c) ((Whether he or she has)) Been or are the subject ((to)) of any negative actions((, as defined by WAC 110-06-0020)).

~~((5) A))~~ (4) Subject individuals must not have unsupervised access to children in care ((unless he or she has obtained)) before obtaining a DCYF background check ((clearance)) authorization under this chapter.

~~((6) A))~~ (5) Subject individuals who ((has)) have been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

~~((7))~~ (6) DCYF ((pays for)) will pay the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by ~~((the Washington state patrol, Federal Bureau of Investigation))~~ WSP, FBI, DSHS, and the DCYF fingerprint contractor; and

(b) The DCYF administrative fee.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0046, filed 12/18/18, effective 1/18/19.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0050 Department action following completion of background ((inquiry)) inquiries. (1) As part of the background check process the department will conduct ((a character, suitability or competence assessment as follows:

~~(1) Compare the background information with the DCYF secretary's list, WAC 110-06-0120, to determine whether the subject individual must be disqualified under WAC 110-06-0070 (1) and (2). In doing this comparison, the department will use the following rules))~~ the back-

ground check investigation and evaluation described in this section to determine whether subject individuals must be disqualified.

(2) Subject individuals must be disqualified when their background information includes conviction information or pending criminal charges described in WAC 110-06-0070(1) or conduct described in WAC 110-06-0070 (4) or (5).

(3) Subject to the requirements of WAC 110-06-0070(3) and after comparing subject individuals' background information with the secretary's list to determine whether to disqualify under WAC 110-06-0070(1), DCYF may conduct a character, suitability, and competence assessment of the subject individuals.

(4) Subject to the requirements of this chapter and after comparing subject individuals' background information with the secretary's list to determine whether to disqualify under WAC 110-06-0070(6), the department must conduct a character, suitability, and competence assessment of the subject individuals.

(5) For purposes of DCYF's investigation, evaluation, and determination, the following standards apply:

(a) A pending criminal charge (~~(for a crime or)~~) that has been filed in the appropriate court, a deferred prosecution (~~(is)~~), or a deferred sentence must be given the same weight as a conviction.

(b) If the conviction or pending criminal charge has been renamed it is given the same weight as the previous named conviction or pending criminal charge.

(c) Convictions or pending criminal charges whose titles (~~(are preceded with)~~) include the word "attempted," "conspiracy," or "solicitation" are given the same weight as those titles without the word "attempted," "conspiracy," or "solicitation."

(d) The term "conviction" (~~(has the same meaning as the term "conviction record" as defined in RCW 10.97.030 and)~~) may include convictions or dispositions for crimes committed as either an adult or juvenile. (~~(It may also include convictions or dispositions for offenses for which the person received a deferred or suspended sentence, unless the record has been expunged according to law.)~~)

(e) Convictions and pending criminal charges from other states or jurisdictions will be treated the same as a crime or pending criminal charge in Washington state. If the elements of the crime from the foreign jurisdiction are not identical or not substantially similar to its Washington equivalent, or if the foreign statute is broader than the Washington definition of the particular crime, the (~~(defendant's)~~) subject individuals' conduct, as evidenced by the indictment or information, will be analyzed to determine whether the conduct would have violated the comparable Washington statute.

(f) (~~(The)~~) Crimes will not be considered (~~(a)~~) convictions (~~(for the purposes of the department when the conviction has)~~) if they have been the subject of an expungement, pardon, annulment, certification of rehabilitation, vacated, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or the conviction has been vacated, the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(~~(2)~~) Evaluate any negative action information to determine whether the subject individual has any negative actions requiring disqualification under WAC 110-06-0070(3).

(~~3~~) Evaluate any negative action information and any other pertinent background information, including nondisqualifying criminal convictions, to determine whether disqualification is warranted under WAC

~~110-06-0070 (5), (6), or (7))~~ (g) If the subject individuals' background information contains a CPI or CROP, DCYF must:

(i) Disqualify them if their background information contains a conviction or pending criminal charge that is listed in WAC 110-06-0120(2); or

(ii) Assess their character, suitability, and competence to determine whether they should be disqualified if the CPI or CROP does not apply to a:

(A) Pending criminal charge or conviction of a crime; or

(B) Negative action under WAC 110-06-0120 (3) or (4).

(h) A CROP does not apply to founded findings of child abuse or neglect. A child abuse or neglect finding must be considered by the department.

(i) A CROP and CPI must be included as part of the criminal history record reports, qualifying letters, assessments, or other reports.

(j) Subject individuals' background check authorizations may be suspended if they are the subject of a child protective services investigation. The length of the suspension may not exceed the following time period:

(i) As defined in RCW 26.44.020, the department makes an unfounded determination; or

(ii) The date a negative action determination is issued or the date a negative action becomes final, whichever is longer.

(k) If the department suspends a subject individual's background check authorization for the time period described in (j)(ii) of this subsection, the department may disqualify them under the requirements described in this chapter.

(l) Subject individuals who request a hearing or appeals a department decision to disqualify will not be authorized to care for or have unsupervised access to children receiving early learning services during the time period the hearing request or appeal is pending.

~~((4))~~ (6) If DCYF has reason to believe that additional information ~~((is))~~ or reports are needed to determine whether subject individuals have the character, suitability ~~((or))~~, and competence ~~((of the subject individual))~~ to care for or have unsupervised access to children receiving early learning services, DCYF may request that they provide such reports or additional information ~~((will be requested. The))~~. Subject individuals ~~((must))~~ who do not provide ~~((to the department any additional reports or))~~ the requested information ~~((that it requests))~~ may be disqualified.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0050, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0050, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0050, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0050, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0050, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0070 (~~(Disqualification.)~~) Background check decisions.
Background information that ~~((will))~~ may or must disqualify ~~((a))~~ subject individuals.

~~(1) ((A)) Subject individuals (who has a background containing any of the permanent convictions on the secretary's list, WAC 110-06-0120(1), will be permanently disqualified from caring for children or having unsupervised access to children receiving early learning services.~~

~~(2) A subject individual who has a background containing any of the nonpermanent convictions on the secretary's list, WAC 110-06-0120(2), will be disqualified from providing licensed child care, caring for children or having unsupervised access to children receiving early learning services for five years after the conviction date.~~

~~(3) A subject individual will be disqualified when his or her background contains a negative action, as defined in WAC 110-06-0020 that relates to:~~

~~(a) An act, finding, determination, decision, or the commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 110-30 WAC.~~

~~(b) An act, finding, determination, decision, or commission of abuse or neglect or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW.~~

~~(4) A subject individual who has a "founded" finding for child abuse or neglect will not be authorized to care for or have unsupervised access to children during the administrative hearing and appeals process.~~

~~(5) Background information that may disqualify a subject individual. A subject individual may be disqualified for other negative action(s), as defined in WAC 110-06-0020 which reasonably relate to his or her character, suitability, or competence to care for or have unsupervised access to children receiving early learning services.~~

~~(6) A subject individual may be disqualified from caring for or having unsupervised access to children if the individual is the subject of a pending child protective services (CPS) investigation.~~

~~(7) The department may also disqualify a subject individual if that person has other nonconviction background information that renders him or her unsuitable to care for or have unsupervised access to children receiving early learning services. Among the factors the department may consider are:~~

~~(a) The subject individual attempts to obtain a license, certification, or authorization by deceitful means, such as making false statements or omitting material information on an application.~~

~~(b) The subject individual used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children were present or presented a risk of harm to any child receiving early learning services.~~

~~(c) The subject individual attempted, committed, permitted, or assisted in an illegal act on the premises. For purposes of this subsection, a subject individual attempted, committed, permitted, or assisted in an illegal act if he or she knew or reasonably should have known that the illegal act occurred or would occur.~~

~~(d) Subject to federal and state law, the subject individual lacks sufficient physical or mental health to meet the needs of children receiving early learning services.~~

~~(e) The subject individual had a license or certification for the care of children or vulnerable adults terminated, revoked, suspended or denied) must be permanently disqualified if they have a background that includes a pending criminal charge or conviction information of a crime listed in WAC 110-06-0120(2).~~

(2) If subject individuals have a background that includes a negative action, or a pending criminal charge or conviction information, that involves any of the conduct described in the secretary's list under WAC 110-06-0120 (3) or (4), DCYF may disqualify them if it determines they do not have the appropriate character, suitability, or competence to be authorized or reauthorized.

(3) DCYF must consider the following factors related to subject individuals' backgrounds when assessing character, suitability, and competence:

(a) Whether they have a background containing any of the permanently disqualifying pending criminal charges or convictions on the secretary's list that are described in WAC 110-06-0120(2);

(b) Whether they have a background containing any pending criminal charges or convictions on the secretary's list that are described in WAC 110-06-0120(3) or negative actions described in WAC 110-06-0120(4);

(c) Whether they have obtained a CROP or CPI for any of the background that is described in WAC 110-06-0120 (3) or (4);

(d) The amount of time that has passed since the pending criminal charge, conviction information, or negative action;

(e) The seriousness of the crime and/or their actions that led to the pending criminal charge, conviction, or negative action;

(f) The number, types, and age of other pending criminal charges, convictions, or negative actions in their background;

(g) Their age at the time of the pending criminal charge, conviction, or the issuance of the negative action determination;

(h) The length and consistency of employment history before and after the pending criminal charge, conviction, or negative action;

(i) The employment or character references and any other information regarding their fitness to be authorized;

(j) The completion of services or other evidence of rehabilitation since the pending criminal charge, conviction, or negative action;

(k) The subject individuals' role or purpose in delivering early learning services; and

(l) How their conduct that is the basis for their pending criminal charge, conviction, or negative action, is conduct that shows they do not have the appropriate character, suitability, and competence to receive a background authorization.

(4) Subject individuals who are registered or required to be registered on a state sex offender registry, state sex offender repository, or the national sex offender registry, must be disqualified.

(5) Subject individuals who knowingly make a materially false statement in connection with the criminal background check application must be disqualified.

(6) DCYF issues decisions within 45 days of completed background application submission dates, notwithstanding delays incurred by applicants or other entities required to provide background information.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0070, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0070, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0070, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0070, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0070, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0080 ((Notification)) Notice of disqualification.

(1) ~~((The department))~~ DCYF will ~~((notify the))~~ send written notice to subject individuals ((in writing if he or she is)) who are disqualified by the background check.

(2) If ~~((the department))~~ DCYF sends a notice of disqualification, ~~((the))~~ subject individuals will not be authorized to:

(a) Care for or have unsupervised access to children receiving early learning services ((, or to)); or

(b) Be present on the early learning service's premises during the hours ((for which)) when child care is provided.

(3) Any decision by ~~((the department))~~ DCYF to disqualify ~~((a))~~ subject individuals under this chapter ~~((is))~~ are effective immediately upon receipt of written notice from the department to the subject individual.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0080, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0080, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0080, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0080, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0080, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0100 ((Request for)) Requesting an administrative hearing.

(1) ~~((Any))~~ Subject individuals ((has)) have a right to contest ~~((the department's))~~ a disqualification decision under WAC 110-06-0070 ~~((and))~~ . Subject individuals must request a hearing within ~~((twenty-eight))~~ 28 days of receipt of the written disqualification decision ~~((, regardless of whether the subject individual requests a~~

department reconsideration of the disqualification under WAC 110-06-0115).

(2) ((A)) Requests for ((a)) hearings must meet the requirements of chapter 110-03 WAC.

(3) Any decision by the department to disqualify ((a)) subject individuals under this chapter will remain in effect pending the outcome of the administrative hearing or review under chapter 110-03 WAC, notwithstanding any provision of chapter 110-03 WAC to the contrary.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0100, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0100, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0100, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0100, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0110 Limitations on challenges to disqualifications.

Administrative hearings requested to challenge background check disqualifications may not be used to adjudicate the basis for disqualification, including:

(1) ((If the disqualification is based on a)) Pending criminal charges or criminal convictions ((, the subject individual cannot contest the conviction in the administrative hearing.));

(2) ((If the disqualification is based on a)) Findings of child abuse or neglect as defined in chapter 26.44 RCW, or ((a)) findings of abandonment, abuse, neglect, exploitation, or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW, ((the subject individual cannot contest the finding)) if the subject individuals:

(a) ((The subject individual was notified of)) Failed to request a hearing to contest the finding after receiving notice of the finding ((by the department of social and health services (DSHS) and failed to request a hearing to contest the finding)) from DCYF; or

(b) ((The subject individual was)) Were notified of the finding ((by DSHS)) and requested a hearing to contest the finding, but the finding was upheld by final administrative order or superior court order((-));

(3) ((If the disqualification is based on a)) Court orders finding ((the subject individual's child)) subject individuals' children to be dependent as defined in chapter 13.34 RCW((, the subject individual cannot contest the finding of dependency in the administrative hearing.)); or

(4) ((If the disqualification is based on a)) Negative actions ((as defined in WAC 110-06-0020 the subject individual cannot contest the underlying negative action in the administrative hearing if the subject individual was)), if the subject individuals were previously given the right of review or hearing right and ((a)) final decisions or findings ((has)) have been issued.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0110, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0110, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0110, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0110, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0115 ((Reconsideration of)) Department decision to vacate disqualification decisions. (1) Subject to the requirements contained in this chapter ((110-06-WAC)), the department may not reconsider ((an)) whether earlier decisions to disqualify ((a)) subject individuals will be vacated unless the department determines a change has occurred in the circumstances of a subject individual between the date of disqualification and the date the request to vacate the disqualification is made. Subject to the requirements contained in this chapter, to receive a background check authorization under this section, the department must review the subject individual's background and assess their character, suitability, and competence to determine whether the change in circumstances demonstrates the subject individual should receive an authorization.

(2) ((For a disqualification based on WAC 110-06-0070 (5) or (7)(a), (c), or (e), a disqualified subject individual's request for reconsideration will be granted only if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualification that demonstrates there is nothing about the subject individual's character, suitability, or competence that would prevent the subject individual from caring for or having unsupervised access to children receiving early learning services. For purposes of subsection (2) of this section a disqualification based on a "negative action," WAC 110-06-0070 (5) or (7)(c) or (e) does not include a decision, final determination, or finding made by an agency or administrative law judge that relates to:

(a) The commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 388-15 WAC; or

(b) The commission of abuse or neglect of a vulnerable adult as defined in chapter 74.34 RCW.)) To determine whether there has been a change in circumstances, the department must consider the factors described in subsection (3) of this section. A change in circumstances includes, but is not limited to, the following:

(a) Two years have passed since the issuance of a disqualification.

(b) The issuance of a valid CROP that pertains to a crime that was the sole basis of the subject individual's disqualification.

(c) If the sole basis for the disqualification was for a pending criminal charge or conviction that has been dismissed, vacated, the subject of a pardon, annulment, or other equivalent procedure.

(d) The issuance of a valid CPI that pertains to a negative action that was the sole basis of the subject individual's disqualification. The CPI must pertain to conduct by the subject individual that resulted in a founded finding of negligent treatment or maltreatment, physical abuse, or a dependency finding that was the result of a finding that the subject individual abused or neglected the child under RCW 13.34.030 (6) (b).

(e) If the sole basis for the disqualification was a negative action that has been dismissed, vacated, annulled, or other equivalent procedure.

(3) ((For a disqualification based on any of the circumstances described in WAC 110-06-0070 (3) and (7)(b) or (d), a disqualified subject individual's request for reconsideration will be granted only if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualification that demonstrates there is nothing about the subject individual's character, suitability, or competence that would constitute a danger to a child's welfare if the individual is allowed to care for or have unsupervised access to children in care.)) Before subject individuals are issued a background check authorization under this section, the department must review their background and assess their character, suitability, and competence. In this assessment, the department considers the following factors related to the subject individual's background:

(a) Whether the subject individual has a pending criminal charge or conviction on the secretary's list described in WAC 110-06-0120(2);

(b) Whether the subject individual has a background containing any of the information described in the secretary's list in WAC 110-06-0120 (3) or (4);

(c) The amount of time that has passed since the pending criminal charge, conviction, or negative action information that is the sole basis, or partial basis, of the subject individual's prior disqualification;

(d) The seriousness of the crime or subject individual's actions that led to the pending criminal charge, conviction, or negative action that was the sole basis, or partial basis, of the subject individual's prior disqualification;

(e) The number, types, and age of other pending criminal charges, conviction information, or negative actions in the subject individual's background;

(f) The subject individual's age at the time of the negative action determination, pending criminal charge or conviction that is the sole basis, or partial basis, of the subject individual's prior disqualification;

(g) The completion of services or other evidence of rehabilitation since the pending criminal charge, conviction, or negative action that is the sole basis, or partial basis of the subject individual's prior disqualification;

(h) The subject individual's role or purpose in delivering early learning services;

(i) The length and consistency of employment history between the date the disqualification was issued and the date the subject individual asks the department to vacate the disqualification decision;

(j) The employment or character references and any other information regarding the subject individual's fitness to be authorized.

(4) ((The department will not reconsider qualifying a subject individual that was disqualified under WAC 110-06-0120(1).)) If a CROP

or CPI has been issued for a crime or negative action described in the secretary's list in WAC 110-06-0120 (3) or (4) that was the sole basis for a disqualification, the department must vacate the disqualification. If a disqualification is vacated for any reason under this section, the department must conduct a new background check investigation and evaluation as described in this chapter.

(5) ((The department will not reconsider qualifying a subject individual that was disqualified under WAC 110-06-0120(2) for a period of five years from the date of the disqualifying conviction.)) As part of the background check process under this section, the department will conduct the background check investigation, evaluation, and assessment as described in this chapter.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0115, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0115, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0115, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0115, filed 5/30/12, effective 7/1/12.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0120 Secretary's list. ~~((1) A subject individual's conviction for any crimes listed in column (a) in the table below will permanently disqualify him or her from authorization to care for or have unsupervised access to children receiving early learning services.~~

~~(2) A subject individual's conviction for any crime listed in column (b) in the table below will disqualify him or her from authorization to care for or have unsupervised access to children receiving early learning services for a period of five years from the date of conviction.~~

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Abandonment of a child	Abandonment of a dependent person not against child
Arson	Assault 3 not domestic violence
Assault 1	Assault 4/simple assault
Assault 2	Burglary
Assault 3 domestic violence	Coercion
Assault of a child	Custodial assault
Bail jumping	Custodial sexual misconduct
	Extortion 2

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Child buying or selling	Forgery
Child molestation	Harassment
Commercial sexual abuse of a minor	
Communication with a minor for immoral purposes	Identity theft
Controlled substance homicide	Leading organized crime
Criminal mistreatment	Malicious explosion 3
Custodial interference	Malicious mischief
Dealing in depictions of minor engaged in sexually explicit conduct	Malicious placement of an explosive 2
Domestic violence (felonies only)	Malicious placement of an explosive 3
Drive-by shooting	Malicious placement of imitation device 1
Extortion 1	Patronizing a prostitute
Harassment domestic violence	Possess explosive device
Homicide by abuse	Promoting pornography
Homicide by watercraft	Promoting prostitution 1
Incendiary devices (possess, manufacture, dispose)	Promoting prostitution 2
Incest	Promoting suicide attempt
Indecent exposure/public indecency (felonies only)	Prostitution
Indecent liberties	Reckless endangerment
Kidnapping	Residential burglary
Luring	Stalking
Malicious explosion 1	Theft
Malicious explosion 2	Theft-welfare
Malicious harassment	Unlawful imprisonment
Malicious mischief domestic violence	Unlawful use of a building for drug purposes
Malicious placement of an explosive 1	Violation of the Imitation Controlled Substances Act (manufacture/deliver/intent)
Manslaughter	Violation of the Uniform Controlled Substances Act (manufacture/deliver/intent)
Murder/aggravated murder	Violation of the Uniform Legend Drug Act (manufacture/deliver/intent)
	Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Possess depictions minor engaged in sexual conduct	
Rape	
Rape of child	
Robbery	
Selling or distributing erotic material to a minor	
Sending or bringing into the state depictions of a minor	
Sexual exploitation of minors	
Sexual misconduct with a minor	
Sexually violating human remains	
Use of machine gun in felony	
Vehicular assault	
Vehicular homicide (negligent homicide)	
Violation of child abuse restraining order	
Violation of civil anti-harassment protection order	
Violation of protection/contact/restraining order	
Voyeurism))	

(1) The crimes and conduct described in this section constitute the secretary's list.

(2) Subject to the requirements described in this chapter, the department must permanently disqualify subject individuals who have a pending criminal charge or conviction for any of the crimes listed in this subsection.

