

WSR 23-18-035
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed August 29, 2023, 12:47 p.m., effective September 29, 2023]

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

Purpose: These amendments to chapter 388-845 WAC are necessary to implement amendments to the developmental disabilities administration's (DDA) home and community-based services (HCBS) waivers as approved by the federal Centers for Medicare and Medicaid Services (CMS). Major changes to the chapter: Adjust the yearly limits applicable to certain waivers; add assistive technology to multiple waivers; remove the positive behavior support and consultation service from all waivers except the community protection waiver; amend the definition of the specialized evaluation and consultation service; amend the definition of community engagement; add teleservice as a service delivery method; add remote supports to multiple waivers; and make other changes necessary to implement amendments to DDA's HCBS waivers as approved by CMS. These permanent rules supersede emergency rules currently enacted on these sections.

Citation of Rules Affected by this Order: New WAC 388-845-0113, 388-845-0945, 388-845-0950, 388-845-0955, 388-845-2141, 388-845-2142 and 388-845-2143; repealing WAC 388-845-0501 and 388-845-0506; and amending WAC 388-845-0001, 388-845-0005, 388-845-0010, 388-845-0030, 388-845-0041, 388-845-0045, 388-845-0050, 388-845-0070, 388-845-0100, 388-845-0105, 388-845-0110, 388-845-0111, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0415, 388-845-0425, 388-845-0500, 388-845-0505, 388-845-0510, 388-845-0515, 388-845-0525, 388-845-0650, 388-845-0660, 388-845-0800, 388-845-0805, 388-845-0810, 388-845-0820, 388-845-0900, 388-845-0910, 388-845-0940, 388-845-1030, 388-845-1040, 388-845-1163, 388-845-1190, 388-845-1192, 388-845-1195, 388-845-1197, 388-845-1600, 388-845-1607, 388-845-1620, 388-845-1660, 388-845-1800, 388-845-1805, 388-845-1810, 388-845-1865, 388-845-1870, 388-845-1880, 388-845-1890, 388-845-2000, 388-845-2005, 388-845-2010, 388-845-2130, 388-845-2150, 388-845-2155, 388-845-2200, 388-845-2205, 388-845-2210, 388-845-2260, 388-845-2270, 388-845-2283, 388-845-2285, 388-845-2290, 388-845-3055, 388-845-3056, 388-845-3065, 388-845-3075, 388-845-3080, 388-845-4000, and 388-845-4005.

Statutory Authority for Adoption: RCW 71A.12.030 and 71A.12.120.

Other Authority: 42 C.F.R. 441.301 (c)(6).

Adopted under notice filed as WSR 23-12-078 on June 6, 2023.

Changes Other than Editing from Proposed to Adopted Version: In response to stakeholder feedback, DDA revised the definition of integrated setting in WAC 388-845-0001 to better align with the federal definition.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-790-4732, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@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 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 7, Amended 72, Repealed 2.

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 7, Amended 72, Repealed 2.

Date Adopted: August 29, 2023.

Lisa N. H. Yanagida
Chief of Staff

SHS-4942.11

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0001 Definitions. "Aggregate services" means a combination of services subject to the dollar limits in the basic plus waiver and CIIBS waiver.

"Allocation" means the amount of individual and family services (IFS) waiver funding available to a client for a maximum of ((~~twelve~~)) 12 months.

"Behavior support plan" means a plan written by a professionally trained behavioral health or similar provider to address behavioral health intervention needs.

"CARE" means comprehensive assessment and reporting evaluation.

"Client" means a person who has a developmental disability under RCW 71A.10.020(5) and has been determined eligible to receive services from the administration under chapter 71A.16 RCW.

"DDA" means the developmental disabilities administration, of the department of social and health services.

"DDA assessment" refers to the standardized assessment tool under chapter 388-828 WAC, used by DDA to measure the support needs of people with developmental disabilities.

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

"Evidence-based treatment" means the use of physical, mental, and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically supported treatment (EST).

"Family" means one or more of the following relatives: Spouse or registered domestic partner; natural, adoptive or step((-))parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your family live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

"General utility" describes something used by people in the absence of illness, injury, or disability.

"HCBS waiver" is a home and community based services waiver program under section 1915(c) of the Social Security Act.

"Home" means present place of long-term residence.

"ICF/IID" means an intermediate care facility for individuals with intellectual disabilities.

"Integrated business settings" means a setting that enables participants to either work alongside or interact with individuals who do not have disabilities, or both.

"Integrated ((settings)) setting" ((mean)) means a ((typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities)) setting in the community that supports a client's full access to the greater community, including opportunities to seek employment and work in competitive settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as people not receiving home and community-based services.

"Legal representative" means a parent of a person who is under ((eighteen)) 18 years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney-at-law, a person's attorney-in-fact, or any other person who is authorized by law to act for another person.