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.42.060</u>	<u>Abandonment of a dependent person in the first degree (if the victim is a child)</u>
<u>RCW 9A.42.070</u>	<u>Abandonment of a dependent person in the second degree (if the victim is a child)</u>
<u>RCW 10.95.020</u>	<u>Aggravated murder</u>
<u>RCW 9A.48.020</u>	<u>Arson in the first degree</u>
<u>RCW 9A.48.030</u>	<u>Arson in the second degree</u>
<u>RCW 9A.36.011</u>	<u>Assault in the first degree</u>
<u>RCW 9A.36.021</u>	<u>Assault in the second degree</u>
<u>RCW 9A.36.031</u>	<u>Assault in the third degree (if causes bodily harm)</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.36.120</u>	<u>Assault of a child in the first degree</u>
<u>RCW 9A.36.130</u>	<u>Assault of a child in the second degree</u>
<u>RCW 9A.36.140</u>	<u>Assault of a child in the third degree</u>
<u>RCW 9A.52.020</u>	<u>Burglary in the first degree (if child or spouse is assaulted)</u>
<u>RCW 9A.44.083</u>	<u>Child molestation in the first degree</u>
<u>RCW 9A.44.086</u>	<u>Child molestation in the second degree</u>
<u>RCW 9A.44.089</u>	<u>Child molestation in the third degree</u>
<u>RCW 9A.64.030</u>	<u>Child buying or selling</u>
<u>RCW 9.68A.100</u>	<u>Commercial sexual abuse of a minor</u>
<u>RCW 9.68A.090</u>	<u>Communication with minor for immoral purposes (if a felony)</u>
<u>RCW 69.50.415</u>	<u>Controlled substances homicide (if the victim is a child)</u>
<u>RCW 9A.42.020</u>	<u>Criminal mistreatment in the first degree (if the victim is a child)</u>
<u>RCW 9A.42.030</u>	<u>Criminal mistreatment in the second degree (if the victim is a child)</u>
<u>RCW 9A.36.100</u>	<u>Custodial assault (if causes bodily harm)</u>
<u>RCW 9A.40.060</u>	<u>Custodial interference in the first degree (if the victim is a child)</u>
<u>RCW 9A.40.070</u>	<u>Custodial interference in the second degree (if the victim is a child; and the conviction is the subject individual's second or subsequent conviction of custodial interference in the second degree)</u>
<u>RCW 9A.44.160</u>	<u>Custodial sexual misconduct in the first degree (if the victim is a child)</u>
<u>RCW 9.68A.050</u>	<u>Dealing in depictions of minor engaged in sexually explicit conduct in the first degree or second degree</u>
<u>RCW 9A.36.045</u>	<u>Drive-by shooting (if the victim is a child)</u>
<u>RCW 9A.42.100</u>	<u>Endangerment with a controlled substance (if the victim is a child)</u>
<u>RCW 9A.56.120</u>	<u>Extortion in the first degree (if the victim is a child)</u>
<u>RCW 9A.56.130</u>	<u>Extortion in the second degree (if the victim is a child)</u>
<u>RCW 9A.36.080</u>	<u>Hate crime offense (if the victim is a child)</u>
<u>RCW 9A.32.055</u>	<u>Homicide by abuse (if the victim is a child)</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.64.020</u>	<u>Incest in the first degree or second degree (if the victim is a child)</u>
<u>RCW 9A.88.010</u>	<u>Indecent exposure (if a felony and the victim is a child)</u>
<u>RCW 9A.44.100</u>	<u>Indecent liberties</u>
<u>RCW 9A.40.020</u>	<u>Kidnapping in the first degree</u>
<u>RCW 9A.40.030</u>	<u>Kidnapping in the second degree</u>
<u>RCW 9A.40.090</u>	<u>Luring (if the victim is a child)</u>
<u>RCW 9A.32.060</u>	<u>Manslaughter in the first degree (if the victim is a child)</u>
<u>RCW 9A.32.070</u>	<u>Manslaughter in the second degree (if the victim is a child)</u>
<u>RCW 9A.32.030</u>	<u>Murder in the first degree</u>
<u>RCW 9A.32.050</u>	<u>Murder in the second degree</u>
<u>RCW 9.68A.070</u>	<u>Possession of depictions of minor engaged in sexually explicit conduct in the first degree or second degree</u>
<u>RCW 9.68A.101</u>	<u>Promoting commercial sexual abuse of a minor</u>
<u>RCW 9.68.140</u>	<u>Promoting pornography (if the victim is a child)</u>
<u>RCW 9A.88.070</u>	<u>Promoting prostitution in the first degree (if the victim is a child)</u>
<u>RCW 9.68A.102</u>	<u>Promoting travel for commercial sexual abuse of a minor</u>
<u>RCW 9A.44.040</u>	<u>Rape in the first degree</u>
<u>RCW 9A.44.050</u>	<u>Rape in the second degree</u>
<u>RCW 9A.44.060</u>	<u>Rape in the third degree</u>
<u>RCW 9A.44.073</u>	<u>Rape of a child in the first degree</u>
<u>RCW 9A.44.076</u>	<u>Rape of a child in the second degree</u>
<u>RCW 9A.44.079</u>	<u>Rape of a child in the third degree</u>
<u>RCW 9A.56.200</u>	<u>Robbery in the first degree (if the victim is a child)</u>
<u>RCW 9A.56.210</u>	<u>Robbery in the second degree (if the victim is a child)</u>
<u>RCW 9.68A.060</u>	<u>Sending, bringing into state depictions of minor engaged in sexually explicit conduct in the first degree or second degree</u>
<u>RCW 9.68A.040</u>	<u>Sexual exploitation of a minor</u>
<u>RCW 9A.44.093</u>	<u>Sexual misconduct with a minor in the first degree</u>
<u>RCW 9A.40.040</u>	<u>Unlawful imprisonment (if the victim is a child)</u>
<u>RCW 46.61.520</u>	<u>Vehicular homicide (if the victim is a child)</u>

(3) Subject to the requirements described in this chapter, the department may disqualify subject individuals who have a pending criminal charge or conviction for a crime listed in this subsection.

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.42.060</u>	<u>Abandonment of a dependent person in the first degree (if the victim is not a child)</u>
<u>RCW 9A.42.070</u>	<u>Abandonment of a dependent person in the second degree (if the victim is not a child)</u>
<u>RCW 9A.42.080</u>	<u>Abandonment of a dependent person in the third degree</u>
<u>RCW 16.52.205</u>	<u>Animal cruelty in the first degree</u>
<u>RCW 16.52.207</u>	<u>Animal cruelty in the second degree</u>
<u>RCW 9A.36.031</u>	<u>Assault in the third degree (if no bodily harm)</u>
<u>RCW 9A.36.041</u>	<u>Assault in the fourth degree</u>
<u>RCW 9A.52.020</u>	<u>Burglary in the first degree (if a child or spouse is not assaulted)</u>
<u>RCW 9A.52.030</u>	<u>Burglary in the second degree</u>
<u>RCW 9A.36.070</u>	<u>Coercion</u>
<u>RCW 9.68A.090</u>	<u>Communication with minor for immoral purposes (if a gross misdemeanor)</u>
<u>RCW 69.50.415</u>	<u>Controlled substances homicide (if the victim is not a child)</u>
<u>RCW 9A.46.120</u>	<u>Criminal gang intimidation</u>
<u>RCW 9A.60.040</u>	<u>Criminal impersonation in the first degree</u>
<u>RCW 9A.42.020</u>	<u>Criminal mistreatment in the first degree (if the victim is not a child)</u>
<u>RCW 9A.42.030</u>	<u>Criminal mistreatment in the second degree (if the victim is not a child)</u>
<u>RCW 9A.42.035</u>	<u>Criminal mistreatment in the third degree</u>
<u>RCW 9A.42.037</u>	<u>Criminal mistreatment in the fourth degree</u>
<u>RCW 9.05.060</u>	<u>Criminal sabotage</u>
<u>RCW 9A.36.100</u>	<u>Custodial assault (if no bodily harm)</u>
<u>RCW 9A.40.060</u>	<u>Custodial interference in the first degree (if the victim is not a child)</u>
<u>RCW 9A.40.070</u>	<u>Custodial interference in the second degree (if the victim is not a child)</u>
<u>RCW 9A.44.160</u>	<u>Custodial sexual misconduct in the first degree (if the victim is not a child)</u>
<u>RCW 9A.44.170</u>	<u>Custodial sexual misconduct in the second degree</u>
<u>RCW 9.61.260</u>	<u>Cyberstalking</u>
<u>RCW 9A.36.045</u>	<u>Drive-by shooting (if the victim is not a child)</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 46.61.502</u>	<u>Driving under the influence of intoxicating liquor, marijuana, or any drug (if the conviction was for a felony or the conviction occurred within three years of the date of the subject individual's request for authorization)</u>
<u>RCW 46.52.020</u>	<u>Duty in case of personal injury or death or damage to attended vehicle or other property – Penalties (if a felony)</u>
<u>RCW 9A.42.100</u>	<u>Endangerment with a controlled substance (if the victim is not a child)</u>
<u>RCW 9A.56.120</u>	<u>Extortion in the first degree (if the victim is not a child)</u>
<u>RCW 9A.56.130</u>	<u>Extortion in the second degree (if the victim is not a child)</u>
<u>RCW 9A.44.132</u>	<u>Failure to register as sex offender or kidnapping offender</u>
<u>RCW 66.44.270</u>	<u>Furnishing liquor to minors (only if the subject individual sells, gives, or otherwise supplies liquor to a person under the age of 21 years; or permits any person under that age to consume liquor on the subject individual's property or on any property under the subject individual's control)</u>
<u>RCW 9A.46.020</u>	<u>Harassment</u>
<u>RCW 9A.36.080</u>	<u>Hate crime offense (if the victim is not a child)</u>
<u>RCW 9A.32.055</u>	<u>Homicide by abuse (if the victim is not a child)</u>
<u>RCW 79A.60.050</u>	<u>Homicide by watercraft</u>
<u>RCW 9.40.120</u>	<u>Incendiary devices</u>
<u>RCW 9A.64.020</u>	<u>Incest in the first degree or second degree (if the victim is not a child)</u>
<u>RCW 9A.88.010</u>	<u>Indecent exposure (if felony and victim is not a child, or if a misdemeanor)</u>
<u>RCW 9A.82.060</u>	<u>Leading organized crime</u>
<u>RCW 46.61.685</u>	<u>Leaving children unattended in standing vehicle with motor running</u>
<u>RCW 9.91.060</u>	<u>Leaving children unattended in parked automobile</u>
<u>RCW 9A.40.090</u>	<u>Luring (if the victim is not a child)</u>
<u>RCW 70.74.270</u>	<u>Malicious placement of an explosive in the first, second, or third degree</u>
<u>RCW 70.74.272</u>	<u>Malicious placement of an imitation device in the first degree or second degree</u>
<u>RCW 9A.32.060</u>	<u>Manslaughter in the first degree (if the victim is not a child)</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.32.070</u>	<u>Manslaughter in the second degree (if the victim is not a child)</u>
<u>RCW 46.61.5249</u>	<u>Negligent driving in the first degree (if the conviction occurred within three years of the date of the subject individual's request for authorization)</u>
<u>RCW 46.61.504</u>	<u>Physical control of vehicle under the influence (if felony)</u>
<u>RCW 9.68.140</u>	<u>Promoting pornography (if the victim is not a child)</u>
<u>RCW 9A.88.070</u>	<u>Promoting prostitution in the first degree (if the victim is not a child)</u>
<u>RCW 9A.88.080</u>	<u>Promoting prostitution in the second degree</u>
<u>RCW 9A.36.060</u>	<u>Promoting a suicide attempt</u>
<u>RCW 9A.36.050</u>	<u>Reckless endangerment</u>
<u>RCW 9A.76.070</u>	<u>Rendering criminal assistance in the first degree</u>
<u>RCW 9A.52.025</u>	<u>Residential burglary</u>
<u>RCW 9A.56.200</u>	<u>Robbery in the first degree (if the victim is not a child)</u>
<u>RCW 9A.56.210</u>	<u>Robbery in the second degree (if the victim is not a child)</u>
<u>RCW 9A.44.096</u>	<u>Sexual misconduct with a minor in the second degree</u>
<u>RCW 9A.44.105</u>	<u>Sexually violating human remains</u>
<u>RCW 9A.46.110</u>	<u>Stalking</u>
<u>RCW 9.61.230</u>	<u>Telephone harassment (if felony)</u>
<u>RCW 9A.40.100</u>	<u>Trafficking in the first degree or second degree</u>
<u>RCW 13.32A.080</u>	<u>Unlawful harboring of a minor</u>
<u>RCW 9A.40.040</u>	<u>Unlawful imprisonment (if the victim is not a child)</u>
<u>RCW 69.53.010</u>	<u>Unlawful use of a building for drug abuse purposes</u>
<u>RCW 9.41.225</u>	<u>Use of machine gun or bump-fire stock in felony</u>
<u>RCW 46.61.522</u>	<u>Vehicular assault</u>
<u>RCW 46.61.520</u>	<u>Vehicular homicide (if the victim is not a child)</u>
<u>RCW 9.68A.075</u>	<u>Viewing depictions of minor engaged in sexually explicit conduct in the first or second degree</u>
<u>RCW 26.50.110</u>	<u>Violation of sexual assault protection order under chapter 7.90 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of stalking no-contact order or stalking protection order under chapter 7.92 RCW if a felony under RCW 26.50.110.</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 26.50.110</u>	<u>Violation of human trafficking no-contact order under chapter 9A.40 if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of an order restricting contact under RCW 9A.46.080.</u>
<u>RCW 26.50.110</u>	<u>Violation of promoting prostitution no-contact order under chapter 9A.88 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of domestic violence no-contact order under chapter 10.99 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of dissolution proceeding restraining order under chapter 26.09 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of paternity proceeding restraining order under chapter 26.26A or 26.26B RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of a domestic violence order for protection under chapter 26.50 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of an order for protection of a vulnerable adult under chapter 74.34 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 10.14.170</u>	<u>Violation of civil antiharassment protection order</u>
<u>RCW 69.52.030</u>	<u>Violation of the Uniform Controlled Substances Act (manufacture, distribute, or possess with intent to distribute)</u>
<u>Chapter 69.50 RCW (Article IV Offenses and penalties)</u>	<u>Except for controlled substance homicide if the child is a victim (RCW 69.50.415), any violation of the Uniform Controlled Substances Act</u>
<u>RCW 69.41.020</u>	<u>The unlawful obtaining or attempting to obtain a legend drug, or procure or attempt to procure the administration of a legend drug</u>
<u>RCW 69.41.030</u>	<u>Sale or delivery of legend drug without prescription or order</u>
<u>RCW 69.43.070</u>	<u>Sale, transfer, or furnishing of any substance listed in RCW 69.43.010 with knowledge or intent the recipient will use the substance to unlawfully manufacture a controlled substance; or the receipt of any substance listed in RCW 69.43.010 with intent to use the substance unlawfully to manufacture a controlled substance.</u>
<u>RCW 9A.44.115</u>	<u>Voyeurism</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 69.41.030</u>	<u>Sale or delivery of legend drug without prescription or order</u>

(4) Subject to the requirements described in this chapter, the department may disqualify subject individuals who have a background that includes any negative action that is based on the conduct described in this subsection.

(a) The abuse, neglect, exploitation, or abandonment of a vulnerable adult, child, or juvenile.

(b) The suspension, termination, revocation, denial, or restriction of a license, professional license, or certification.

(c) The suspension, termination, or revocation of a state or federal contract.

(d) The relinquishment of a license, certification, or contract in lieu of an agency negative action.

(5) Under 42 U.S.C. § 9858f (c)(1)(B) subject individuals must be disqualified and not authorized for employment at a licensed or certified child care facility, if they knowingly make a materially false statement in connection with their criminal background check.

(6) Under 42 U.S.C. § 9858f (c)(1)(C) subject individuals must be disqualified and not authorized for employment at a licensed or certified child care facility, if they are registered, or are required to be registered, on a state sex offender registry or repository or the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901 et seq.).

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0120, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0120, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0120, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.060, 43.215.070 and chapter 43.215 RCW. WSR 14-13-002, § 170-06-0120, filed 6/4/14, effective 7/5/14. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0120, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0120, filed 4/30/08, effective 5/31/08.]

WSR 22-10-023

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed April 25, 2022, 2:35 p.m., effective June 1, 2022]

Effective Date of Rule: June 1, 2022.

Purpose: The agency is adopting new rules to align with E2SSB 5377. This bill provides that if a public option plan is not available in plan year 2022 or later, certain hospitals must contract with at least one public option plan to provide in-network services to that plan's enrollees. The bill also provides that the health care authority may adopt rules to enforce compliance. The new rules, in part, describe which hospitals must comply.

Citation of Rules Affected by this Order: New WAC 182-400-0100, 182-400-0200, 182-400-0300, and 182-400-0400.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: E2SSB 5377.

Adopted under notice filed as WSR 22-06-080 on March 1, 2022.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
WAC 182-400-0100		
Proposed	(2) Each hospital should actively seek to contract with as many carriers that offer public option plans as possible to ensure compliance with this chapter and to avoid sanctions by failing to contract with at least one carrier offering public option plans.	Revised to align with the underlying law, which requires hospitals to contract with at least one public option plan and act when they receive an offer from a public option plan.
Adopted	(2) Each hospital should consider all valid offers from public option plans to ensure compliance with this chapter and to avoid sanctions by failing to contract with at least one public option plan.	
WAC 182-400-0300		
Proposed	(2) Investigations. The authority may open an investigation: (b) When there are counties in which no public option plans are available; or	Revised based on clarifying language recommended by stakeholders.
Adopted	(2) Investigations. The authority may open an investigation: (b) When there are no public option plans available in the county where the hospital is located; or	
WAC 182-400-0400		
Proposed	(3) The authority conducts hearings under the Washington state Administrative Procedure Act (chapter 34.05 RCW) and the administrative hearing rules for medical services programs (chapter 182-526 WAC).	Revised to clarify that appeals are part of the review process.
Adopted	(3) The authority conducts hearings and appeals under the Washington state Administrative Procedure Act (chapter 34.05 RCW) and the administrative hearing rules for medical services programs (chapter 182-526 WAC).	
Proposed	(7) The authority may impose a one percent interest charge for any nonpayment of sanctions.	Revised to clarify how unpaid interest charges accrue.
Adopted	(7) The authority may impose a one percent interest charge for each month sanctions are unpaid.	

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 Nongovernmental 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 4, 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 4, Amended 0, Repealed 0.

Date Adopted: April 25, 2022.

Wendy Barcus
Rules Coordinator

OTS-3528.4

Chapter 182-400 WAC
PUBLIC OPTION PLANS (CASCADE CARE SELECT)

NEW SECTION

WAC 182-400-0100 Public option hospital participation—Purpose and scope. (1) The Washington health benefit exchange, in partnership with the health care authority, administers public purchasing of the Washington state public option plans known as Cascade Care Select.

(2) Each hospital should consider all valid offers from public option plans to ensure compliance with this chapter and to avoid sanctions by failing to contract with at least one public option plan.

(3) In accordance with RCW 41.05.405, beginning in plan year 2023, a hospital that receives payments through a medical assistance program under chapter 74.09 RCW, or a public employees benefits board (PEBB) or a school employees benefits board (SEBB) program under chapter 41.05 RCW must contract with at least one carrier offering public option plans to provide in-network coverage to enrollees, if the hospital received a valid offer to contract with a carrier offering public option plans to provide in-network services.

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NEW SECTION

WAC 182-400-0200 Definitions. For the purposes of this chapter:

"Authority" means the Washington state health care authority.

"Carrier" is defined in RCW 48.43.005.

"Health benefit exchange" means the Washington state health benefit exchange established in RCW 43.71.020.

"Hospital" means any hospital licensed under chapter 70.41 RCW that receives payment for services provided:

(a) To enrollees in the public employees benefits program or school employees benefits program under chapter 41.05 RCW; or

(b) Through a medical assistance program under chapter 74.09 RCW. "Parties" means carriers and hospitals as defined in this chapter.

"Plan year" means the 12-month period beginning on January 1st of each year and ending on December 31st of the same year.

"Public option plan" means a qualified health plan contracted by or offered in a response to a procurement issued by the authority under RCW 41.05.410.

"Valid offer to contract" means:

(a) A written offer made by a carrier to a hospital to enter into a contract with the carrier to provide in-network coverage to enrollees of the carrier's public option plans; and

(b) The carrier's offer must contain sufficient information so that a reasonable person would understand that a good faith offer has been made. The carrier must, at a minimum, include the reimbursement rate offered in a manner that constitutes a legally binding document that the parties could execute.

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NEW SECTION

WAC 182-400-0300 Enforcement. (1) **Compliance.** The authority conducts investigations, as needed, to ensure compliance with this chapter.

(2) **Investigations.** The authority may open an investigation:

(a) When the authority receives information from a carrier that a hospital failed to contract with that carrier to provide in-network coverage to enrollees of the carrier's public option plans after making a valid offer to contract;

(b) When there are no public option plans available in the county where the hospital is located; or

(c) On a case-by-case basis at the authority's sole discretion.

(3) **Procedure.**

(a) The authority sends a written investigation notice explaining the nature of the allegation to both the hospital and to bidding or contracted carriers.

(b) The authority may request additional information or documentation from the carrier or carriers and the hospital. If the authority sends a written request for information, parties have 30 calendar days to:

(i) Provide the requested information or documentation; or

(ii) Request additional time to complete the request, which the authority may grant on a case-by-case basis.

(c) The authority may request the following information or documentation from any party during an investigation:

(i) A copy of all written communications, including emails, between the hospital and the carriers related to any potential contract offers, or contracts that have been executed related to public option plans and related discussions;

(ii) A copy, including the provider reimbursement rates, of any offer to contract or executed contract;

(iii) A statement from a party explaining the party's position, including information regarding why the offer was not accepted;

(iv) A statement regarding any mitigating factors the hospital or carrier would like the authority to take into consideration when determining whether a sanction is warranted; and

(v) Any other information the authority decides is relevant in determining whether a sanction is appropriate.

(d) If the authority determines that any party has failed to fully and timely respond to the authority's request for information or documentation, the authority may impose an immediate sanction for non-compliance for each incident of noncompliance, as follows:

Number of incidents of noncompliance	Sanction amount
First	\$10,000
Second	\$25,000
Third	\$50,000
Fourth and subsequent incidents	\$100,000

(e) The authority may issue a sanction for each missing item, or for each failure to provide documentation or information within the required time or may issue sanctions for both. Sanctions under this section are cumulative and immediate but may be stayed if the sanctioned party files an appeal under WAC 182-400-0400.

(f) When issuing an immediate sanction under (d) of this subsection, the authority sends a written notice to demand payment. The authority must receive payment within 28 calendar days of the date the party received the notice.

(4) Sanctions for failure to accept valid contract offer.

(a) After an investigation conducted under subsection (3) of this section, if, in the authority's sole discretion, the authority determines that a hospital failed to accept a valid offer to contract from a carrier, and is not contracted with any other public option plan for that plan year, the sanction amount for that plan year is as follows:

(i) For hospitals with 50 beds or fewer, \$182,500; or

(ii) For hospitals with more than 50 beds, \$3,650 per bed.

(b) A party may appeal a sanction notice under WAC 182-400-0400.

(5) **Public disclosure.** The information submitted according to this section is not subject to public disclosure under chapter 42.56 RCW, to the extent set forth in RCW 41.05.410 (3) (b).

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NEW SECTION

WAC 182-400-0400 Notice of sanction appeal process. (1) The process described in this section applies only if a party receives a written sanction notice from the authority for noncompliance with this chapter.

(2) The authority must receive a party's appeal within 28 calendar days of the date the party received the notice of sanction.

(a) To file an appeal, a party must send a written request for an administrative hearing to the address listed on the notice of sanction in a manner that provides proof of receipt.

(b) The request for the administrative hearing must provide a copy of the notice of sanction in dispute.

(3) The authority conducts hearings and appeals under the Washington state Administrative Procedure Act (chapter 34.05 RCW) and the administrative hearing rules for medical services programs (chapter 182-526 WAC).

(4) Under WAC 182-526-0025(2), the authority, in its sole discretion, may conduct the administrative hearing or may transfer the hearing to the office of administrative hearings (OAH).

(a) If the authority conducts the administrative hearing, it issues the final agency decision.

(b) If OAH conducts the administrative hearing, it issues an initial order with instructions on how to file an appeal with the authority's board of appeals.

(5) Repayment of sanctions is stayed only if a party timely files an appeal under this section.

(6) If the final order upholds the notice of sanction, the authority immediately begins collection activities.

(7) The authority may impose a one percent interest charge for each month sanctions are unpaid.

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WSR 22-10-024
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed April 25, 2022, 3:08 p.m., effective May 26, 2022]

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

Purpose: The department is adding two new sections and amending four sections in chapter 388-71 WAC, Home and community services and programs; and chapter 388-112A WAC, Residential long-term care services training.

RCW 18.20.270(9) stipulates that "the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department."

Under gubernatorial suspension of training rules and coordinated efforts to expand opportunities for remote training during the COVID-19 pandemic, the department of social and health services (DSHS) contracted with DSHS-approved training company to conduct a pilot basic training program in which skills would be taught, demonstrated, reinforced, and remediated remotely.

These rules will set standards for remote skills training and update current definitions and basic training rules to allow for virtual classroom and remote skills training. The effect will be to expand opportunities for long-term care worker training statewide, especially in remote areas.

Citation of Rules Affected by this Order: New WAC 388-71-0873 and 388-112A-0305; and amending WAC 388-71-0836, 388-71-8070, 388-112A-0010, and 388-112A-0030.

Statutory Authority for Adoption: RCW 74.08.090, 74.39A.070, 74.39A.074, 18.20.270, 70.128.230.

Adopted under notice filed as WSR 22-05-041 on February 8, 2022.

Changes Other than Editing from Proposed to Adopted Version: Typographical error "much" was changed to "must," and the term "70-hour long-term care worker basic training" was changed to "70-hour home care aide basic training" for clarity.

A final cost-benefit analysis is available by contacting David Chappell, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-2366, email david.chappell@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental 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 2, Amended 4, Repealed 0.

Date Adopted: April 22, 2022.

Lisa N. H. Yanagida
Interim Chief of Staff

SHS-4909.3

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0836 What definitions apply to the long-term care worker training requirements? The following definitions apply to the long-term care worker training requirements:

(1) "**Activities of daily living**((~~7~~))" means self-care abilities related to personal care such as bathing, eating, using the toilet, medication assistance, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) "**Care team**" means the client and everyone involved in his or her care. The care team may include family, friends, doctors, nurses, long-term care workers, social workers, and case managers. The role of the care team is to support the client's well-being. However, the client directs the care plan.

(3) "**Challenge test**" means a competency test taken for specialty training without first taking the class for which the test is designed and may only be used when basic training is not required.

(4) "**Client**" means an individual receiving in-home services.

(5) "**Competency**" means the integrated knowledge, skills, or behavior expected of a long-term care worker after completing training in a required topic area. Learning objectives are associated with each competency.

(6) "**Competency testing**" means evaluating a student to determine if he or she can demonstrate the required level of skill, knowledge, and behavior with respect to the identified learning objectives of a particular course. The department only requires competency testing for nurse delegation core and specialized diabetes training, and the specialty and expanded specialty trainings. Training programs may integrate competency testing within their approved curricula.

(7) "**Core basic training**" means the portion of the ((~~seventy-hour~~)) 70-hour ((~~long-term care worker~~)) home care aide basic training that covers the core competencies and skills that long-term care workers need in order to provide personal care services efficiently and safely. The core basic training hours also includes hours devoted to student practice and demonstration of skills.

(8) "**Date of hire**" for determining timeframes related to training and certification, means the date of hire as described in ((~~WAC 246-980-010~~)) chapter 246-980 WAC.

(9) "**DDA**" refers to the developmental disabilities administration.

(10) "**Direct care worker**" means a paid individual who provides direct, personal care services to persons with disabilities or the elderly requiring long-term care (see also the definition of long-term care worker, which includes client care workers).

(11) "**Department**" or "**DSHS**" means the department of social and health services.

(12) "**Enhancement**" means additional time provided for skills practice and additional training materials or classroom activities that help a long-term care worker to thoroughly learn the course content and skills. Enhancements can include new student materials, videos or DVDs, online materials, and additional student activities.

(13) **"Expanded specialty training"** means optional curricula that provide caregivers with advanced knowledge and skills to provide person-centered care to clients or residents living with conditions other than developmental disabilities, dementia, and mental health. The optional expanded specialty training may include such topics as traumatic brain injury, diabetes care, and bariatric care. The optional expanded specialty training curricula must be DSHS developed and based on competencies and learning objectives established by the department.

(14) **"Guardian"** means an individual as defined in chapter 11.88 RCW.

(15) **"Home care aide"** or **"certified home care aide"** means a long-term care worker who has obtained and maintains a home care aide certification through the department of health.

(16) **"Hybrid"** means a combination of online training and in-person, remote or virtual classroom instruction.

(17) **"Individual provider"** or **"IP"** means a person who has contracted with the department to provide personal care or respite care services to persons with functional disabilities under a medicaid state plan program, such as the medicaid personal care or community first choice programs or under a federal medicaid waiver program.

~~((17))~~ (18) **"Learning objectives"** means measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing. Curriculum developers have the flexibility to determine how learning objectives are met and may include additional content deemed necessary to best meet the competency in a particular setting.

~~((18))~~ (19) **"Long-term care worker"** means:

(a) All persons who provide paid, personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, community residential service providers, and any other direct care staff who provide home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) Long-term care workers do not include:

(i) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers; or

(ii) Persons who are not paid by the state, by a private agency, or facility licensed by the state to provide personal care services.

~~((19))~~ (20) **"Online training"** means a course taken through an automated, asynchronous learning management system or other technology that conforms to the online training standards posted on the DSHS website at <https://bit.ly/dshs-online-standards>.

(21) **"Personal care services"** means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living that are provided to the client.

(22) **"Remote skills training"** means training conducted in a virtual classroom environment, or online when a student either demon-

strates a skill live or provides a video recorded file of themselves performing a skill that is forwarded for feedback to an approved instructor or a proctor trained by an approved instructor, or both. A training program must be approved by DSHS to provide remote skills training.

~~((20))~~ **"Seventy-hour)** (23) "70-hour ((long-term care worker)) home care aide training" means the ~~((seventy-hours))~~ 70 hours of required training that a new long-term care worker ~~((much))~~ must complete within ~~((one hundred and twenty))~~ 120 days of hire. It has three components: Core competencies, practice of skills, and population specific topics, which may include specialty and nurse delegation training.

~~((21))~~ (24) "Specialty training" means curricula that meets the requirements of RCW 18.20.270 and 70.128.230 to provide basic core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities. The specialty training curricula may be DSHS developed or DSHS approved and must be based on the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450.

~~((22))~~ (25) "Training entity" means an organization, including an independent contractor, who provides or may provide training under this chapter using approved curriculum. Training entities may only deliver approved curriculum.

~~((23))~~ (26) "Training partnership" means a joint partnership or trust that includes the office of the governor, and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

(27) "Virtual classroom" means a synchronous, instructor-led, remote learning environment conducted in real time that conforms to the virtual classroom standards posted on the DSHS website at <https://bit.ly/dshs-online-standards>. A training program must be approved by DSHS to provide virtual classroom instruction.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0836, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0836, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0870 What is the ~~((seventy-hour))~~ 70-hour home care aide basic training? (1) The ~~((seventy-hour))~~ 70-hour ((long-term care worker)) home care aide basic training is in addition to orientation and safety training. It is 70 hours and includes:

- (a) The core competencies and skills that long-term care workers need in order to provide personal care services effectively and safely;
- (b) Practice and demonstration of skills; and
- (c) Population specific competencies.

(2) DSHS (~~((approved seventy-hour))~~) must approve the 70-hour home care aide basic training curricula.

(3) On-the-job training, as described in WAC 388-71-0932, may be applied to (~~((seventy-hour))~~) the 70-hour (~~((long-term care worker))~~) home care aide basic training for an amount that must be approved by the department.

(4) The DSHS developed fundamentals of caregiving (FOC) or another department approved training may be used to teach core basic training but (~~((it))~~) the FOC must include enhancements. Additional student materials are required to ensure the enhancements are well planned and documented for students. Materials must be submitted for approval and approved per WAC 388-71-1026. Examples of enhancements include, but are not limited to:

(a) More time for workers to practice skills including:

(i) The mechanics of completing the skill correctly;

(ii) Client centered communication and problem solving associated with performing the skill;

(iii) The different levels of care required for each skill including independent, supervision, limited, extensive, and total;

(iv) Working with assistive devices associated with a skill.

(v) Helpful tips or best practices in working through common client challenges associated with a skill; and

(vi) Disease specific concerns or challenges associated with a skill.

(b) Augmenting or adding additional materials, student activities, videos, or guest speakers that:

(i) More deeply reinforce and fortify the learning outcomes required for basic training;

(ii) Ensure each student integrates and retains the knowledge and skills needed to provide quality basic personal care; and

(iii) Prepares workers for the certification testing environment and process.

(c) Enhancements are NOT materials or activities that are one or more of the following:

(i) Are out of the scope of practice for a long-term care worker such as content clearly written for registered nurses;

(ii) Are identical to, or a direct replacement of, those already included in FOC;

(iii) (~~((Do not))~~) Fail to reinforce Washington state laws associated with client rights and client directed care;

(iv) Long-term care workers are not paid to provide; and

(v) Are written above a high school reading level.

(5) The delivery mode of the (~~((seventy-hour))~~) 70-hour (~~((long-term care worker))~~) home care aide basic training may be either in-person or virtual classroom instruction, or a hybrid of online and in-person (~~((modules))~~), remote, or virtual classroom instruction. One hour of completed classroom instruction or other form of training (such as (~~((a video))~~) virtual classroom, remote, or online course) equals one hour of training.

(a) Online and virtual classroom modules must be (~~((an instructor led class, such as a webinar, or an online))~~) interactive (~~((self-paced class that provides clear instructions on how students get questions answered during the course))~~), provide the student with access to the instructor, and (~~((adheres))~~) adhere to the DSHS online (~~((class))~~) and virtual classroom standards posted on DSHS's website <https://bit.ly/dshs-online-standards>.

(b) The in-person skills training or remote skills training portion of hybrid modules must be no less than ~~((twelve))~~ 16 hours of the total basic training hours and include in-person or remote instruction on the personal care ~~((assistance))~~ tasks supporting activities of daily living ~~((, commonly referred to as skills training))~~ as described in WAC 388-71-0911.

(6) The long-term care worker must be able to ask the instructor questions during the training ~~((entity must establish a way for the long-term care worker to ask the instructor questions. An instructor or representative must be available within twenty-four hours during the business week))~~.

(7) There is no challenge test for the 70-hour home care aide basic training.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0870, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0870, filed 12/20/12, effective 1/20/13.]

NEW SECTION

WAC 388-71-0873 What are the minimum requirements for training programs to provide remote skills training?

(1) A training program offering remote skills training must meet the following minimum requirements:

- (a) Provide students with:
 - (i) The opportunity to practice, review, and receive coaching for every skill;
 - (ii) Virtual classroom demonstrations or videos of each skill;
 - (iii) Access to all supplies and materials required for practice;
 - (iv) Reasonable alternatives for skills when a live partner would not be safe or practical;
 - (v) Clearly outlined student performance guidelines for each skill that provide definitions for the levels of performance, such as:
 - (A) Excellent - Exceeds expectations;
 - (B) Satisfactory - Meets expectations;
 - (C) Developing - Approaching expectations;
 - (D) Potential for harm - Fails to meet expectations.
 - (vi) The opportunity to receive individualized feedback on every skill within seven business days unless other mutual arrangements are made;
 - (vii) The ability to receive instructional support through multiple formats such as by phone, chat, text, or email, or using the technology provided through a learning management system;
 - (viii) Equal access to knowledge acquisition through such methods as providing materials in multiple formats, allowing access through different devices, and providing learner-centered approaches for individual situations;
 - (ix) Accessible instructions for all technology skills required;
 - (x) Technical support for any technology that students need to access the training;

(xi) The ability to communicate with an instructor, peer mentor, or basic support team in real time to answer questions scheduled with varying hours to accommodate students who may work different shifts;

(xii) Downloadable and printable step-by-step guides for each skill taught.

(b) Include scheduled, flexible opportunities for students to access support during which a student may ask questions and have skills demonstrated.

(c) Support knowledge acquisition of skills equitably using methods designed to accommodate the needs of diverse learning styles and the use of various devices; and

(d) Provide reasonable accommodations to students upon request.

(2) If a student fails to attain a satisfactory skill level for any skill through remote training, the training program will provide opportunities for remediation or additional practice for the skill.

(3) A training program must be approved by DSHS to provide remote skills training. Initial approval shall be provisional for one year during which a training program will be required to:

(a) Confer with DSHS training quality assurance staff no less than quarterly;

(b) Allow DSHS training quality assurance staff access to any materials, processes, training sessions, and documentation when requested; and

(c) Track student certificates of completion and monitor pass/fail data to the extent feasible for all students trained remotely and provide that data to DSHS when requested.

(4) Renewal of approval to provide remote skills training after the one-year provisional period shall be conditional upon a training program's:

(a) Adherence to the standards outlined in this section; and

(b) Satisfactory demonstration, to the extent feasible, that the training program's pass/fail rate for students trained remotely meets or exceeds the statewide average pass/rate for students trained in person.

(5) If data for renewal is insufficient to determine an accurate pass/fail rate, the department may renew provisional certification for an additional year.

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AMENDATORY SECTION (Amending WSR 21-04-057, filed 1/28/21, effective 2/28/21)

WAC 388-112A-0010 What definitions apply to this chapter? The following definitions apply to this chapter:

(1) **"Activities of daily living"** means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, medication assistance, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) **"Adult family home training network"** means a nonprofit organization established by the exclusive bargaining representative of adult family homes designated under RCW 41.56.026 with the capacity to

provide training, workforce development, and other services to adult family homes.

(3) **"Applicant"** means:

(a) An individual who is applying for an adult family home license;

(b) An individual with an ownership interest in a partnership, corporation, or other entity that is applying for an adult family home license; or

(c) An individual who is applying for an enhanced services facility license.

(4) **"Capable caregiving training"** means the DSHS developed training curricula in dementia and mental health that will be available in three class levels. The level one series of the class in both dementia and mental health meets the requirements under RCW 18.20.270 and RCW 70.128.230 for specialty training. The level two and level three capable caregiving classes, when developed in both topics, may be completed for continuing education credits.

(5) **"Care team"** includes the resident and everyone involved in their care. The care team may include family, friends, doctors, nurses, long-term care workers, social workers, and case managers. The role of the care team is to support the resident's well-being. However, the resident directs the service plan when able.

(6) **"Challenge test"** means a competency test taken for specialty training without first taking the class for which the test is designed.

(7) **"Competency"** means the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training in a required topic area. Learning objectives are associated with each competency.

(8) **"Competency testing"** including challenge testing, evaluates a student to determine if they can demonstrate the required level of skill, knowledge, and behavior with respect to the identified learning objectives of a particular course.

(9) **"Core basic training"** is the portion of the ~~((seventy-))~~ 70-hour ~~((long-term care worker))~~ home care aide basic training that covers the core competencies and skills that long-term care workers need in order to provide personal care services efficiently and safely. The core basic training hours also includes hours devoted to student practice and demonstration of skills.

(10) **"Date of hire"** for determining timeframes related to training and certification, means ~~((the day an individual was first hired as a long-term care worker as determined by the department according to WAC 388-112A-0115))~~ date of hire according to chapter 246-980 WAC.

(11) **"DDA"** means the developmental disabilities administration.

(12) **"Designee"** means a person in an assisted living facility or enhanced services facility who supervises long-term care workers and is designated by an assisted living facility administrator or enhanced services facility administrator to take the trainings in this chapter required of the facility administrator. An assisted living facility or enhanced services facility administrator may have more than one designee.

(13) **"Direct care worker"** means a paid individual who provides direct, personal care services to persons with disabilities or the elderly requiring long-term care (see also the definition of long-term care worker, which includes direct care workers).

(14) **"Direct supervision"** means oversight by a person who has demonstrated competency in basic training and if required, specialty

training, or has been exempted from the basic training requirements, and is on the premises and quickly available to the caregiver.

(15) "**DSHS**" or "**department**" means the department of social and health services.

(16) "**Enhancement**" means additional time provided for skills practice and additional training materials or classroom activities that help a long-term care worker to thoroughly learn the course content and skills. Enhancements may include new student materials, videos or DVDs, online materials, and additional student activities.

(17) "**Entity representative**" means the individual designated by an adult family home provider who is or will be responsible for the daily operations of an adult family home.

(18) "**Expanded specialty training**" means optional curricula that provide caregivers with advanced knowledge and skills to provide person-centered care to clients or residents living with conditions other than developmental disabilities, dementia, and mental health. The optional expanded specialty training may include such topics as traumatic brain injury, diabetes care, and bariatric care. The optional expanded specialty training curricula must be DSHS developed and based on competencies and learning objectives established by the department.

(19) "**Guardian**" means an individual as defined in chapter 11.88 RCW.

(20) "**Home**" means adult family homes, enhanced services facilities, and assisted living facilities.

(21) "**Home care aide certified**" or "**home care aide**" means a person who obtained and maintains a home care aide certification through the department of health.

(22) "**Hybrid**" means a combination of online training and in-person, remote or virtual classroom instruction.

(23) "**Indirect supervision**" means oversight by a person who has demonstrated competency in basic training and if required, specialty training, or was exempted from basic training requirements, and who is quickly and easily available to the long-term care worker, but not necessarily on-site.

~~((23))~~ (24) "**Learning objectives**" means measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing.

~~((24))~~ (25) "**Long-term care worker**" means:

(a) All persons who provide paid, personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, community residential service providers, and any other direct care staff who provide home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) Long-term care workers do not include:

(i) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies

subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or

(ii) Persons who are not paid by the state, by a private agency, or facility licensed by the state to provide personal care services.

~~((25))~~ (26) **"Online training"** means a course taken through an automated, asynchronous learning management system or other technology that conforms to the online training standards posted on DSHS website at <https://bit.ly/dshs-online-standards>.

(27) **"Personal care services"** means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living, which is provided to meet the resident's care needs.

~~((26))~~ (28) **"Provider"** means any person or entity licensed by the department to operate an adult family home, enhanced services facility, or assisted living facility, or any person or entity certified by the department to provide instruction and support services to meet the needs of persons receiving services under Title 71A RCW.

~~((27))~~ (29) **"Remote skills training"** means training conducted in a virtual classroom environment, or online when a student either demonstrates a skill live or provides a video recorded file of themselves performing a skill that is forwarded for feedback to an approved instructor or a proctor trained by an approved instructor, or both. A training program must be approved by DSHS to provide remote skills training.

(30) **"Renewal period"** means the certification renewal period as defined in WAC 246-12-010.

~~((28))~~ (31) **"Resident"** means a person residing and receiving long-term care services at an assisted living facility, enhanced services facility, or adult family home. As applicable, "resident" also means the resident's legal guardian or other surrogate decision maker.

~~((29))~~ (32) **"Resident manager"** means a person employed or designated by the provider to manage the adult family home who meets the requirements in WAC 388-76-10000 and this chapter.

~~((30))~~ (33) **"Routine interaction"** means regular contact with residents.

~~((31) "Seventy-hour")~~ (34) **"70-hour ((long-term care worker) home care aide basic training"** means the ~~((seventy-hours))~~ 70-hours of required training that a new long-term care worker must complete within ~~((one hundred and twenty))~~ 120 days of hire. It has three components: Core competencies, practice of skills, and population specific topics, which may include specialty and nurse delegation training.

~~((32))~~ (35) **"Special needs"** means a resident has dementia consistent with WAC 388-78A-2510 for assisted living or WAC 388-76-10000 for adult family homes; mental illness consistent with WAC 388-78A-2500 for assisted living or WAC 388-76-10000 for adult family homes; or developmental disabilities consistent with WAC 388-78A-2490 for assisted living or WAC 388-76-10000 for adult family homes.

~~((33))~~ (36) **"Specialty training"** means curricula that meets the requirements of RCW 18.20.270 and RCW 70.128.230 to provide basic core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities. The specialty training curricula may be DSHS developed or DSHS approved and must be based on the competencies and learning objectives in WAC 388-112A-0430, WAC 388-112A-0440, or WAC 388-112A-0450.

~~((34))~~ (37) **"Training entity"** means an organization, including an independent contractor, who provides or may provide training under this chapter using approved curriculum.

(38) **"Virtual classroom"** means a synchronous, instructor-led, remote learning environment conducted in real time that conforms to the virtual classroom standards posted on the DSHS website at <https://bit.ly/dshs-online-standards>. A training program must be approved by DSHS to provide virtual classroom instruction.

[Statutory Authority: RCW 74.08.090 and 70.128.060. WSR 21-04-057, § 388-112A-0010, filed 1/28/21, effective 2/28/21. Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030, and 70.97.080. WSR 20-14-088, § 388-112A-0010, filed 6/30/20, effective 7/31/20. Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0010, filed 10/24/17, effective 11/24/17.]

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0300 What is the ~~((seventy-hour))~~ 70-hour ~~((long-term care worker))~~ home care aide basic training? (1) The ~~((seventy-hour))~~ 70-hour ~~((long-term care worker))~~ home care aide basic training is in addition to orientation and safety training. It is ~~((seventy))~~ 70 hours and includes:

(a) The core competencies and skills that long-term care workers need in order to provide personal care services effectively and safely;

(b) Practice and demonstration of skills; and

(c) Population specific competencies.

(2) DSHS must approve the ~~((seventy-hour))~~ 70-hour ~~((long-term care worker))~~ home care aide basic training curricula.

(3) On-the-job training may be applied to the ~~((seventy-hour))~~ core competencies of 70-hour ~~((long-term care worker))~~ home care aide basic training for an amount that must be approved by the department ~~((7))~~.

(4) The DSHS developed ~~((revised))~~ fundamentals of caregiving ~~((RFOC))~~ (FOC) or another department approved training may be used to teach the ~~((seventy-hour))~~ core competencies of the 70-hour ~~((long-term care worker))~~ home care aide basic training but ~~((it))~~ the FOC must include enhancements. Additional student materials are required to ensure the enhancements are well planned and documented for students. Materials must be submitted for approval and approved per WAC 388-112A-1020. Examples of enhancements include, but are not limited to:

(a) More time for workers to practice skills including:

(i) The mechanics of completing the skill correctly;

(ii) Resident centered communication and problem solving associated with performing the skill;

(iii) The different levels of care required for each skill including independent, supervision, limited, extensive, and total;

(iv) Working with assistive devices associated with a skill;

(v) Helpful tips or best practices in working through common resident challenges associated with a skill; and

(vi) Disease specific concerns or challenges associated with a skill.

(b) Augmenting or adding additional materials, student activities, videos, or guest speakers that:

(i) More deeply reinforce and fortify the learning outcomes required for basic training;

(ii) Ensure each student integrates and retains the knowledge and skills needed to provide quality basic personal care; and

(iii) Prepares workers for the certification testing environment and process.

(c) Enhancements are not materials or activities that are one or more of the following:

(i) Are out of the scope of practice for a long-term care worker such as content clearly written for registered nurses;

(ii) Are identical to, or a direct replacement of, those already included in the ~~((RFOC))~~ FOC;

(iii) Fail to reinforce Washington state laws associated with resident rights and resident directed care;

(iv) Long-term care workers are not paid to provide;

(v) Are written above a high school reading level.

(5) The delivery mode of the ~~((seventy-hour))~~ 70-hour ~~((long-term care worker))~~ home care aide basic training may be either in-person or virtual classroom instruction, or a hybrid of online and in-person ~~((modules))~~, remote, or virtual classroom instruction. One hour of completed classroom instruction or other form of training (such as a ~~((video))~~ virtual classroom, remote or online course) equals one hour of training.

(a) Online and virtual classroom modules must be ~~((an instructor led class, such as a webinar or an))~~ interactive ~~((online class that provides))~~, provide the student with access to the instructor, and ~~((adheres))~~ adhere to the DSHS online ~~((class))~~ and virtual classroom standards posted on DSHS's website at <https://bit.ly/dshs-online-standards>.

(b) The in-person skills training or remote skills training portion of hybrid modules must be no less than ~~((twelve))~~ 16 hours of the total basic training hours and include in-person or remote instruction on the personal care ~~((assistance))~~ tasks supporting activities of daily living, ~~((commonly referred to as skills training))~~ as described in WAC 388-112A-0320.

(6) The long-term care worker must be able to ask the instructor questions during the training.

(7) There is no challenge test for the ~~((seventy-hour))~~ 70-hour ~~((long-term care worker))~~ home care aide basic training.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0300, filed 10/24/17, effective 11/24/17.]

NEW SECTION

WAC 388-112A-0305 What are the minimum requirements for training programs to provide remote skills training? (1) A training program offering remote skills training must meet the following minimum requirements:

- (a) Provide students with:
 - (i) The opportunity to practice, review, and receive coaching for every skill;
 - (ii) Virtual classroom demonstrations or videos of each skill;
 - (iii) Access to all supplies and materials required for practice;
 - (iv) Reasonable alternatives for skills when a live partner would not be safe or practical;
 - (v) Clearly outlined student performance guidelines for each skill that provide definitions for the levels of performance, such as:
 - (A) Excellent - Exceeds expectations;
 - (B) Satisfactory - Meets expectations;
 - (C) Developing - Approaching expectations;
 - (D) Potential for harm - Fails to meet expectations.
 - (vi) The opportunity to receive individualized feedback on every skill within seven business days unless other mutual arrangements are made;
 - (vii) The ability to receive instructional support through multiple formats such as by phone, chat, text, or email, or using the technology provided through a learning management system;
 - (viii) Equal access to knowledge acquisition through such methods as providing materials in multiple formats, allowing access through different devices, and providing learner-centered approaches for individual situations;
 - (ix) Accessible instructions for all technology skills required;
 - (x) Technical support for any technology that students need to access the training;
 - (xi) The ability to communicate with an instructor, peer mentor, or basic support team in real time to answer questions scheduled with varying hours to accommodate students who may work different shifts;
 - (xii) Downloadable and printable step-by-step guides for each skill taught.
- (b) Include scheduled, flexible opportunities for students to access support during which a student may ask questions and have skills demonstrated.
- (c) Support knowledge acquisition of skills equitably using methods designed to accommodate the needs of diverse learning styles and the use of various devices; and
- (d) Provide reasonable accommodations to students upon request.
- (2) If a student fails to attain a satisfactory skill level for any skill through remote training, the training program will provide opportunities for remediation or additional practice for the skill.
- (3) A training program must be approved by DSHS to provide remote skills training. Initial approval shall be provisional for one year during which a training program will be required to:
 - (a) Confer with DSHS training quality assurance staff no less than quarterly;
 - (b) Allow DSHS training quality assurance staff access to any materials, processes, training sessions, and documentation when requested; and
 - (c) Track student certificates of completion and monitor pass/fail data to the extent feasible for all students trained remotely and provide that data to DSHS when requested.
- (4) Renewal of approval to provide remote skills training after the one-year provisional period shall be conditional upon a training program's:
 - (a) Adherence to the standards outlined in this section; and

(b) Satisfactory demonstration, to the extent feasible, that the training program's pass/fail rate for students trained remotely meets or exceeds the statewide average pass/rate for students trained in person.

(5) If data for renewal is insufficient to determine an accurate pass/fail rate, the department may renew provisional certification for an additional year.

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WSR 22-10-031

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed April 26, 2022, 3:38 p.m., effective June 9, 2022]

Effective Date of Rule: June 9, 2022.

Purpose: The adopted rules amend four sections under Title 192 WAC related to the required waiting period, proration of benefits, calculation of typical workweek hours, and petitions for review submitted to the commissioner's review office.

The rules clarify that a waiting period does not reduce the maximum duration of an employee's available paid family or medical leave and that the waiting period does not apply to medical leave taken upon the birth of a child. The rules also clarify that proration of benefits and the calculation of typical workweek hours do not apply to the waiting period. In addition, the rules allow petitions for review to be submitted by email and make other technical changes.

Citation of Rules Affected by this Order: WAC 192-500-185 Waiting period, 192-620-035 When will a weekly benefit amount be prorated?, 192-620-040 How will the department determine the number of hours of paid family or medical leave an employee claims each week?, and 192-800-125 When is a petition for review considered delivered to the department?

Statutory Authority for Adoption: RCW 50A.05.060, 50A.15.020.

Adopted under notice filed as WSR 22-06-093 on March 2, 2022.

A final cost-benefit analysis is available by contacting Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-790-6583, TTY Washington relay 711. Contact Teresa Eckstein at 360-507-9890 for accommodations, email rules@esd.wa.gov, website <https://paidleave.wa.gov/rulemaking/>.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: April 26, 2022.

April Amundson
Policy and Rules Manager
Leave and Care Division

OTS-3635.1

AMENDATORY SECTION (Amending WSR 20-20-074, filed 10/2/20, effective 11/2/20)

WAC 192-500-185 Waiting period. (1) A "waiting period" is the first seven consecutive calendar days beginning with the Sunday of the first week an eligible employee starts taking paid family or medical leave.

(2) An employee will satisfy the waiting period requirement if the employee takes at least eight consecutive hours of leave during the first week of the employee's paid family or medical leave claim.

(3) An employee will not receive a benefit payment for hours claimed during the waiting period.

(4) A waiting period does not reduce the maximum duration of an employee's available paid family or medical leave.

~~((6))~~ (7) Subject to subsection ~~((6))~~ (7) of this section, an employee must only meet the requirement of one waiting period in a claim year.

~~((5))~~ (6) If an employee is denied eligibility for a period of time that satisfied the waiting period requirement, the waiting period requirement will not be deemed satisfied for a future claim for which the employee is deemed eligible.

~~((6))~~ (7) The waiting period does not apply to:

(a) Medical leave taken upon the birth of a child;

(b) Family leave taken for bonding after the child's birth or placement; or

~~((b))~~ (c) Family leave taken for reasons related to a qualified military exigency.

~~((7))~~ (8) An employee's use of paid time off for all of or any portion of the waiting period will not affect the satisfaction of the waiting period requirement.

[Statutory Authority: RCW 50A.05.060 and 2020 c 125. WSR 20-20-074, § 192-500-185, filed 10/2/20, effective 11/2/20. Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-500-185, filed 12/12/19, effective 1/12/20.]

OTS-3636.1

AMENDATORY SECTION (Amending WSR 21-18-082, filed 8/30/21, effective 9/30/21)

WAC 192-620-035 When will a weekly benefit amount be prorated?

(1) For an employee on paid family or medical leave, a weekly benefit amount is prorated when:

(a) The employee reports hours worked for wages;

(b) The employee reports hours for paid sick leave, paid vacation leave, or other paid time off that is not considered a supplemental benefit payment as defined in WAC 192-500-180; or

(c) The employee files a weekly application for benefits that contains a day or days for which the employee was not approved for paid family or medical leave.

(2) If an employee reports hours under subsection (1)(a) or (b) of this section, proration will be calculated as specified by RCW 50A.15.020(2).

(3) This section does not apply to a week that is claimed to satisfy an employee's waiting period.

(4) If an employee is approved for leave for part of a week under subsection (1)(c) of this section, proration for that week will occur as follows:

(a) The employee's typical workweek hours are multiplied by the number of days approved for leave, then divided by seven. The result is rounded down to the nearest whole hour. This amount is the employee's adjusted typical workweek hours.

(b) Any hours worked or taken as paid time off as reported by the employee are then subtracted from the employee's adjusted typical workweek hours. This amount will be the number of hours of paid family or medical leave claimed for that week.

(c) The number of hours claimed for that week are then divided by the employee's typical workweek hours to produce a percentage.

(d) The resulting percentage is then multiplied by the employee's normal weekly benefit amount. The resulting amount, rounded down to the nearest whole dollar, is the employee's benefit payment for that week.

Example 1: An employee has already served a waiting period in the claim year and files a claim for a week of paid medical leave. The employee typically works ~~((forty))~~ 40 hours a week at eight hours per day. In the week for which the employee is claiming, the employee claimed one day of paid medical leave and worked the other four days. This employee's weekly benefit is usually ~~((eight hundred dollars))~~ \$800. The weekly benefit would then be prorated by the hours on paid medical leave (eight hours) relative to the typical workweek hours ~~((forty))~~ 40 hours). Eight hours is ~~((twenty))~~ 20 percent of ~~((forty))~~ 40 hours. The employee's weekly benefit would be prorated to ~~((twenty))~~ 20 percent for a total of ~~((one hundred sixty dollars))~~ \$160.

Example 2: An employee with typical workweek hours of ~~((forty))~~ 40 and a weekly benefit amount of ~~((one thousand dollars))~~ \$1,000 is approved for leave through Thursday. The employee is not approved for leave Friday or Saturday. For this week only, the following proration will occur:

(a) The employee's typical workweek hours ~~((forty))~~ 40 are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of ~~((twenty-eight))~~ 28.

(b) The employee reports no hours of work or paid time off for that week. The resulting number of hours claimed for that week are ~~((twenty-eight))~~ 28.

(c) The number of hours claimed for that week ~~((twenty-eight))~~ 28 are then divided by the employee's normal typical workweek hours ~~((forty))~~ 40. This results in a percentage of ~~((seventy))~~ 70 percent.

(d) The percentage ~~((seventy))~~ 70 is then multiplied by the employee's weekly benefit amount ~~((one thousand))~~ 1,000. For that week, the employee will receive ~~((seven hundred dollars))~~ \$700.

Example 3: An employee with typical workweek hours of ~~((forty))~~ 40 and a weekly benefit amount of ~~((one thousand dollars))~~ \$1,000 is approved for leave through Thursday. The employee is not approved for

leave Friday or Saturday. For this week only, the following proration will occur:

(a) The employee's typical workweek hours (~~((forty))~~ 40) are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of (~~((twenty-eight))~~) 28.

(b) The employee reports eight hours of work and eight hours of paid time for that week. The adjusted workweek hours are reduced to reflect (~~((sixteen))~~) 16 hours of work and paid time. The resulting number of hours claimed for that week are (~~((twelve))~~) 12.

(c) The number of hours claimed for that week (~~((twelve))~~) 12) are then divided by the employee's normal typical workweek hours (~~((forty))~~) 40). This results in a percentage of (~~((thirty))~~) 30 percent.

(d) The percentage (~~((thirty))~~) 30) is then multiplied by the employee's weekly benefit amount (~~((one thousand dollars))~~) \$1,000). For that week, the employee will receive (~~((three hundred dollars))~~) \$300.

[Statutory Authority: RCW 50A.05.060 and 50A.15.020. WSR 21-18-082, § 192-620-035, filed 8/30/21, effective 9/30/21. Statutory Authority: RCW 50A.05.060 and 50A.25.030. WSR 21-11-009, § 192-620-035, filed 5/7/21, effective 6/7/21. Statutory Authority: RCW 50A.05.060. WSR 20-20-073, § 192-620-035, filed 10/2/20, effective 11/2/20. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-620-035, filed 11/19/19, effective 12/20/19.]

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

WAC 192-620-040 How will the department determine the number of hours of paid family or medical leave an employee claims each week?

(1) When the employee submits a weekly application for benefits as described in WAC 192-620-020, the department will determine the number of hours claimed by the employee for that week by determining the typical workweek hours as described in WAC 192-610-050, then deducting the number of hours:

(a) Physically worked by the employee; and

(b) Claimed by the employee as sick leave, vacation leave, or other paid time off that has not been offered as a supplemental benefit by the employer.

(2) The result of the calculation in subsection (1) of this section will be deducted from the employee's duration of paid family and medical leave for the current claim year and, if necessary, for the purposes of proration as described in WAC 192-620-035.

(3) This section does not apply to a week that is claimed to satisfy an employee's waiting period.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-620-040, filed 11/19/19, effective 12/20/19.]

OTS-3637.1

AMENDATORY SECTION (Amending WSR 21-04-067, filed 1/29/21, effective 3/1/21)

WAC 192-800-125 When is a petition for review considered delivered to the department? Delivery under RCW 34.05.542 is made when a copy of the petition for judicial review is received by:

(1) Delivery to the Commissioner's Office at 212 Maple Park Avenue S.E., Olympia, WA ((~~or received by~~));

(2) Mail at the Commissioner's Review Office, Post Office Box 9555, Olympia, WA 98507-9555; or

(3) Email at the commissioner's review office at cro@esd.wa.gov.

[Statutory Authority: RCW 50A.05.060. WSR 21-04-067, § 192-800-125, filed 1/29/21, effective 3/1/21. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-125, filed 11/19/19, effective 12/20/19.]

WSR 22-10-034
PERMANENT RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed April 27, 2022, 7:24 a.m., effective May 28, 2022]

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

Purpose: Amendments to current rule language in WAC 196-23-020 provides clarification to land surveyor licensees of what final documents need stamped and removes the requirement of preparing a report each time a licensee reviews a document prepared by another licensee and may lessen the cost to the licensees.

Citation of Rules Affected by this Order: Amending WAC 196-23-020.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 22-03-101 on January 19, 2022.

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 Nongovernmental 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 1, Repealed 0.

Date Adopted: April 21, 2022.

Ken Fuller
Director

OTS-3111.2

AMENDATORY SECTION (Amending WSR 08-10-009, filed 4/24/08, effective 7/1/08)

WAC 196-23-020 Seal/stamp usage. The use of the seal/stamp must be in accordance with chapter 18.43 RCW or as otherwise described herein:

(1) Final documents are those documents that are prepared and distributed for filing with public officials, use for construction, final agency approvals or use by clients. Any final document must contain the seal/stamp, signature and date of signature of the licensee who prepared or directly supervised the work. For the purpose of this section "document" is defined as plans, specifications, plats, surveys, land descriptions as defined in WAC 332-130-020, reports, and as-built documents prepared by the licensee (~~(, and reports)~~).

(2) Preliminary documents are those documents not considered final as defined herein, but are released or distributed by the licensee. Preliminary documents must be clearly identified as "PRELIMINARY"

or contain such wording so it may be differentiated from a final document. Preliminary documents must be stamped, but need not be signed or dated by the licensee.

(3) Plan sets: Every page of a plan set must contain the seal/stamp, signature of the licensee(s) who prepared or who had direct supervision over the preparation of the work, and date of signature.

(a) Plans/plats containing work prepared by or under the direct supervision of more than one licensee should be sealed/stamped and dated by each licensee and shall clearly note the extent of each licensee's responsibility.

(b) As provided for in subsections (1) and (2) of this section, each page of a plan set must contain the seal/stamp of the licensee who prepared or who had direct supervision over the preparation of the work.

(c) Plan/plat sheets containing and/or depicting background and/or supporting information that is duplicated from other plans need only be sealed/stamped by the licensee(s) who prepared or was in direct supervision of the design. The origin of the background information shall be noted on the plan sheet.

(d) All design revisions to final plan/plat sheets shall clearly identify on each sheet((~~r~~)) the revisions made and shall contain the name and seal of the licensee((~~r~~)) and signature of the licensee with the date the sheet was sealed.

(4) Specifications: Specifications that are prepared by or under the direct supervision of a licensee shall contain the seal/stamp, signature of the licensee and the date of signature. If the specifications prepared by a licensee are a portion of a bound specification document that contains specifications other than that of an engineering or land surveying nature, the licensee need only seal/stamp that portion or portions of the documents for which the licensee is responsible. Nothing herein should be construed to require that each page of an engineering or land surveying specification be sealed/stamped by the licensee.

(5) Document review: When a licensee is required to review work prepared by another professional engineer or land surveyor, the reviewing licensee shall fully review those documents ((~~and~~)). If required, the licensee shall prepare a report that discusses the findings of the review with any supporting calculations and sketches. The reviewing licensee would then seal/stamp, sign and date the report. The report would make reference to and/or be attached to the subject document(s) reviewed.

[Statutory Authority: RCW 18.43.035. WSR 08-10-009, § 196-23-020, filed 4/24/08, effective 7/1/08; WSR 06-22-036, § 196-23-020, filed 10/25/06, effective 11/25/06; WSR 99-15-055, § 196-23-020, filed 7/15/99, effective 8/15/99.]

WSR 22-10-041
PERMANENT RULES
SECRETARY OF STATE
 [Filed April 27, 2022, 2:53 p.m.]

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

Purpose: Permanent adoption of WAC changes related to rules supporting the process for 17 year old voters to participate in primaries if the voter will be 18 years of age prior to the following general election; this includes updates to notices in current rule.

Citation of Rules Affected by this Order: New WAC 434-232-010, 434-232-020, 434-232-030 and 434-232-040; and amending WAC 434-324-045, 434-324-085, 434-324-087, and 434-324-103.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 22-07-001 on March 2, 2022.

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 4, Amended 4, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 4, Amended 4, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 27, 2022.

Randy Bolerjack
Deputy Secretary of State

OTS-3410.5

Chapter 434-232 WAC
SEVENTEEN YEAR OLDS PARTICIPATING IN THE PRIMARY—FUTURE VOTERS

NEW SECTION

WAC 434-232-010 Definitions. (1) "Ballot measure" for the purposes of this chapter means any question put forth for voting that involves a yes/no or approve/disapprove response. This includes, but is not limited to, any bond election; tax levy proposition; election to form, dissolve, or annex territory into a district or municipality; charter adoption, amendment, or abandonment; initiative; referendum; advisory vote; or any issue characterized by finalization of the question.

(2) "Contests prohibited to primary-only voters" means the following contests, even when held in conjunction with a primary:

(a) Any ballot measure; or

(b) Any contest where a candidate is deemed elected following the primary including, but not limited to, candidates for precinct committee officer, freeholder, charter review, and commissioners elected to a newly formed jurisdiction.

(3) "Contests subject to participation by primary-only voters" means the following contests:

(a) Nonpartisan candidate races that contain three or more candidates, appearing on a primary ballot;

(b) Partisan candidate races, regardless of the number of candidates, appearing on a primary ballot; and

(c) The presidential primary as described in chapter 29A.56 RCW regardless of the number of presidential candidates appearing on the ballot.

(4) "Primary-only voter ballots" are ballots issued to primary-only voters that contain only contests subject to participation by primary-only voters, and do not include races or contests prohibited to primary-only voters.

(5) "Primary-only voters" means a voter who is 17 years of age on the day of the primary but will reach the age of 18 on or before the date of the following November general election. Primary-only voters are only authorized to participate in primary elections and prohibited from participating in any special or general election.

(6) "Standard primary ballots" are ballots issued to all voters who are at least 18 years of age on the date of the primary that contain all applicable issues and candidate races for that ballot style.

[]

NEW SECTION

WAC 434-232-020 Primary-only voters—Future voters eligible to participate in primaries. As authorized by RCW 29A.08.170, persons signed up to register to vote as part of the future voter program are eligible to vote in state and local primaries and presidential primaries if they are 17 years of age on the day of the primary and will be 18 years of age on or before the day of the associated subsequent November general election.

[]

NEW SECTION

WAC 434-232-030 Ballots issued to primary-only voters. The county auditor may issue standard primary ballots to primary-only voters that contain all eligible races in a state, local, or presidential primary if there are no contests prohibited to primary-only voters on the ballot. When a contest prohibited to primary-only voters is held on the date of the primary as specified in RCW 29A.04.311, county election offices must issue primary-only voter ballots to primary-only voters.

[]

NEW SECTION

WAC 434-232-040 Information pertaining to primary-only voters, when disclosable. (1) Pursuant to RCW 29A.08.720, personally identifiable information from the voter registration record is exempt from public inspection and copying until the voter is 18 years of age, except for the purpose of processing and delivering ballots.

(2) Pursuant to RCW 29A.40.130, ballot issuance and return information for a primary-only voter, excluding the date of birth, gender, and address, is subject to public disclosure at the time of ballot issuance by the county auditor for a primary that the voter is eligible to participate in.

(3) Pursuant to RCW 29A.08.170, a person who signs up to register to vote must remain as a "future voter" as defined by RCW 29A.04.070 until such time as they will be eligible to vote in the next election. The voter registration information is exempt from public inspection and copying until they are 18 years of age. The ballot issuance and return information is exempt until they are eligible to participate in an election. When a person is eligible to participate in an election, the date of birth, gender, and address of the person is exempt from disclosure when providing ballot issuance and return information in accordance with RCW 29A.40.130 until they are 18 years of age.

[]

OTS-3411.2

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

WAC 434-324-045 Verification of applicant's identity. (1) If the applicant is provisionally registered pursuant to WAC 434-324-040(5), the county auditor may use other government resources and public records to confirm the applicant's driver's license or state identification card number, valid tribal identification card, or the last four digits of the applicant's Social Security number. The county auditor may also attempt to contact the applicant by phone, email or other means to obtain identification information.

(2) If, after these attempts, the county auditor is still unable to verify the applicant's identity, the county auditor must send the applicant an identification notice at the time of registration that includes a postage prepaid, preaddressed form by which the applicant may verify or send additional information. The identification notice must include:

(a) A statement explaining that because the applicant's identity cannot be verified with the information provided on the application, they have been provisionally registered to vote.

(b) A statement explaining that if this additional information is not provided, the applicant's ballot will not be counted.

(c) A statement explaining that federal law requires the applicant to provide their driver's license number, state identification card number, valid tribal identification card number or the last four

digits of their Social Security number, or a copy of one of the following forms of identification, either before or when they vote:

- (i) Valid photo identification;
- (ii) A valid enrollment card of a federally recognized tribe in Washington;
- (iii) A current utility bill, or a current bank statement;
- (iv) A current government check;
- (v) A current paycheck; or
- (vi) A government document, other than a voter registration card, which shows both the registrant's name and current address.

(3) If the applicant responds with updated driver's license, state identification card, valid tribal identification card, or Social Security information, or with a copy of one of the alternative forms of identification, the flag on the voter registration record must be removed, allowing the applicant's ballot to otherwise be counted the first time they vote after registering.

(4) If the applicant fails to respond with adequate documentation to verify the applicant's identity, the applicant's voter registration record must remain flagged. The applicant must be notified at the time of each election that the ballot will not be counted unless adequate verification of identity is provided.

(5) A provisional registration must remain on the official list of registered voters for at least two general elections for federal office. If, after two general elections for federal office, the voter still has not verified or provided information to verify identity, the provisional registration shall be canceled.

(6) The county auditor shall mail an identification notice to a primary-only voter, as defined in WAC 434-232-010, no earlier than 90 days before the primary that they are eligible to participate in.

(7) The county auditor shall not mail an identification notice to a participant in the future voter program established under RCW 29A.08.170 until the participant becomes a registered voter.

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-324-045, filed 6/10/20, effective 7/11/20; WSR 14-06-040, § 434-324-045, filed 2/26/14, effective 3/29/14. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-324-045, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. WSR 09-18-098, § 434-324-045, filed 9/1/09, effective 10/2/09; WSR 09-12-078, § 434-324-045, filed 5/29/09, effective 6/29/09; WSR 09-03-110, § 434-324-045, filed 1/21/09, effective 2/21/09; WSR 07-24-044, § 434-324-045, filed 11/30/07, effective 12/31/07; WSR 07-02-100, § 434-324-045, filed 1/3/07, effective 2/3/07.]

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

WAC 434-324-085 Acknowledgment notice. (1) The auditor must send an acknowledgment notice to an individual by nonforwardable, address correction requested mail if an individual:

- (a) Registers to vote;
- (b) Transfers their registration record within the county;
- (c) Transfers their registration record from another county within Washington state; or

(d) Changes from one precinct to another because of a change in precinct boundaries.

(2) The acknowledgment notice must include:

- (a) Voter's full name;
- (b) Mailing address;
- (c) County name;
- (d) Precinct name and/or number; and
- (e) The date the voter registered.

(3) The county auditor shall mail an acknowledgment notice to a primary-only voter, as defined in WAC 434-232-010, no earlier than 90 days before the primary that they are eligible to participate in.

(4) The county auditor shall not mail an acknowledgment notice to a participant in the future voter program established under RCW 29A.08.170 until the participant becomes a registered voter.

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-324-085, filed 6/10/20, effective 7/11/20; WSR 09-18-098, § 434-324-085, filed 9/1/09, effective 10/2/09; WSR 07-02-100, § 434-324-085, filed 1/3/07, effective 2/3/07; WSR 06-11-041, § 434-324-085, filed 5/10/06, effective 6/10/06; WSR 05-24-039, § 434-324-085, filed 11/30/05, effective 12/31/05. Statutory Authority: RCW 29A.04.610. WSR 04-15-089, § 434-324-085, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. WSR 98-03-033, § 434-324-085, filed 1/13/98, effective 2/13/98; WSR 97-21-045, recodified as § 434-324-085, filed 10/13/97, effective 11/13/97; Order 74-4, § 434-24-085, filed 6/3/74.]

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

WAC 434-324-087 Confirmation notice. (1) When a voter is placed on inactive status, the county auditor must send a confirmation notice to the voter by first-class forwardable mail, and must include a response form that:

- (a) Is preaddressed and postage prepaid;
- (b) Includes either the voter's date of birth or voter registration number;
- (c) Asks the voter to verify their current address; and
- (d) Asks the voter to sign the oath in RCW 29A.08.230.

(2) When the voter sends the county auditor a response to the confirmation notice, the auditor must:

(a) Transfer the voter's registration and send the voter an acknowledgment notice if the response indicates that the voter has moved within the county.

(b) Forward the confirmation notice to the voter's new county by mail or electronically if the response indicates that the voter has moved to another county within Washington and the confirmation notice contains the minimum information required by WAC 434-324-036.

The county auditor in the voter's new county must register the voter using the information and signature on the confirmation notice. The new county must transfer the registration from the old county to the new county and send the voter an acknowledgment notice.

(c) Send the voter a voter registration application if the response indicates that the voter has moved to another county within Washington but the confirmation notice does not contain the minimum

information required by WAC 434-324-036. The voter shall remain on inactive status according to RCW 29A.08.635.

(d) Cancel the voter's registration if the response indicates that the voter has moved out-of-state and the response is signed.

(e) Keep the voter on inactive status according to RCW 29A.08.635 if the response indicates that the voter has moved out-of-state but is not signed.

(3) The county auditor shall mail a confirmation notice to a primary-only voter, as defined in WAC 434-232-010, no earlier than 90 days before the primary that they are eligible to participate in.

(4) The county auditor shall not mail a confirmation notice to a participant in the future voter program established under RCW 29A.08.170 until the participant becomes a registered voter.

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-324-087, filed 6/10/20, effective 7/11/20; WSR 12-14-074, § 434-324-087, filed 7/2/12, effective 8/2/12.]

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

WAC 434-324-103 Verification notices. A verification notice must be sent when a voter registration application does not contain all the minimum information required in RCW 29A.08.010. The notice must be sent by first-class forwardable mail and must include a response form that:

(1) Is preaddressed and postage paid or is accompanied by a pre-addressed and postage paid return envelope.

(2) Requests that the applicant provide the missing information only.

(3) Requests that the applicant provide the missing information within (~~forty-five~~) 45 days from the date the verification notice was mailed.

If the applicant does not respond by the (~~forty-five~~) 45 day deadline, the voter registration application is considered void.

(4) The county auditor shall mail a verification notice to a primary-only voter, as defined in WAC 434-232-010, no earlier than 90 days before the primary that they are eligible to participate in.

(5) The county auditor shall not mail a verification notice to a participant in the future voter program established under RCW 29A.08.170 until the participant becomes a registered voter.

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-324-103, filed 6/10/20, effective 7/11/20. Statutory Authority: RCW 29A.04.611 and 29A.04.620. WSR 16-13-063, § 434-324-103, filed 6/13/16, effective 7/14/16.]

WSR 22-10-044

PERMANENT RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed April 28, 2022, 6:57 a.m., effective May 29, 2022]

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

Purpose: WAC 246-945-056 Schedule V. The pharmacy quality assurance commission (commission) is amending WAC 246-945-056 to delete Epidiolex from Schedule V controlled substances in Washington state to be in line with federal changes in the Uniform Controlled Substances Act and in response to a rule-making petition received on April 7, 2020. The commission has filed consecutive emergency rules to stay in alignment with the federal changes until this permanent rule is adopted. When it becomes effective, this rule will supersede the current emergency rule under WSR 22-06-053 filed on February 25, 2022.

Citation of Rules Affected by this Order: Amending WAC 246-945-056.

Statutory Authority for Adoption: RCW 18.64.005, 69.50.201.

Adopted under notice filed as WSR 22-05-089 on February 15, 2022.

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 Nongovernmental 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: March 25, 2022.

Teri Ferreira, RPh
Pharmacy Quality Assurance Chair

OTS-2392.1

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-056 Schedule V. The commission finds that the following substances have low potential for abuse relative to substances in Schedule IV under RCW 69.50.210 and WAC 246-945-055 and have currently accepted medical use in treatment in the United States and that the substances have limited physical dependence or psychological dependence liability relative to the substance in Schedule IV. In addition to the substances listed in RCW 69.50.212, the commission places each of the following drugs and substances by whatever official name, common or usual name, chemical name, or brand name in Schedule V.

Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or prepa-

ration which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide); also referred to as BRV; UCB-34714; Briviact;

(2) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester].

~~((3) Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methyl-phenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols, also known as Epidiolex.))~~

[Statutory Authority: RCW 18.64.005, 18.64.080, 18.130.075, 18.64.043, 18.64.044, 18.64.045, 18.64.046, 18.64.370, 18.64.460, 69.50.310, 18.64.011, 18.64.245, 18.64.470, 18.64.255, 18.64.205, 18.64.253, 18.64.410, 18.64.500, 18.64.590. WSR 20-12-072, § 246-945-056, filed 6/1/20, effective 7/1/20.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WSR 22-10-050
PERMANENT RULES
DEPARTMENT OF HEALTH
 [Filed April 29, 2022, 12:01 p.m.]

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

Purpose: WAC 246-282-990(4) Sanitary control of shellfish—Fees, annual paralytic shellfish poisoning (PSP) testing fee redistribution. The adopted rule equitably assesses the cost of PSP testing by following the annual redistribution formula, which is based on the number of PSP tests done in the previous year. PSP testing is essential to public health as it is the only means available to determine if dangerous levels of PSP exist in commercial geoduck so that toxic shellfish do not reach consumers.

Citation of Rules Affected by this Order: Amending WAC 246-282-990.

Statutory Authority for Adoption: RCW 43.70.250.

Other Authority: RCW 69.30.050.

Adopted under notice filed as WSR 22-06-072 on February 28, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 26, 2022.

Lauren Jenks
 Assistant Secretary

OTS-3571.1

AMENDATORY SECTION (Amending WSR 21-11-080, filed 5/18/21, effective 6/18/21)

WAC 246-282-990 Fees. (1) Annual shellfish operation license fees are:

<u>Type of Operation</u>	<u>Annual Fee</u>
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542

Type of Operation	Annual Fee
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

(2) The fee for each export certificate is \$55.00.

(3) Annual biotoxin testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category

Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	\$353
Harvester	3 or more	\$535
Shellstock Shipper Wholesale Company		\$198
Shellstock Shipper 0 - 49 acres	≤ 2	\$393
Shellstock Shipper 0 - 49 acres	3 or more	\$610
Shellstock Shipper 50 or greater acres	N/A	\$961
Shucker-Packer (plants < 2000 ft ²)	≤ 2	\$752
Shucker-Packer (plants < 2000 ft ²)	3 or more	\$1,076
Shucker-Packer (plants 2000 - 5000 ft ²)	≤ 2	\$882
Shucker-Packer (plants 2000 - 5000 ft ²)	3 or more	\$1,297
Shucker-Packer (plants > 5000 ft ²)	N/A	\$2,412

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

(i) At the time of first licensure; or

(ii) January 1st of each year for companies licensed as harvesters; or

(iii) July 1st of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Cert #	Fee
((Chuckanut Shellfish, Inc.	WA-1350-HA	\$626)
Department of Natural Resources	NA	(\$11,266) <u>\$15,037</u>
Jamestown S'Klallam Tribe	WA-0588-SS	(\$4,590) <u>\$5,618</u>

Harvester	Cert #	Fee
Lower Elwha Klallam Tribe	WA-0587-HA	(\$6,468) \$2,644
Lummi Indian Business Council	WA-0098-SS	(\$209) \$496
(Nisqually Indian Tribe)	WA-1268-HA	(\$209)
Port Gamble S'Klallam Tribe	WA-0859-HA	(\$2,295) \$5,123
Puyallup Tribe of Indians	WA-1137-HA	(\$7,302) \$4,957
Seaproducts, Inc.	WA-1416-SS	(\$417) \$661
Skokomish Indian Tribe	WA-0577-HA	(\$1,878) \$165
Suquamish Tribe	WA-0694-SS	(\$7,719) \$5,618
Swinomish Indian Tribal Community	WA-1420-SS	(\$1,043) \$661
Taylor Shellfish Company, Inc.	WA-0046-SP	(\$6,468) \$7,932
The Tulalip Tribes	WA-0997-HA	(\$7,511) \$9,088

(5) Fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

[Statutory Authority: RCW 43.70.250 and 69.30.050. WSR 21-11-080, § 246-282-990, filed 5/18/21, effective 6/18/21; WSR 20-22-001, § 246-282-990, filed 10/21/20, effective 11/21/20; WSR 19-10-026, § 246-282-990, filed 4/23/19, effective 5/24/19; WSR 18-09-067, § 246-282-990, filed 4/16/18, effective 5/17/18; WSR 17-06-062, § 246-282-990, filed 2/28/17, effective 3/31/17. Statutory Authority: RCW 43.70.250 and 60.30.005. WSR 16-07-094, § 246-282-990, filed 3/18/16, effective 4/18/16. Statutory Authority: RCW 43.70.250 and 77.32.555. WSR 16-01-041, § 246-282-990, filed 12/9/15, effective 1/9/16. Statutory Authority: RCW 43.70.250. WSR 15-11-053, § 246-282-990, filed 5/15/15, effective 6/15/15; WSR 14-12-082, § 246-282-990, filed 6/3/14, effective 7/4/14; WSR 13-11-038, § 246-282-990, filed 5/10/13, effective 6/10/13; WSR 12-14-073, § 246-282-990, filed 7/2/12, effective 8/2/12. Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 11-19-011, § 246-282-990, filed 9/7/11, effective 10/8/11. Statutory Authority: RCW 43.70.250. WSR 10-19-034, § 246-282-990, filed 9/9/10, effective 10/10/10; WSR 09-19-067, § 246-282-990, filed 9/14/09, effective 10/15/09; WSR 08-13-067, § 246-282-990, filed 6/13/08, effective 7/14/08; WSR 07-17-159, § 246-282-990, filed 8/21/07, effective 9/21/07; WSR 06-15-131, § 246-282-990, filed 7/19/06, effective 8/19/06; WSR 05-17-120, § 246-282-990, filed 8/17/05, effective 9/17/05; WSR 04-15-154, § 246-282-990, filed 7/21/04, effective 8/21/04; WSR 03-18-093, § 246-282-990, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 43.70.250 and 34.70.250 [43.70.250]. WSR 03-14-037, § 246-282-990, filed 6/23/03, effective 7/24/03. Statutory Authority: RCW 43.70.250 and the 2002 supplemental operating budget. WSR 02-15-094, § 246-282-990, filed 7/16/02, effective 8/16/02. Statutory Authority:

RCW 43.70.250, 70.90.150, and 43.20B.250. WSR 01-14-047, § 246-282-990, filed 6/29/01, effective 7/30/01. Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-990, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 43.70.250. WSR 00-02-016, § 246-282-990, filed 12/27/99, effective 1/27/00; WSR 99-12-022, § 246-282-990, filed 5/24/99, effective 6/24/99. Statutory Authority: RCW 43.20B.020 and 69.30.030. WSR 98-12-068, § 246-282-990, filed 6/1/98, effective 7/2/98. Statutory Authority: RCW 43.203.020 [43.20B.020]. WSR 97-12-031, § 246-282-990, filed 5/30/97, effective 6/30/97. Statutory Authority: RCW 43.20B.020 and 69.30.030. WSR 96-16-073, § 246-282-990, filed 8/6/96, effective 10/1/96. Statutory Authority: RCW 43.70.040. WSR 93-17-096 (Order 389), § 246-282-990, filed 8/17/93, effective 9/17/93; WSR 91-02-049 (Order 121), recodified as § 246-282-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.20A.055. WSR 85-12-029 (Order 2236), § 440-44-065, filed 5/31/85; WSR 84-13-006 (Order 2109), § 440-44-065, filed 6/7/84; WSR 83-15-021 (Order 1991), § 440-44-065, filed 7/14/83. Statutory Authority: 1982 c 201. WSR 82-13-011 (Order 1825), § 440-44-065, filed 6/4/82.]

WSR 22-10-052
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed April 29, 2022, 4:09 p.m., effective June 1, 2022]

Effective Date of Rule: June 1, 2022.

Purpose: The operating permit program fees, like the other fee programs of the Puget Sound Clean Air Agency (agency) (registration, notice of construction, and asbestos), are designed to recover the costs implementing and administering the program. The last significant changes to the operating permit fee schedule in Regulation I, Section 7.07 were made in 2012. The current proposed changes are intended to adjust fees to keep the revenues in balance with the level of effort to complete the compliance work associated with the operating permit program. While the revenue and expenses for the operating permit program have been roughly balanced for most of the past 10 years, the increasing costs to the program and increasing level of effort for some types of work by the agency for certain aspects of the operating permit program need to be addressed through a revised fee schedule to ensure the agency does not regularly reach a deficit condition.

The proposed amendments to the operating permit fee schedule include both cost increases for each regulated category at approximately 25 percent. The consumer price index increase since the last operating permit fee increase is 28 percent.

Additionally, the proposed changes include an update to the North American Industrial Classification System (NAICS) codes referenced in the regulation to reflect the series that the agency currently uses and the elimination of a NAICS code no longer published in the NAICS system manual.

Citation of Rules Affected by this Order: Amending Regulation I, Section 7.07 Operating permit fees.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 22-05-088 on February 15, 2022.

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 Nongovernmental 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: April 28, 2022.

Cynthia Wang
Executive Director

SECTION 7.07 OPERATING PERMIT FEES Adopted 10/28/93 (766) Revised 09/08/94 (798), 09/14/95 (821), 09/12/96 (839), 09/11/97 (856), 09/10/98 (871), 09/09/99 (894), 07/13/00 (925), 06/14/01 (946), 10/11/01 (957), 05/23/02 (970), 05/22/03 (995), 07/22/04 (1031), 05/22/08 (1119), 05/24/12 (1244), 09/26/13 (1286)

(a) The Agency shall assess annual operating permit fees as set forth in Section 7.07(b) below to cover the cost of administering the operating permit program.

(b) Upon assessment by the Agency, the following annual operating permit fees are due and payable within 45 days of the invoice date. They shall be deemed delinquent if not fully paid within 90 days of the date of the invoice and will be subject to an additional delinquent fee equal to 25% of the original fee, not to exceed \$((6,500)) 8,125. In addition, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than 90 days late with such payments may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter ((70.94)) 70A.15 RCW).

(1) Sources in the following North American Industry Classification System (NAICS) codes (*North American Industry Classification System Manual*, U.S. Executive Office of the President, Office of Management and Budget, ((1997)) 2012), or sources subsequently determined by the control officer to be assigned to either Section 7.07 (b) (1) (i) or 7.07 (b) (1) (ii) shall be subject to the following facility fees:

(i) Operating permit sources with the following NAICS codes:

NAICS	NAICS Description	Fee
221112	Fossil Fuel Electric Power Generation	
324110	Petroleum Refineries	
327213	Glass Container Manufacturing	
327310	Cement Manufacturing	
331110	Iron and Steel Mills and Ferroalloy Manufacturing	
336411	Aircraft Manufacturing	
336413	Other Aircraft Parts and Auxiliary Equipment Manufacturing	
928110	National Security	
	 \$((57,200)) <u>71,500</u>

(ii) Operating permit sources with the following NAICS codes:

NAICS	NAICS Description	Fee
311119	Other Animal Food Manufacturing	
311812	Commercial Bakeries	
321912	Cut Stock, Resawing Lumber, and Planing	
321918	Other Millwork (including Flooring)	
321999	All Other Miscellaneous Wood Product Manufacturing	
322220	Paper Bag and Coated and Treated Paper Manufacturing	
326140	Polystyrene Foam Product Manufacturing	
((327121	Brick and Structural Clay Tile Manufacturing))	
332996	Fabricated Pipe and Pipe Fitting Manufacturing	
	 \$((14,300)) <u>17,875</u>

(iii) Operating permit sources with NAICS codes other than listed above. \$((28,600)) 35,750

(2) Additional emission rate fees shall be paid in addition to the annual operating permit fees of Section 7.07 (b) (1):

\$30 for each ton of CO reported in the previous calendar year,
and

\$60 for each ton of NO_x reported in the previous calendar year,
and

\$60 for each ton of PM₁₀ reported in the previous calendar year,
and

\$60 for each ton of SO_x reported in the previous calendar year,
and

\$60 for each ton of VOC reported in the previous calendar year,
and

\$60 for each ton of HAP reported in the previous calendar year.

(c) In addition to the fees under Sections 7.07 (b) (1) and (b) (2) above, the Agency shall, on a source-by-source basis, assess the following fees:

(1) \$500 for administrative permit amendments [WAC 173-401-720],
and

(2) for minor permit modifications [WAC 173-401-725 (2) and (3)], a fee equal to 10% of the annual operating permit fee, not to exceed \$ ((6,500)) 8,125, and

(3) for the original issuance [WAC 173-401-700], significant modification [WAC 173-401-725(4)], reopening for cause [WAC 173-401-730], or renewal [WAC 173-401-710] of an operating permit, a fee equal to 20% of the annual operating permit fee, not to exceed \$ ((13,000)) 16,250, and

(4) to cover the costs of public involvement under WAC 173-401-800, and

(5) to cover the costs incurred by the Washington State Department of Health in enforcing 40 CFR Part 61, Subpart I and chapter 246-247 WAC.

(d) In addition to the fees described under Sections 7.07 (b) and (c) above, the Agency shall collect and transfer to the Washington State Department of Ecology a surcharge established by the Department of Ecology under chapter 173-401 WAC to cover the Department of Ecology's program development and oversight costs.

(e) Continued payment to the Agency of the annual operating permit fee maintains the operating permit and the status of the source as an operating facility.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 22-10-053

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed April 29, 2022, 5:17 p.m., effective May 30, 2022]

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

Purpose: The department is amending WAC 388-112A-1245 What are the requirements and minimum qualifications for high school instructors and programs that offer core basic, population specific, nurse delegation, and specialty trainings? to rephrase subsection (1)(f). The change adds clarity, does not alter the intent or context of the rule, and will not affect any existing rule.

Citation of Rules Affected by this Order: Amending WAC 388-112A-1245.

Statutory Authority for Adoption: RCW 74.08.090, 70.128.060.

Adopted under notice filed as WSR 21-21-071 on October 18, 2021.

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

Number of Sections Adopted at the Request of a Nongovernmental 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: April 29, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4894.2

AMENDATORY SECTION (Amending WSR 21-18-062, filed 8/26/21, effective 9/26/21)

WAC 388-112A-1245 What are the requirements and minimum qualifications for high school instructors and programs that offer core basic, population specific, nurse delegation, and specialty trainings?

(1) A high school instructor teaching core basic, population specific, nurse delegation core, nurse delegation special focus on diabetes, specialty and expanded specialty trainings must meet the following minimum qualifications:

(a) Be at least twenty-one years of age;

(b) Not have had a professional, adult family home, assisted living facility, or social services license or certification revoked in Washington state;

(c) Meet the following education and work experience requirements upon initial approval or hire:

(i) Have a valid teaching credential with a related endorsement such as career and technical education, science, health, or special education; and

(A) Have caregiving experience within the last five years in a school, community-based, or home setting; or

(B) Be a registered nurse with direct care experience within the last five years; or

(C) Be certificated under the vocational code V511614; or

(D) Have successfully completed core basic training taught by a DSHS approved instructor; or

(E) Have taught forty hours of basic training while being mentored by an instructor who is approved to teach basic training;

(d) Have at least 100 hours teaching experience;

(e) Be knowledgeable in caregiving practices and demonstrate competency for teaching the course content or units being taught; and

(f) Have successfully completed ~~((any))~~ a specialty or expanded specialty training ~~((classes))~~ class before providing training in that curriculum to others;

(2) In addition to requirements under subsection (1) of this section, an instructor for nurse delegation core or diabetes must have a current Washington registered nurse (RN) license in good standing without practice restrictions.

(3) A high school home care aide training program must be approved and contracted by the department as a community instructor program.

[Statutory Authority: RCW 74.08.090 and 70.128.060. WSR 21-18-062, § 388-112A-1245, filed 8/26/21, effective 9/26/21.]

WSR 22-10-064
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 3, 2022, 8:53 a.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: This adoption updates a conversion factor provided in WAC 296-20-135 and maximum daily fees provided in WAC 296-23-220 and 296-23-230 for certain professional health care services for injured workers. Rule changes are necessary to maintain current overall fees for health care services, which are published annually in the medical aid rules and fee schedules.

These updates increase the resource based relative value scale (RBRVS) conversion factor, increase the anesthesia conversion factor, and increase the maximum daily caps to be consistent with the changes for other professional fees resulting from our RBRVS process and changes in the relative value units published by the Centers for Medicare and Medicaid Services.

Citation of Rules Affected by this Order: Amending WAC 296-20-135, 296-23-220, and 296-23-230.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Adopted under notice filed as WSR 22-06-077 on March 1, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, 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 3, Repealed 0.

Date Adopted: May 3, 2022.

Joel Sacks
Director

OTS-3603.1

AMENDATORY SECTION (Amending WSR 21-11-084, filed 5/18/21, effective 7/1/21)

WAC 296-20-135 Conversion factors. (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of \$((~~57.90~~)) 59.46. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of ~~\$(3.64)~~ 3.75 per minute, which is equivalent to ~~\$(54.60)~~ 56.25 per 15 minutes. The base units and payment policies can be found in the fee schedules.

[Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 21-11-084, § 296-20-135, filed 5/18/21, effective 7/1/21; WSR 20-17-116, § 296-20-135, filed 8/18/20, effective 10/1/20; WSR 18-10-082, § 296-20-135, filed 5/1/18, effective 7/1/18; WSR 17-10-060, § 296-20-135, filed 5/2/17, effective 7/1/17; WSR 16-10-084, § 296-20-135, filed 5/3/16, effective 7/1/16; WSR 15-09-120, § 296-20-135, filed 4/21/15, effective 7/1/15; WSR 14-09-094, § 296-20-135, filed 4/22/14, effective 7/1/14; WSR 13-11-020, § 296-20-135, filed 5/7/13, effective 7/1/13; WSR 12-11-107, § 296-20-135, filed 5/22/12, effective 7/1/12; WSR 11-12-019, § 296-20-135, filed 5/24/11, effective 7/1/11; WSR 10-10-107, § 296-20-135, filed 5/4/10, effective 7/1/10; WSR 08-09-121, § 296-20-135, filed 4/22/08, effective 7/1/08; WSR 07-10-082, § 296-20-135, filed 5/1/07, effective 7/1/07; WSR 06-09-071, § 296-20-135, filed 4/18/06, effective 7/1/06; WSR 05-09-062, § 296-20-135, filed 4/19/05, effective 7/1/05; WSR 04-09-100, § 296-20-135, filed 4/20/04, effective 7/1/04; WSR 03-14-043, § 296-20-135, filed 6/24/03, effective 8/1/03; WSR 02-10-129, § 296-20-135, filed 5/1/02, effective 7/1/02; WSR 01-10-026, § 296-20-135, filed 4/24/01, effective 7/1/01; WSR 00-09-077, § 296-20-135, filed 4/18/00, effective 7/1/00. Statutory Authority: RCW 51.04.020(4) and 51.04.030. WSR 99-10-043, § 296-20-135, filed 4/30/99, effective 7/1/99; WSR 98-09-125, § 296-20-135, filed 4/22/98, effective 7/1/98; WSR 97-10-017, § 296-20-135, filed 4/28/97, effective 7/1/97. Statutory Authority: RCW 51.04.020 and 51.04.030. WSR 96-19-060, § 296-20-135, filed 9/16/96, effective 10/17/96; WSR 96-10-086, § 296-20-135, filed 5/1/96, effective 7/1/96; WSR 95-17-001 § 296-20-135, filed 8/2/95, effective 10/1/95; WSR 95-05-072, § 296-20-135, filed 2/15/95, effective 3/18/95. Statutory Authority: RCW 51.04.020, 51.04.030 and 1993 c 159. WSR 94-02-045 and 94-03-008, § 296-20-135, filed 12/30/93 and 1/6/94, effective 3/1/94; WSR 93-16-072, § 296-20-135, filed 8/1/93, effective 9/1/93. Statutory Authority: RCW 51.04.020(4) and 51.04.030. WSR 91-02-063, § 296-20-135, filed 12/28/90, effective 1/28/91; WSR 88-24-011 (Order 88-28), § 296-20-135, filed 12/1/88, effective 1/1/89; WSR 87-03-004 (Order 86-45), § 296-20-135, filed 1/8/87; WSR 83-24-016 (Order 83-35), § 296-20-135, filed 11/30/83, effective 1/1/84; WSR 82-24-050 (Order 82-39), § 296-20-135, filed 11/29/82, effective 7/1/83. Statutory Authority: RCW 51.04.020(4), 51.04.030, and 51.16.120(3). WSR 81-24-041 (Order 81-28), § 296-20-135, filed 11/30/81, effective 1/1/82; WSR 80-18-033 (Order 80-24), § 296-20-135, filed 12/1/80, effective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-20-135, filed 11/30/79, effective 1/1/80; Order 77-27, § 296-20-135, filed 11/30/77, effective 1/1/78; Order 76-34, § 296-20-135, filed 11/24/76, effective 1/1/77; Order 75-39, § 296-20-135, filed 11/28/75, effective 1/1/76; Order 74-7, § 296-20-135, filed 1/30/74; Order 71-6, § 296-20-135, filed 6/1/71; Order 68-7, § 296-20-135, filed 11/27/68, effective 1/1/69.]

OTS-3602.1

AMENDATORY SECTION (Amending WSR 21-11-084, filed 5/18/21, effective 7/1/21)

WAC 296-23-220 Physical therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist, a physical therapist assistant serving under the direction of a licensed physical therapist as required in RCW 18.74.180 (3)(a), or a licensed athletic trainer serving under the direction of a licensed physical therapist as required in RCW 18.250.010 (4)(a)(v). In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or \$((~~136.74~~)) 140.84 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following ((~~twelve~~)) 12 treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial ((~~twelve~~)) 12 treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

[Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 21-11-084, § 296-23-220, filed 5/18/21, effective 7/1/21; WSR 20-17-116, § 296-23-220, filed 8/18/20, effective 10/1/20; WSR 18-10-082, § 296-23-220, filed 5/1/18, effective 7/1/18; WSR 17-10-060, § 296-23-220, filed 5/2/17, effective 7/1/17; WSR 16-10-084, § 296-23-220, filed 5/3/16, effective 7/1/16; WSR 15-09-120, § 296-23-220, filed 4/21/15, effective 7/1/15. Statutory Authority: RCW 51.04.020 and 51.04.030. WSR 14-23-064, § 296-23-220, filed 11/18/14, effective 1/1/15. Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 14-09-094, § 296-23-220, filed 4/22/14, effective 7/1/14; WSR 13-11-020, § 296-23-220, filed 5/7/13, effective 7/1/13; WSR 12-11-107, § 296-23-220, filed 5/22/12, effective 7/1/12; WSR 08-09-121, § 296-23-220, filed 4/22/08, effective 7/1/08; WSR 07-10-082, § 296-23-220, filed 5/1/07, effective 7/1/07; WSR 06-09-071, § 296-23-220, filed 4/18/06, effective 7/1/06. Statutory Authority: RCW 51.04.020 and 51.04.030. WSR 05-18-030, § 296-23-220, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 05-09-062, § 296-23-220, filed 4/19/05, effective 7/1/05; WSR 04-09-100, § 296-23-220, filed 4/20/04, effective 7/1/04; WSR 03-14-043, § 296-23-220, filed 6/24/03, effective 8/1/03; WSR 02-10-129, § 296-23-220, filed 5/1/02, effective 7/1/02; WSR 01-10-026, § 296-23-220, filed 4/24/01, effective 7/1/01; WSR 00-09-077, § 296-23-220, filed 4/18/00, effective 7/1/00. Statutory Authority: RCW 51.04.020(4) and 51.04.030. WSR 99-10-043, § 296-23-220, filed 4/30/99, effective 7/1/99; WSR 98-09-125, § 296-23-220, filed 4/22/98, effective 7/1/98; WSR 97-10-017, § 296-23-220, filed 4/28/97, effective 7/1/97; WSR 96-10-086, § 296-23-220, filed 5/1/96, effective 7/1/96; WSR 95-05-072, § 296-23-220, filed 2/15/95, effective 3/18/95. Statutory Authority: RCW 51.04.020, 51.04.030 and 1993 c 159. WSR 94-02-045, § 296-23-220, filed 12/30/93, effective 3/1/94; WSR 93-16-072, § 296-23-220, filed 8/1/93, effective 9/1/93.]

AMENDATORY SECTION (Amending WSR 21-11-084, filed 5/18/21, effective 7/1/21)

WAC 296-23-230 Occupational therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following ((~~twelve~~)) 12 treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial ((~~twelve~~)) 12 treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or \$((~~136.74~~)) 140.84 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

[Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 21-11-084, § 296-23-230, filed 5/18/21, effective 7/1/21; WSR 20-17-116, § 296-23-230, filed 8/18/20, effective 10/1/20; WSR 18-10-082, §

296-23-230, filed 5/1/18, effective 7/1/18; WSR 17-10-060, §
296-23-230, filed 5/2/17, effective 7/1/17; WSR 16-10-084, §
296-23-230, filed 5/3/16, effective 7/1/16; WSR 15-09-120, §
296-23-230, filed 4/21/15, effective 7/1/15; WSR 14-09-094, §
296-23-230, filed 4/22/14, effective 7/1/14; WSR 13-11-020, §
296-23-230, filed 5/7/13, effective 7/1/13; WSR 12-11-107, §
296-23-230, filed 5/22/12, effective 7/1/12; WSR 08-09-121, §
296-23-230, filed 4/22/08, effective 7/1/08; WSR 07-10-082, §
296-23-230, filed 5/1/07, effective 7/1/07; WSR 06-09-071, §
296-23-230, filed 4/18/06, effective 7/1/06. Statutory Authority: RCW
51.04.020 and 51.04.030. WSR 05-18-030, § 296-23-230, filed 8/30/05,
effective 10/1/05. Statutory Authority: RCW 51.04.020(1) and
51.04.030. WSR 05-09-062, § 296-23-230, filed 4/19/05, effective
7/1/05; WSR 04-09-100, § 296-23-230, filed 4/20/04, effective 7/1/04;
WSR 03-14-043, § 296-23-230, filed 6/24/03, effective 8/1/03; WSR
02-10-129, § 296-23-230, filed 5/1/02, effective 7/1/02; WSR
01-10-026, § 296-23-230, filed 4/24/01, effective 7/1/01; WSR
00-09-077, § 296-23-230, filed 4/18/00, effective 7/1/00. Statutory
Authority: RCW 51.04.020(4) and 51.04.030. WSR 99-10-043, §
296-23-230, filed 4/30/99, effective 7/1/99; WSR 98-09-125, §
296-23-230, filed 4/22/98, effective 7/1/98; WSR 97-10-017, §
296-23-230, filed 4/28/97, effective 7/1/97; WSR 96-10-086, §
296-23-230, filed 5/1/96, effective 7/1/96; WSR 95-05-072, §
296-23-230, filed 2/15/95, effective 3/18/95. Statutory Authority: RCW
51.04.020, 51.04.030 and 1993 c 159. WSR 94-02-045, § 296-23-230,
filed 12/30/93, effective 3/1/94; WSR 93-16-072, § 296-23-230, filed
8/1/93, effective 9/1/93.]

WSR 22-10-070
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 3, 2022, 10:53 a.m., Effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: This rule implements the requirements of EHB 1756 (chapter 304, Laws of 2019), codified under RCW 49.17.470.

Chapter 296-831 WAC, Adult entertainer safety:

- Adds requirement that adult entertainment establishments provide panic buttons in specified locations.
 - Panic buttons must be silent (discreet) unless an adult entertainment establishment's safety committee has assessed the premises and operations and have unanimously agreed on the use of an audible alarm.
- Adds requirement that adult entertainment establishments record accusations of customer violence, including assault, sexual assault, or sexual harassment, towards an entertainer.
- Adds requirement that adult entertainment establishments ban customers for three years if an accusation of violence or harassment against the entertainer is supported by a statement made under penalty of perjury or other evidence.
- Includes definitions pertinent to these new requirements.
- Includes notes clarifying requirements.

Citation of Rules Affected by this Order: New WAC 296-831-100, 296-831-200, 296-831-300, 296-831-310, 296-831-400, and 296-831-500.

Statutory Authority for Adoption: Chapter 49.17 RCW; RCW 49.17.470.

Adopted under notice filed as WSR 22-06-075 on March 1, 2022.

Changes Other than Editing from Proposed to Adopted Version: The term "blacklist" was changed to "blocklist" throughout the rule to better reflect objective of list which is to note customers who are prohibited from entrance and service at a specific establishment.

A final cost-benefit analysis is available by contacting Kevin Walder, Administrative Regulations Analyst, Department of Labor and Industries, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-902-6681, fax 360-902-5619, email Kevin.Walder@lni.wa.gov, website <https://lni.wa.gov/safety-health/safety-rules/rulemaking-stakeholder-information/sh-rules-stakeholder-adult-entertainer-safety#rulemaking>.

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 6, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental 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 6, Amended 0, Repealed 0.

Date Adopted: May 3, 2022.

Joel Sacks

OTS-1747.15

**Chapter 296-831 WAC
ADULT ENTERTAINER SAFETY**

NEW SECTION

WAC 296-831-100 Purpose and scope. This chapter applies to all adult entertainment establishments.

In addition to this chapter, chapter 296-800 WAC Safety and health core rules, chapter 296-24 WAC General safety and health standards, and chapter 296-62 WAC General occupational health standards contain safety and health rules that also apply to adult entertainment establishments. Similarly, other special industry focused chapters (e.g., chapter 296-832 WAC Late night retail worker crime prevention, chapter 296-155 WAC construction, etc.) and special hazard focused chapters (e.g., chapter 296-876 WAC ladders, chapter 296-880 WAC fall protection, etc.) complement the rules found in this chapter and may apply depending on operations being performed.

Note: All of the requirements in this rule work in conjunction with the Accident Prevention Program (APP) rules in WAC 296-800-140 through 296-800-14025 within the safety and health core rules. Therefore, an adult entertainment establishment's fully compliant Accident Prevention Program (APP) will cover the following (in addition to other general safety and health considerations applicable to all businesses):

- Entertainer orientation on panic button location, use, and maintenance, if any;
- How to add a problematic customer to your complaint log/blocklist;
- How to report work-related hazards, injuries, unsafe conditions, or unsafe practices;
- The proper use and care of personal protective equipment (PPE); and
- What to do in an emergency, including how to leave the workplace.

Adult entertainment establishments are also required to regularly hold safety and health meetings for the purpose of communicating and evaluating safety and health issues in the workplace, including the evaluation of your APP to determine whether improvements are necessary to ensure that it is effective in practice. Specific requirements differ somewhat between large and small employers. See WAC 296-800-130 Safety committees/safety meetings—Summary, for details.

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NEW SECTION

WAC 296-831-200 Definitions. Note: The definitions below exclusively apply to this chapter.

Adult entertainment. Any exhibition, performance, or dance of any type conducted in premises where such exhibition, performance, or dance involves an entertainer who:

(a) Is unclothed or in such attire, costume, or clothing as to expose to view any portion of the breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva, or genitals; or

(b) Touches, caresses, or fondles the breasts, buttocks, anus, genitals, or pubic region of another person, or permits the touching, caressing, or fondling of the entertainer's own breasts, buttocks,

anus, genitals, or pubic region by another person, with the intent to sexually arouse or excite another person.

Adult entertainment establishment or establishment. Any business to which the public, patrons, or members are invited or admitted where an entertainer provides adult entertainment to a member of the public, a patron, or a member.

Entertainer. Any person who provides adult entertainment within an adult entertainment establishment, whether or not a fee is charged or accepted for entertainment and whether or not the person is an employee under RCW 49.17.020.

Panic button. An emergency contact device by which the entertainer may summon immediate on-scene assistance from another entertainer, a security guard, or a representative of the entertainment establishment.

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NEW SECTION

WAC 296-831-300 Panic button requirements. (1) Adult entertainment establishments must provide a panic button in each room in the establishment in which an entertainer may be alone with a customer, and in bathrooms and dressing rooms. An entertainer may use the panic button if the entertainer has been harmed, reasonably believes there is a risk of harm, or there is another emergency in the entertainer's presence. The entertainer may cease work and leave the immediate area to await the arrival of assistance.

(2) Panic buttons, and their associated alarm(s), must be silent (discreet) at the entertainer's point of use, while still effectively alerting whomever you have determined to be responsible for responding to emergencies.

Exception: Panic buttons that trigger a recognizable (audible/visual/tactile) alarm at the entertainer's point of use may be used in specific locations within an establishment where alarms are required but only if you have assessed your business operations and alarm system with your required safety and health committee (see WAC 296-800-130 Safety committees/safety meetings—Summary) and the committee has unanimously determined that such an alarm would be more effective for a particular location within your establishment where an alarm is required. In such cases, this determination is limited to a particular location within your establishment and must be documented along with other required safety committee documentation.

(3) Adult entertainment establishments must test and maintain your alarm system regularly to ensure that it will function as intended when needed.

(a) Testing must be performed at least annually, or at whatever interval is recommended by the alarm system manufacturer (this information is typically found in the owner's manual).

(b) Adult entertainment establishments must keep a record that includes the dates of all testing or maintenance performed and any pertinent details such as errors corrected or adjustments made.

Note: Appendix A contains a nonmandatory panic button checklist that adult entertainment establishments can use to assist in identifying panic button and response procedure related hazards in their workplace, and to aid establishments in evaluating what performance criteria will address the violence-based hazards in their establishment.

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NEW SECTION

WAC 296-831-310 Install an appropriate entertainer alarm system(s). (1) Adult entertainment establishments must make sure that an alarm system, with a distinctive (not confused with fire alarm, etc.) signal, is installed for the purposes of communicating entertainer violence related emergencies to employer-designated responders.

(2) Adult entertainment establishments must make sure alarm systems:

(a) Communicate the use/triggering of panic buttons.

(b) Identify the location of all panic buttons which have been used/triggered.

(c) Latch, or continue to both communicate the use/triggering of panic buttons, and identify the location of panic buttons which have been used/triggered, without requiring ongoing action(s) of the person that used the panic button. For example, entertainers must not be required to hold a button down to keep the alarm triggering.

(d) Are recognizable above surrounding noise and/or light levels by establishment designated responder(s) in all relevant portions of the establishment in which designated responders are acting in this role. Areas far enough away from an alarm, or where building materials or walls are in the alarms path, may reduce the effectiveness of the alarm to the point that it is no longer recognizable.

(3) For the purposes of this rule, panic button alarm systems can be categorized based on whether the entertainer's point of use features a silent (discreet), or a recognizable (audible/visual/tactile) alarm from the entertainer's and customer's perspective. Discreet panic buttons reduce the likelihood of escalating a confrontation towards violence, but at the same time prevent other entertainers and personnel in the area from knowing a panic button was used/triggered. **See WAC 296-831-300(2) and the exception immediately following it for specific requirements regarding silent (discreet) vs. recognizable (audible/visual/tactile) alarm systems.** Regardless of which method is used, associated hazards must be further mitigated by implementing either of the below, or a similarly protective, strategy:

(a) A multistage alarm (normally discreet at the panic button point of use, but switches to audible/recognizable at the point of use if the alarm system detects a malfunction that would prevent response actions); or

(b) A multicomponent alarm (discreet at the panic button point of use, but nonaudible alarm components (lights, etc.)) provided within adjacent booths/rooms/etc., and above/adjacent/on the entrance to booth(s)/room(s)/etc., to communicate to designated responders both the use, and location, of a panic button alarm in the area.

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NEW SECTION

WAC 296-831-400 Training requirements. (1) Adult entertainment establishments must train entertainers on the following, prior to their work as entertainers (for more information related to customer complaint logs/blocklists see WAC 296-831-500).

(a) The location and type of panic buttons used in the establishment (audible/discreet at the point of use).

- (b) How to use panic button(s).
 - (c) Proper scenarios for use of panic button(s).
 - (d) What, if any, are the limitations of the panic button(s) and/or alarm system(s) - Under what circumstances could the panic button(s) and alarm system(s) fail and what are entertainers expected to do in these scenarios.
 - (e) The location and purpose of both the customer complaint log and blocklist.
 - (f) What scenarios are appropriate for listing customers in both the complaint log and blocklist.
 - (g) What steps entertainers must take to have customers added to blocklist and/or customer complaint log.
- (2) Adult entertainment establishments designate and train responders on the following prior to their work as designated responders (for more information related to customer complaint logs/blocklists see WAC 296-831-500).
- (a) The location and type of panic buttons used in the establishment.
 - (b) How to recognize panic button alarms?
 - (c) What, if any, are the limitations of the panic button(s) and/or alarm system(s) - Under what circumstances could the panic button(s) and alarm system(s) fail and what are responders expected to do in these scenarios?
 - (d) What are the designated responders assigned duties following the use of a panic button?
 - (e) How do designated responders perform assigned duties following the use of a panic button?
 - (f) The location and purpose of both the customer complaint log and blocklist.
 - (g) What scenarios are appropriate for listing customers in both the complaint log and blocklist.
 - (h) What steps designated responders must take to have customers added to blocklist and/or customer complaint log.

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NEW SECTION

WAC 296-831-500 Customer complaint log requirements. (1) Adult entertainment establishments must record the accusations it receives that a customer has committed an act of violence, including assault, sexual assault, or sexual harassment, towards an entertainer. The establishment must make every effort to obtain the customer's name and if the establishment cannot determine the name, it must record as much identifying information about the customer as is reasonably possible. The establishment must retain a record of the customer's identifying information for at least five years after the most recent accusation.

(2) If an accusation is supported by a statement made under penalty of perjury or other evidence, the adult entertainment establishment must decline to allow the customer to return to the establishment (blocklist) for at least three years after the date of the incident. The establishment must share the information about the customer with other establishments with common ownership and those establishments with common ownership must also decline to allow the customer to enter those establishments (blocklist) for at least three years after the

date of the incident. No entertainer may be required to provide such a statement.

Note: Appendix B contains a standard declaration template that can be used to make a statement under penalty of perjury. In addition to statements made under penalty of perjury, any other evidence brought forth to an employer that a customer has committed an act of violence, including assault, sexual assault, or sexual harassment towards an entertainer, should be considered credible and trigger the employer to take action as required under the customer complaint log requirements above unless the employer can provide a rational explanation why they do not deem the evidence credible.

Appendix A

PANIC BUTTON CHECKLIST		
If the response to <i>any</i> of the following questions in this checklist is "NO," and if no other alternative hazard controls are in place for the identified hazard, panic buttons are likely not effective.		
Do panic buttons and panic buttons systems exclusively rely on establishment owned/leased/etc., equipment or services?	YES	NO
The above covers the complete chain of events from the initial signaling at the entertainer's point of use through notification and to response from the establishment. The rule does not prohibit entertainer owned devices supplementing the devices provided by establishment (e.g., as a backup method).		
Do panic buttons require only a single action to activate (such as a single push/pull/tap, etc.)?	YES	NO
Panic buttons which require multiple actions (such as using a number pad to unlock/dial a cell phone, or selecting a channel/frequency on a portable radio, or pressing a button and then speaking) would require an entertainer to extend their exposure to a hazard in order to seek relief from it.		
Do panic buttons and the associated signal or alarm latch?	YES	NO
Once triggered, panic buttons alarms continue to both alarm and identify the location of the used panic button(s) without requiring ongoing action of the entertainer. Panic buttons requiring ongoing actions of the entertainer (continued holding/pressing, etc.) would require an entertainer to extend their exposure to a hazard in order to seek relief from it.		
Do panic buttons systems resist tampering?	YES	NO
Once triggered, panic buttons alarms are not easily reset at the panic button (entertainer's point of use) itself, especially using the same action that activated it. Panic buttons which can be readily turned off or reset by customers would delay response actions and allow continued exposure to the hazard.		
Do panic buttons reduce or minimize inadvertent activation or false alarms?	YES	NO
False alarms increase the likelihood of delayed, deprioritized, or ignored alarms. Buttons, switches, etc., which are protected, shouldered, recessed, or flush with top surface/bracket/etc. reduce the likelihood of false alarms.		
Do panic buttons systems identify the location of the triggered panic buttons?	YES	NO
Uncoordinated response to panic buttons increases the likelihood of response actions being delayed or otherwise inadequate.		
Do panic buttons trigger distinct alarms?	YES	NO
If an establishment's panic button response procedures dictate that after the triggering of a panic button, uninvolved entertainers should continue entertaining while the establishment conducts response activities; then panic buttons alarm systems (and response procedures) would need to continue to fully function during an alarm (or multiple alarms). Indistinct alarms, or alarms where the establishment cannot identify/respond to multiple simultaneous alarms, increase the likelihood of response actions being delayed or otherwise inadequate.		
Do panic buttons alarms produce recognizable signals to perform actions under the APP, Emergency Action Plan, etc.?	YES	NO

<p>At the establishment's point of reception, alarms must be recognizable in the conditions under which they will be used. The following can obscure alarms sufficiently enough to make an alarm unrecognizable:</p> <ul style="list-style-type: none"> - Areas subject to noise/music at volumes equal or above the volume of an alarm; - Areas subject to strobing lighting equal or above the amount of illumination of an alarm; - Areas with sufficient distance, intermediary materials, or the room/building configuration itself, impairs alarm signals to the point that they are no longer recognizable. <p>At the entertainer's point of use, panic buttons may be either discreet, or produce an audible alarm. Discreet panic buttons reduce the likelihood of escalating a confrontation towards violence, but simultaneously prevent other entertainers and personnel in the area from knowing a panic button was triggered. Regardless of which method is used, associated hazards must be further mitigated such as via a multistage alarm (normally discreet, only audible if alarm malfunction, etc.), multicomponent alarm (using notification lights, rather than audible alarms, within adjacent booths/rooms/etc., in conjunction with indicator light(s) outside booth/room/etc., to signal and locate the use of a panic button).</p>		
Are panic buttons provided by the establishment in each room in the establishment in which entertainers may be alone with a customer, and in bathrooms and dressing rooms?	YES	NO
<p>For the purposes of this question, "<i>alone</i>" means outside of direct line-of-sight of other establishment personnel, entertainers, employees, etc., such as in private or semi-private booths, rooms, etc.</p>		
Are panic buttons that are permanently installed in the workplace, located within immediate reach?	YES	NO
<p>Panic buttons must be kept free of obstacles blocking their use (doors, furniture, mop buckets, boxes, coat racks, etc.).</p>		
Are panic buttons in good working order? If not, are entertainers informed of, and excluded from, areas lacking required panic buttons protection (e.g. during power loss, wireless service loss, etc.)?	YES	NO
<p>Keep a record of, and inform entertainers of, nonfunctional/improperly working panic buttons until replaced or repaired.</p> <ul style="list-style-type: none"> - Use signage or otherwise inform entertainers prior to working; and - Use written procedures and policies in Accident Prevention Plan that prohibit or restrict access to relevant areas. 		

Appendix B

Declaration of: _____
(Type or print your name here)

_____ declares as follows:
(Type or print your name)

I am over the age of eighteen, and I am otherwise competent to testify. I make these statements based on personal knowledge and belief.

(Insert your statement here describing what happened)

I declare under penalty of perjury of the laws of the State of Washington the foregoing is true and correct.

DATED this ____ day of _____ 20____, in _____, Washington.
(##) (Month) (Year) (Name of city/town)

(Sign above)

(Type or print your name)

[]

WSR 22-10-094

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed May 3, 2022, 5:45 p.m., effective June 3, 2022]

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

Purpose: This filing is making corrections to the adopted amendments to the 2018 Washington State Energy Code, Residential Provisions, as adopted by the state building code council on November 8, 2019.

Several typographical and internal reference errors were found in the code after adoption. The following editorial corrections are being made:

1. In Table R405.2, the title for Section R403.3.1 was corrected from "Equipment and system sizing" to "Insulation."
2. In Table R406.3, in Group 2, Air Leakage Control, the IRC section references in Items 2.1, 2.2, 2.3, and 2.4 were corrected and the air leakage rate in Item 2.3 was corrected.
3. In Table R406.3, in Group 4, High Efficiency HVAC Distribution System, the section reference in Item 4.1 was corrected.

Citation of Rules Affected by this Order: Amending WAC 51-11R-40520 and 51-11R-40621.

Statutory Authority for Adoption: RCW 19.27A.045.

Other Authority: Chapter 19.27A RCW.

Adopted under notice filed as WSR 22-06-044 on February 24, 2022.

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 Nongovernmental 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: May 3, 2022.

Tony Doan
Acting Council Chair

OTS-3612.1

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40520 Section R405.2—Mandatory requirements.

R405.2 Mandatory requirements. Compliance with this section requires compliance with those sections shown in Table R405.2. All supply and return ducts not completely inside the *building thermal envelope* shall be insulated to a minimum of R-8.

TABLE R405.2
MANDATORY COMPLIANCE MEASURES FOR SIMULATED PERFORMANCE ALTERNATIVE

Section	Title	Comments
General		
R401.3	Certificate	
Envelope		
R402.4	Air leakage	
R402.5	Maximum fenestration <i>U</i> -factor	
Systems		
R403.1	Controls	
R403.1.2	Heat pump supplemental heat	
R403.3.2	Sealing	
R403.3.1	((Equipment and system sizing)) <u>Insulation</u>	
R403.3.3	Duct testing	
R403.3.4	Duct leakage	
R403.3.5	Building cavities	
R403.4	Mechanical system piping insulation	
R403.5.1	Heated water circulation and temperature maintenance system	
R403.6	Mechanical ventilation	
R403.7	Equipment sizing and efficiency rating	
R403.8	Systems serving multiple dwelling units	
R403.9	Snow melt system controls	
R403.10	Pool and permanent spa energy consumption	
R403.11	Portable spas	
Electrical Power and Lighting		
R404.1	Lighting equipment	
R404.1.1	Lighting equipment	
R404.2	Electric readiness	
Other Requirements		
R406	Additional energy efficiency requirements	

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40520, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40520, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40621 Table R406.3—Energy credits.

**TABLE 406.3
ENERGY CREDITS**

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
1. EFFICIENT BUILDING ENVELOPE OPTIONS Only one option from Items 1.1 through 1.7 may be selected in this category. Compliance with the conductive UA targets is demonstrated using Section R402.1.4, Total UA alternative, where [1-(Proposed UA/Target UA)] > the required %UA reduction			
1.1	Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.24.	0.5	0.5
1.2	Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.20.	1.0	1.0
1.3	Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.28 Floor R-38 Slab on grade R-10 perimeter and under entire slab Below grade slab R-10 perimeter and under entire slab or Compliance based on Section R402.1.4: Reduce the Total conductive UA by 5%.	0.5	N/A
1.4	Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.25 Wall R-21 plus R-4 ci Floor R-38 Basement wall R-21 int plus R-5 ci Slab on grade R-10 perimeter and under entire slab Below grade slab R-10 perimeter and under entire slab or Compliance based on Section R402.1.4: Reduce the Total conductive UA by 15%.	1.0	1.0
1.5	Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.22 Ceiling and single-rafter or joist-vaulted R-49 advanced Wood frame wall R-21 int plus R-12 ci Floor R-38 Basement wall R-21 int plus R-12 ci Slab on grade R-10 perimeter and under entire slab Below grade slab R-10 perimeter and under entire slab or Compliance based on Section R402.1.4: Reduce the Total conductive UA by 30%.	2.0	1.5
1.6	Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.18 Ceiling and single-rafter or joist-vaulted R-60 advanced Wood frame wall R-21 int plus R-16 ci Floor R-48 Basement wall R-21 int plus R-16 ci Slab on grade R-20 perimeter and under entire slab Below grade slab R-20 perimeter and under entire slab or Compliance based on Section R402.1.4: Reduce the Total conductive UA by 40%.	3.0	2.0

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
1.7	Advanced framing and raised heel trusses or rafters Vertical Glazing U-0.28 R-49 Advanced (U-0.020) as listed in Section A102.2.1, <i>Ceilings below a vented attic</i> and R-49 vaulted ceilings with full height of uncompressed insulation extending over the wall top plate at the eaves.	0.5	0.5
2. AIR LEAKAGE CONTROL AND EFFICIENT VENTILATION OPTIONS Only one option from Items 2.1 through 2.4 may be selected in this category.			
2.1	Compliance based on R402.4.1.2: Reduce the tested air leakage to 3.0 air changes per hour maximum at 50 Pascals or For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.3 cfm/ft ² maximum at 50 Pascals and All whole house ventilation requirements as determined by Section ((M1507.3)) M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a high efficiency fan(s) (maximum 0.35 watts/cfm), not interlocked with the furnace fan (if present). Ventilation systems using a furnace including an ECM motor are allowed, provided that they are controlled to operate at low speed in ventilation only mode. To qualify to claim this credit, the building permit drawings shall specify the option being selected, the maximum tested building air leakage, and shall show the qualifying ventilation system and its control sequence of operation.	0.5	1.0
2.2	Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 2.0 air changes per hour maximum at 50 Pascals or For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.25 cfm/ft ² maximum at 50 Pascals and All whole house ventilation requirements as determined by Section ((M1507.3)) M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.65. To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.	1.0	1.5
2.3	Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 1.5 air changes per hour maximum at 50 Pascals or For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to ((0.25)) 0.20 cfm/ft ² maximum at 50 Pascals and All whole house ventilation requirements as determined by Section ((M1507.3)) M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.75. To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.	1.5	2.0

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
2.4	<p>Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.6 air changes per hour maximum at 50 Pascals</p> <p>or</p> <p>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.15 cfm/ft² maximum at 50 Pascals</p> <p>and</p> <p>All whole house ventilation requirements as determined by Section ((M1507.3)) M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.80. Duct installation shall comply with Section R403.3.7.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</p>	2.0	2.5
<p>3. HIGH EFFICIENCY HVAC EQUIPMENT OPTIONS Only one option from Items 3.1 through 3.6 may be selected in this category.</p>			
3.1 ^a	<p>Energy Star rated (U.S. North) Gas or propane furnace with minimum AFUE of 95%</p> <p>or</p> <p>Energy Star rated (U.S. North) Gas or propane boiler with minimum AFUE of 90%.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.0	1.0
3.2 ^a	<p>Air-source centrally ducted heat pump with minimum HSPF of 9.5.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.0	N/A
3.3 ^a	<p>Closed-loop ground source heat pump; with a minimum COP of 3.3</p> <p>or</p> <p>Open loop water source heat pump with a maximum pumping hydraulic head of 150 feet and minimum COP of 3.6.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.5	1.0
3.4	<p>Ductless mini-split heat pump system, zonal control: In homes where the primary space heating system is zonal electric heating, a ductless mini-split heat pump system with a minimum HSPF of 10.0 shall be installed and provide heating to the largest zone of the housing unit.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.5	2.0
3.5 ^a	<p>Air-source, centrally ducted heat pump with minimum HSPF of 11.0.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p>	1.5	N/A
3.6 ^a	<p>Ductless split system heat pumps with no electric resistance heating in the primary living areas. A ductless heat pump system with a minimum HSPF of 10 shall be sized and installed to provide heat to entire dwelling unit at the design outdoor air temperature.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected, the heated floor area calculation, the heating equipment type(s), the minimum equipment efficiency, and total installed heat capacity (by equipment type).</p>	2.0	3.0
<p>4. HIGH EFFICIENCY HVAC DISTRIBUTION SYSTEM OPTIONS</p>			

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
4.1	<p>All supply and return ducts located in an unconditioned attic shall be deeply buried in ceiling insulation in accordance with Section ((R403.3.7)) R403.3.6.</p> <p>For mechanical equipment located outside the conditioned space, a maximum of 10 linear feet of return duct and 5 linear feet of supply duct connections to the equipment may be outside the deeply buried insulation. All metallic ducts located outside the conditioned space must have both transverse and longitudinal joints sealed with mastic. If flex ducts are used, they cannot contain splices.</p> <p>Duct leakage shall be limited to 3 cfm per 100 square feet of conditioned floor area.</p> <p>Air handler(s) shall be located within the conditioned space.</p>	0.5	0.5
4.2	<p>HVAC equipment and associated duct system(s) installation shall comply with the requirements of Section R403.3.7.</p> <p>Locating system components in conditioned crawl spaces is not permitted under this option.</p> <p>Electric resistance heat and ductless heat pumps are not permitted under this option.</p> <p>Direct combustion heating equipment with AFUE less than 80% is not permitted under this option.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and shall show the location of the heating and cooling equipment and all the ductwork.</p>	1.0	N/A
<p>5. EFFICIENT WATER HEATING OPTIONS Only one option from Items 5.2 through 5.6 may be selected in this category. Item 5.1 may be combined with any option.</p>			
5.1	<p>A drain water heat recovery unit(s) shall be installed, which captures waste water heat from all and only the showers, and has a minimum efficiency of 40% if installed for equal flow or a minimum efficiency of 54% if installed for unequal flow. Such units shall be rated in accordance with CSA B55.1 or IAPMO IGC 346-2017 and be so labeled.</p> <p>To qualify to claim this credit, the building permit drawings shall include a plumbing diagram that specifies the drain water heat recovery units and the plumbing layout needed to install it. Labels or other documentation shall be provided that demonstrates that the unit complies with the standard.</p>	0.5	0.5
5.2	<p>Water heating system shall include one of the following: Energy Star rated gas or propane water heater with a minimum UEF of 0.80.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p>	0.5	0.5
5.3	<p>Water heating system shall include one of the following: Energy Star rated gas or propane water heater with a minimum UEF of 0.91 or Solar water heating supplementing a minimum standard water heater. Solar water heating will provide a rated minimum savings of 85 therms or 2000 kWh based on the Solar Rating and Certification Corporation (SRCC) Annual Performance of OG-300 Certified Solar Water Heating Systems or Water heater heated by ground source heat pump meeting the requirements of Option 3.3.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency and, for solar water heating systems, the calculation of the minimum energy savings.</p>	1.0	1.0

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
5.4	<p>Water heating system shall include one of the following: Electric heat pump water heater meeting the standards for Tier I of NEEA's advanced water heating specification or For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier I of NEEA's advanced water heating specification, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p>	1.5	2.0
5.5	<p>Water heating system shall include one of the following: Electric heat pump water heater meeting the standards for Tier III of NEEA's advanced water heating specification or For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier III of NEEA's advanced water heating specification, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p>	2.0	2.5
5.6	<p>Water heating system shall include one of the following: Electric heat pump water heater with a minimum UEF of 2.9 and utilizing a split system configuration with the air-to-refrigerant heat exchanger located outdoors. Equipment shall meet Section 4, requirements for all units, of the NEEA standard <i>Advanced Water Heating Specification</i> with the UEF noted above or For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier III of NEEA's advanced water heating specification and utilizing a split system configuration with the air-to-refrigerant heat exchanger located outdoors, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p>	2.5	3.0
6. RENEWABLE ELECTRIC ENERGY OPTION			
6.1	<p>For each 1200 kWh of electrical generation per housing unit provided annually by on-site wind or solar equipment a 1.0 credit shall be allowed, up to 3 credits. Generation shall be calculated as follows: For solar electric systems, the design shall be demonstrated to meet this requirement using the National Renewable Energy Laboratory calculator PVWATTs or approved alternate by the code official.</p> <p>Documentation noting solar access shall be included on the plans.</p> <p>For wind generation projects designs shall document annual power generation based on the following factors: The wind turbine power curve; average annual wind speed at the site; frequency distribution of the wind speed at the site and height of the tower.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall show the photovoltaic or wind turbine equipment type, provide documentation of solar and wind access, and include a calculation of the minimum annual energy power production.</p>	1.0	1.0
7. APPLIANCE PACKAGE OPTION			

OPTION	DESCRIPTION	CREDIT(S)	
		All Other	Group R-2
7.1	<p>All of the following appliances shall be new and installed in the dwelling unit and shall meet the following standards: Dishwasher - Energy Star rated Refrigerator (if provided) - Energy Star rated Washing machine - Energy Star rated Dryer - Energy Star rated, ventless dryer with a minimum CEF rating of 5.2.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall show the appliance type and provide documentation of Energy Star compliance. At the time of inspection, all appliances shall be installed and connected to utilities. Dryer ducts and exterior dryer vent caps are not permitted to be installed in the dwelling unit.</p>	0.5	1.5

^a An alternative heating source sized at a maximum of 0.5 Watts/ft² (equivalent) of heated floor area or 500 Watts, whichever is bigger, may be installed in the dwelling unit.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40621, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.025, 19.27A.045, 19.27A.160, and 19.27.074. WSR 17-10-063, § 51-11R-40621, filed 5/2/17, effective 6/2/17. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40621, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.025, 19.27A.045, 19.27.020, and 19.27.074. WSR 14-24-123, § 51-11R-40621, filed 12/3/14, effective 1/3/15. Statutory Authority: RCW 19.27A.025, 19.27A.045, and 19.27.074. WSR 13-20-121, § 51-11R-40621, filed 10/1/13, effective 11/1/13. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40621, filed 2/1/13, effective 7/1/13.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 22-10-099

PERMANENT RULES

BOARD OF TAX APPEALS

[Filed May 4, 2022, 9:20 a.m., effective June 4, 2022]

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

Purpose: The purpose of these changes is to clarify statutory language, reorganize administrative-related provisions into one section, provide for pro tems, and update provisions to comply with current law in the Open Public Meetings Act and the Public Records Act.

Citation of Rules Affected by this Order: New WAC 456-12-037, 456-12-038, 456-12-039, 456-12-041, 456-12-043, 456-12-073, 456-12-078, 456-12-083 and 456-12-112; repealing WAC 456-12-025, 456-12-065, 456-12-075, 456-12-095 and 456-12-125; and amending WAC 456-12-015, 456-12-035, 456-12-045, 456-12-055, 456-12-085, 456-12-105, and 456-12-115.

Statutory Authority for Adoption: RCW 82.03.170.

Adopted under notice filed as WSR 22-01-155 [22-06-039] on March 22, 2022 [February 24, 2022].

Changes Other than Editing from Proposed to Adopted Version: WAC 456-12-038 was amended from the proposed version to add that the vice chair may appoint a pro tem in the chair's absence. The purpose for this was to address instances where the chair was unavailable or unavailable to select a pro tem. In addition, this section was changed to limit the selection of a pro tem to instances where a member is recused or cannot otherwise hear a case, and removed language about selecting a pro tem for workload variations. The rationale was to address any concerns about the language "workload variations" being overly broad or vague. Regardless, the general subject matter of this proposed provision remains the same.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 9, Amended 7, Repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 7, Repealed 5.

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: April 22, 2022.

Andrea Vingo
Review Officer

OTS-3408.4

AMENDATORY SECTION (Amending WSR 19-21-045, filed 10/9/19, effective 11/9/19)

WAC 456-12-015 Purpose of this chapter. The purpose of this chapter is to ~~((set forth rules on))~~ outline the organization and administration of the board of tax appeals (board), and to set forth rules that comply with the Open Public Meetings Act, chapter 42.30 RCW, ((regarding open public meetings,)) and the Public Records Act, chapter 42.56 RCW((, regarding public records)).

[Statutory Authority: RCW 82.03.170. WSR 19-21-045, § 456-12-015, filed 10/9/19, effective 11/9/19; WSR 99-13-098, § 456-12-015, filed 6/15/99, effective 7/16/99.]

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-035 Description of the board. (1) ~~((As an independent state agency,))~~ The board is an independent state agency that reviews, holds hearings on, and decides state tax appeals filed by taxpayers and taxing authorities. The board consists of three members, an executive director, tax referees, and staff ~~((hired by the board))~~. The three members of the board serve on a full-time basis, and are appointed by the governor, with the consent of the senate, for a term of six years.

(2) The executive director is the board's chief executive officer and is responsible for implementing board directions and for directing the board's staff.

~~((3) The board holds regular meetings at 10:00 a.m. on the second Thursday of each March, June, September, and December. The meetings are held at the board's office at 910 5th Avenue S.E., Olympia, WA 98504-0915.))~~

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-035, filed 6/15/99, effective 7/16/99.]

NEW SECTION

WAC 456-12-037 Communication and contact with the board. (1) The board's office is located at 1110 Capitol Way South, Suite 307, Olympia, WA 98501. The board's mailing address is P.O. Box 40915, Olympia, WA 98504-0915. The board's telephone number is 360-753-5446. The board's fax number is 360-586-9020. The board's email address is bta@bta.wa.gov, and the board's website is bta.wa.gov.

(2) The board's primary method of communication is by electronic mail.

(3) Decisions and other correspondence will be sent by electronic mail unless an individual or party has made prior arrangements with the board.

[]

NEW SECTION

WAC 456-12-038 Pro tem. The chair, or the vice chair, in the chair's absence, may select one of the board's tax referees to serve pro tem when a member of the board is recused or otherwise cannot hear and consider a particular case set for full board review. If the parties do not consent in writing to the selection of the tax referee, the matter will be decided by the members available to hear it.

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PUBLIC MEETINGSNEW SECTION

WAC 456-12-039 Meetings and quorums. (1) The board holds regular meetings at 9:30 a.m. on the third Friday of each month. The meetings are held at the board's office.

(2) All meetings of the board are open to the public. Anyone is allowed to attend except as limited by the Open Public Meetings Act, chapter 42.30 RCW.

(3) Two members of the board constitute a quorum for the purpose of making orders or decisions, or for promulgating rules and regulations relating to the board's procedures. A quorum of the board may act even though one position is vacant.

[]

NEW SECTION

WAC 456-12-041 Meeting agendas and minutes. (1) The agenda for a board meeting is available at least 24 hours in advance of the meeting, and is posted on the board's website at bta.wa.gov.

(2) The minutes of any meeting are available for public inspection as provided in RCW 42.30.035. Meeting minutes are available by emailing the clerk of the board at bta@bta.wa.gov.

[]

PUBLIC RECORDS

NEW SECTION

WAC 456-12-043 Purpose and intent. (1) These rules provide information to those who want to request access to public records of the board, and to establish processes for both requestors and the board. They are designed to best assist members of the public in obtaining such access.

(2) The board will respond promptly to requests for records made under chapter 42.56 RCW, Public Records Act.

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AMENDATORY SECTION (Amending WSR 19-17-042, filed 8/15/19, effective 9/15/19)

WAC 456-12-045 (~~(Public records available.)~~) Hours for inspection and copying. (~~(Unless exempt under chapter 42.17 RCW or other law, all public records and indexes of the board are available for public inspection and copying at the board's main office during customary office hours.)~~) Public records of the board are available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays and the days the board is closed.

[Statutory Authority: RCW 82.03.170. WSR 19-17-042, § 456-12-045, filed 8/15/19, effective 9/15/19. Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-045, filed 6/15/99, effective 7/16/99.]

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-055 Public records officer. (1) The board's executive director is (~~(identified as)~~) the board's public records officer and is responsible for reviewing requests for public records.

(2) The public records officer will oversee compliance with the act, but a designee may process a request. The public records officer or designee and the board will provide the fullest assistance to requestors; ensure that public records are protected from damage or disorganization; and prevent the fulfilling of public records requests to cause excessive interference with the essential functions of the board.

(3) The board encourages communication with the public records officer if a requestor has not received a response in writing or has questions or concerns about a records request.

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-055, filed 6/15/99, effective 7/16/99.]

NEW SECTION

WAC 456-12-073 Public Records Act requests to the board. (1) **Website records.** Before submitting a records request, those seeking public records of the board are strongly encouraged to first review the board's website at bta.wa.gov. This website includes the board's decisions from 1967 to the present, board policies, and public meeting schedules, and agendas. These are free for viewing and downloading at any time, and are accessible without making a Public Records Act request.

(2) **Public Records Act requests.** Public Records Act requests must be sent or submitted to the public records officer in one of the following ways:

(a) Online: <http://www.bta.wa.gov>

(b) Email: bta@bta.wa.gov with subject line indicating "public records request"

(c) U.S. Mail or Delivery: Public Records Officer
Washington State Board of Tax Appeals
P.O. Box 40915
Olympia, WA 98504-0915

(d) In person: 1110 Capitol Way South, Suite 307
Olympia, WA 98501

Communications that seek the board's records, but which are sent or provided to unauthorized addresses or staff, will not be accepted or processed as Public Records Act requests. The board will instead process such communications as general informal inquiries, general correspondence, or general requests for information.

(3) **Manner of requests.** Requestors are strongly encouraged to make requests in writing. If the board receives an oral request, the board will reduce the request to writing and verify with the requestor in writing that it correctly memorializes the request. Requestors are also urged to include a description of the records requested by docket number, appellant name, subject matter, suggested search terms, or other means that will allow the public records officer or designee to identify the requested records. The board accepts in-person requests at its office during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and days the board's office is closed.

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NEW SECTION

WAC 456-12-078 Response to Public Records Act requests. (1) Within five business days of receiving a Public Records Act request, the board will assign the request a tracking number and log it. The public records officer or designee will evaluate the request according to the nature of the request, clarity, volume, and availability of requested records.

(2) Following the initial evaluation of the request, and within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying including:

(i) Providing an internet address and link on the website to specific records requested if copies are available on the board's website;

(ii) Sending copies to the requestor, if requested and where a payment or a deposit has been made, if any, or other terms of payment are agreed upon and have been satisfied.

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available. The public records officer or designee may revise the estimate.

(c) Acknowledge receipt of the request and ask the requestor to provide clarification for all or part of a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of time the board will need to respond to the unclear request or unclear part of a request if it is not clarified.

(i) Clarification may be requested and provided by phone and memorialized in writing, or by email or letter;

(ii) If the requestor fails to respond to a request for clarification within 30 calendar days and the entire request is unclear, the board need not respond to it. The board will only respond to those portions of a request that are clear.

(d) Deny the request.

(3) The board may request additional time to respond to a request because of the need to clarify the request, locate and assemble the records requested, notify third persons or agencies affected by the request, or determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(4) The board will provide an estimate of the time required to respond to a request, and may provide an estimate of copying costs specific to a request seeking an estimate of cost. If the requestor believes the amount of time or estimated costs are not reasonable, the requestor may petition the board for review as outlined in WAC 456-12-115(2).

[]

NEW SECTION

WAC 456-12-083 Providing responsive records to a Public Records Act request. (1) **Inspecting records.** Consistent with other demands, the board will provide space to inspect public records at a designated location. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor must indicate which documents he or she wishes the office to copy.

(a) The requestor must claim or review the assembled records within 30 days of the board's notification that the records are available for inspection or copying. The board will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the board to make arrangements to claim or review the records.

(b) If the requestor fails to claim or review the records within the 30-day period or make other arrangements, the board may close the request and refile the assembled records.

(2) **Providing copies of records.** After inspection is complete and the requestor asks for copies of some or all of the inspected records, or where copies are otherwise requested, the public records officer or designee will make the requested copies or arrange for copying.

(a) If the board charges for copies, the requestor must pay for the copies before the copies are provided.

(b) Electronic records will be provided as a link to the records if the records are located on the website, or in a format used by the board which is generally commercially available to the public. Records will generally not be provided by email for records responses with multiple records, or where records may not be successfully delivered or received via the board's or the requestor's email systems.

(3) **Providing records in installments.** When a request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within 30 days, the requestor fails to inspect or pay for the entire set of records or for one or more of the installments, the public records officer or designee may stop searching for or producing the remaining records and close the request.

(4) **Multiple requests.** Multiple public records requests from the same requestor will be processed in a manner so as not to interfere with essential agency functions including processing records requests from other requestors. The board may process such requests in the order received, and may complete one request before searching for records for a subsequent request.

(5) **Completion of inspection.** When the review of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the board has completed a reasonable search for the requested records and made any located nonexempt records available for inspection.

[]

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-085 Costs and fees. (1) No fee will be charged for inspecting the board's public records.

(2) ~~The board ((will charge ten cents per page for copies of requested public records. Payment will be made by check payable to the board. The board may require that all charges be paid before the copies are released. The executive director may decide that no fee will be charged for the copies if the expense of processing the payment is greater than the cost of providing the copies.))~~ does not calculate all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The board does not have the resources to conduct a study to determine all its actual copying costs; and

(b) Conducting such a study would interfere with other essential agency functions.

(3) The board will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2) (b) and (c). The board may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The board may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4).

(4) The board requires requestors to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests. The public records officer has the discretion to waive fees when:

(a) All of the records responsive to an entire request are paper copies and are 25 or fewer pages; or

(b) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(c) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of 10 percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds \$25.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The board will notify the requestor of when payment is due.

(7) Payment should be made by check or money order to the board. The board prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The board will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-085, filed 6/15/99, effective 7/16/99.]

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-105 Exemptions and denying requests for public records.

(1) The board may determine that all or part of a requested public record is exempt under the Public Records Act, chapter ((42.17)) 42.56 RCW, or other law and may not be inspected or copied.

(2) ~~((All denials of a request for public records will contain a written statement from the executive director stating the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.))~~ If the board believes that a record or part of a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief written explanation as to why it is being withheld. If only a portion of a record is exempt from disclosure, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

~~(3) ((The board may remove identifying details when it makes available or publishes any public record when there is reason to believe that revealing such details would be an invasion of personal privacy protected by chapter 42.17 RCW.)) The public records officer or designee may give notice to those whose rights may be affected by the disclosure under RCW 42.56.540 before providing the records. Notice should be given to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.~~

~~(4) The board is prohibited by statute from disclosing lists of individuals for commercial purposes.~~

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-105, filed 6/15/99, effective 7/16/99.]

NEW SECTION

WAC 456-12-112 Closing a request for public records. (1) When the requestor either withdraws a request, or fails to clarify an entirely unclear request, or fails to fulfill his or her obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make a final payment for the requested copies, the public records officer or designee will close the request and, unless the board has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to the requestor that the office has closed the request.

(2) If, after the board has informed the requestor that it has provided all available records, the board becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor.

[]

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-115 Reviewing denials of requests for public records, estimates of time, and estimates of cost. ~~((1) Any person objecting to a denial of a request for public records may submit a written request for review to the board.~~

~~(2) Upon receiving the written request for review, the executive director will call a meeting of the board to review the denial.~~

~~(3) The board will issue a written decision within two business days of receiving the request for review.~~

~~(4) The board's written decision regarding the request for review will be the final action by the agency.)~~ (1) Requestors are encouraged to communicate with the public records officer or assigned designee about denials of public records requests, estimates of time, or estimates of costs. If unsatisfied, a requestor may seek review of the issue.

(2) Any person who objects to the board's denial or partial denial of a request for public records or contends an estimate of time to provide records or copying costs to provide records is not reasonable, may petition for prompt review of the decision by submitting a written request to the executive director for a review by the board.

(3) The written request for review must specifically refer to the written statement, if any, by the public records officer or designee which accompanied the denial or estimate.

(4) Within two business days of receiving a written request for review, the executive director will schedule a meeting of the board to review the denial.

(5) The board will issue a written decision or order within two business days of the board's meeting where the request for review is considered. The board will affirm, reverse, or amend the denial or estimate.

(6) The board's written decision regarding a request for review will be the final action by the board.

(7) The board will have concluded a public record is exempt from disclosure for purposes of WAC 44-06-160 only after the review conducted under this section has been completed.

(8) Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-115, filed 6/15/99, effective 7/16/99.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 456-12-025	Definitions.
WAC 456-12-065	Communications with the board.
WAC 456-12-075	Records indexes.
WAC 456-12-095	Requesting public records.
WAC 456-12-125	Electronic correspondence.

WSR 22-10-102
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed May 4, 2022, 10:20 a.m.]

Effective Date of Rule: July 1, 2022.

Purpose: To update WAC 308-56A-460 to reflect a new market value threshold, as required by RCW 46.12.600. Subsection (3) should read: "The current market value threshold amount is ten thousand and four hundred thirty dollars."

Citation of Rules Affected by this Order: Amending WAC 308-56A-460.

Statutory Authority for Adoption: RCW 46.12.600.

Adopted under notice filed as WSR 22-06-031 on February 23, 2022.

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 Nongovernmental 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 1, Repealed 0.

Date Adopted: May 4, 2022.

Ellis Starrett
Rules and Policy Manager

OTS-3632.1

AMENDATORY SECTION (Amending WSR 22-02-056, filed 1/4/22, effective 2/4/22)

WAC 308-56A-460 Destroyed or wrecked vehicle—Reporting—Rebuilt.

(1) **What are total loss, destroyed, salvage, and wrecked vehicles?** For the purposes of this section:

(a) A total loss vehicle is one whose destruction has been reported to the department as described in RCW 46.12.600 by an insurer (insurance companies and self-insurers as described in RCW 46.29.630);

(b) A destroyed vehicle is one whose destruction has been reported to the department as described in RCW 46.12.600 by the vehicle's owner;

(c) A salvage vehicle as defined in RCW 46.04.514;

Note: When used in this section, the terms "destroyed" and "destroyed vehicle" include total loss, destroyed, and salvage vehicles.

(d) A wrecked vehicle as defined in RCW 46.80.010(6).

Note: A vehicle may be considered destroyed or wrecked when the evidence of ownership is a salvage certificate/title, insurance company bill of sale, or wrecker bill of sale from any jurisdiction, or when the evidence of ownership indicates the vehicle may be a destroyed vehicle not reported to the department.

(2) **How are vehicles reported to the department as total loss, destroyed, salvage, or wrecked?**

(a) Insurers may report total loss vehicles to the department:

- (i) Electronically through the department's online reporting system. Insurers must destroy ownership documents for a vehicle reported this way; or
- (ii) By submitting the certificate of title or affidavit in lieu of title indicating the vehicle is "DESTROYED"; or
- (iii) By submitting a completed total loss claim settlement form.

Note: Reports of total loss vehicles must include the insurer's name, address, and the date of loss.

(b) Registered or legal owners report a vehicle as destroyed by submitting the certificate of title or affidavit in lieu of title indicating the vehicle is "DESTROYED," and must include the registered owner's name, address, and date of loss.

(c) Licensed wreckers report wrecked vehicles as required in RCW 46.80.090.

(d) For vehicles six through 20 years old a statement whether or not the vehicle meets the market value threshold amount as defined in RCW 46.12.600 is also required.

(3) **What is the current market value threshold amount?** The current market value threshold amount is (~~(\$8,230)~~) \$10,430.

(4) **How is the market value threshold amount determined?** Using the current market value threshold amount described in RCW 46.12.600 each year the department will add the increased value if the increase is equal to or greater than \$50.

(5) **What if the "market value threshold amount" is not provided as required?** If the market value threshold amount is not provided when required, the department would treat the report of destruction as if the market value threshold as described in RCW 46.12.600 has been met. The certificate of title will be branded according to WAC 308-56A-530.

(6) **What documentation is required to obtain a certificate of title after a vehicle is destroyed?** After a vehicle has been reported destroyed or wrecked and is rebuilt, you must submit the following documentation to the department in order to obtain a new certificate of title:

(a) Application for certificate of title as described in RCW 46.12.530;

(b) Certificate of vehicle inspection as described in WAC 308-56A-150;

(c) Bill of sale from the insurer, owner, or wrecker who reported the vehicle's destruction to the department.

(i) Bills of sale from insurers must include a representative's signature and title of office;

(ii) Bills of sale from insurers and wreckers do not need to be notarized;

(iii) Bills of sale from owners shown on department records must be notarized or certified;

(iv) A bill of sale is not required when owners shown on department records retain a destroyed vehicle and apply for a new certificate of ownership;

(v) Releases of interest from lien holder(s) or proof of payment such as a canceled check bearing a notation that it has been paid by the bank on which it was drawn or a notarized statement on a receipt from the legal owner that the debt is satisfied are required when the vehicle is retained by the registered owner(s).

(d) Odometer disclosure statement, if applicable.

(7) **What is required of a Washington licensed vehicle dealer prior to selling a destroyed or wrecked vehicle?** Except as permitted by

RCW 46.70.101 (1)(b)(viii), before a dealer may sell a destroyed or wrecked vehicle under their Washington vehicle dealer license, the dealer must:

(a) Rebuild the vehicle to standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles; and

(b) Obtain a vehicle inspection by the Washington state patrol; and

(c) Apply for and receive a certificate of ownership for the vehicle, issued in the name of the vehicle dealer.

(8) **Once a destroyed or wrecked vehicle is rebuilt, do the license plates remain with the vehicle?** Whether or not the license plates remain with the vehicle depends on the circumstance:

(a) Standard issue license plates may remain with a destroyed vehicle unless they are severely damaged or the vehicle was issued a department temporary permit described in WAC 308-56A-140;

(b) Replacement license plates are required for wrecked vehicles since Washington licensed wreckers are required by WAC 308-63-070 to remove them;

(c) Special license plates may remain with or be transferred to a destroyed or wrecked vehicle;

(d) Applicants may retain the current license plate number as provided for in RCW 46.16A.200, unless the vehicle was issued a department temporary permit as described in WAC 308-56A-140.

(9) **Will the certificate of ownership or registration certificate indicate "WA REBUILT"?** Salvage or wrecked vehicles meeting the criteria described in WAC 308-56A-530 will be branded "WA REBUILT."

[Statutory Authority: RCW 46.12.600. WSR 22-02-056, § 308-56A-460, filed 1/4/22, effective 2/4/22; WSR 20-19-113, § 308-56A-460, filed 9/21/20, effective 10/22/20; WSR 19-13-008, § 308-56A-460, filed 6/6/19, effective 7/7/19. Statutory Authority: RCW 46.01.110 and 46.12.600. WSR 12-20-032, § 308-56A-460, filed 9/27/12, effective 10/28/12; WSR 11-22-034, § 308-56A-460, filed 10/26/11, effective 11/26/11. Statutory Authority: RCW 46.01.110. WSR 10-19-045, § 308-56A-460, filed 9/13/10, effective 10/14/10. Statutory Authority: RCW 46.12.005 and 46.01.110. WSR 09-19-113, § 308-56A-460, filed 9/22/09, effective 10/23/09. Statutory Authority: RCW 46.01.110. WSR 04-08-080, § 308-56A-460, filed 4/6/04, effective 5/7/04; WSR 02-19-016, § 308-56A-460, filed 9/9/02, effective 10/10/02; WSR 01-20-010, § 308-56A-460, filed 9/20/01, effective 10/21/01. Statutory Authority: RCW 46.01.110 and 46.12.070. WSR 00-06-025, § 308-56A-460, filed 2/23/00, effective 3/25/00. Statutory Authority: RCW 46.01.110. WSR 92-15-024, § 308-56A-460, filed 7/6/92, effective 8/6/92. Statutory Authority: RCW 46.01.110 and 46.12.070. WSR 91-04-025, § 308-56A-460, filed 1/29/91, effective 3/1/91; Order MV 208, § 308-56A-460, filed 7/31/74.]