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his or her living expenses.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDA planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDA when the client does not have a legal guardian and the client is requesting or receiving DDA services.

"Participant" means a client who is enrolled in a home and community based services waiver program.

"Person-centered service plan" is a document that identifies your goals and assessed health and welfare needs. Your person-centered service plan also indicates the paid services and natural supports that will assist you to achieve your goals and address your assessed needs.

"Primary caregiver" means the person who provides the majority of your care and supervision.

"Provider" means an individual or agency who meets the provider qualifications and is contracted with DSHS to provide services to you.

"Respite assessment" means an algorithm within the DDA assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the basic plus, children's intensive in-home behavioral support, or core waiver.

"SSI" means supplemental security income, an assistance program administered by the federal Social Security Administration for blind, disabled, and aged individuals.

"SSP" means state supplementary payment program, a state-paid cash assistance program for certain clients of the developmental disabilities administration.

"State-funded services" means services that are funded entirely with state dollars.

"You" means the client or participant.

"Waiver year" means the ((twelve)) 12-month period starting from the initial or annual plan effective date in the client's person-centered service plan.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0001, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0001, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0001, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0001, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-0001, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0001, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-0001, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-0001, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0001, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-0005 What are home and community based services (HCBS) waivers? (1) Home and community based services (HCBS) waivers are services approved by the Centers for Medicare and Medicaid Services (CMS) under section 1915(c) of the Social Security Act as an alternative to intermediate care facility for ((the)) individuals with intellectual disabilities (ICF/IID).

(2) Certain federal regulations are "waived" enabling the provision of services in the home and community to individuals who would otherwise require the services provided in an ICF/IID as defined in chapters 388-835 and 388-837 WAC.

[Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0005, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0005, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-0010 What is the purpose of HCBS waivers? The purpose of HCBS waivers is to provide services in the community to individuals with ICF/IID level of need to prevent their placement in an ICF/IID.

[Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0010, filed 1/24/13, effective 2/24/13. Statutory

Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0010, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? (1) You meet criteria for DDA HCBS waiver-funded services if you meet all of the following:

(a) You have been determined eligible for DDA services per RCW 71A.10.020.

(b) You have been determined to meet ICF/IID level of care per WAC 388-845-0070, 388-828-3060, and 388-828-3080.

(c) You meet disability criteria established in the Social Security Act.

(d) You meet financial eligibility requirements as defined in WAC 182-515-1510.

(e) You choose to receive services in the community rather than in an ICF/IID facility.

(f) You have a need for monthly waiver services or monthly monitoring as identified in your person-centered service plan.

(g) You are not residing in hospital, jail, prison, nursing facility, ICF/IID, or other institution.

(2) For the individual and family services waiver, you must meet the criteria in subsection (1) of this section and live in your family home.

((h)) (3) ((Additionally,)) For the children's intensive in-home behavioral ((support)) supports (CIIBS) waiver((-funded services)), in addition to meeting criteria in subsection (1) of this section:

(a) You must:

(i) ((You are)) Be age eight or older and under the age of ((eighteen)) 18 for initial enrollment and under age ((twenty-one)) 21 for continued enrollment;

(ii) ((You have been)) Be determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only; and

(iii) ((You)) Live with your family((; and)).

((iv)) (b) Your parent((+)) or guardian((+)), and primary caregiver((+)) if other than your parent((+)) or guardian((+)), ((have)) must sign ((signed)) the participation agreement.

((2) For the individual and family services waiver, you must meet the criteria in subsection (1) of this section and also live in your family home.))

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0030, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-0030, filed 2/18/20, effective 3/20/20. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0030, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0030, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0030, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i),

and Title 71A RCW. WSR 10-22-088, § 388-845-0030, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0030, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0030, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0041 What is DDA's responsibility to provide your services under the DDA HCBS waivers administered by DDA? If you are enrolled in an HCBS waiver administered by DDA((-)) :

(1) DDA will provide an annual comprehensive assessment to evaluate your health and welfare needs. Your person-centered service plan, as specified in WAC 388-845-3055, will document:

(a) Your identified health and welfare needs; and

(b) Your HCBS waiver services and nonwaiver services authorized to meet your assessed need.

(2) You have access to DDA paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and 388-845-0115.

(3) DDA will provide waiver services you need and qualify for within your waiver.

(4) DDA will not deny or limit, based on lack of funding, the number of waiver services for which you are eligible.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0041, filed 9/20/21, effective 10/21/21. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0041, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0041, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-0041, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1) (i), and Title 71A RCW. WSR 10-22-088, § 388-845-0041, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0041, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0041, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled? When there is capacity on a waiver(~~and available funding for new waiver participants~~), DDA may enroll people from the statewide database in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health

and welfare needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDA may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDA has determined to be in immediate risk of ICF/IID admission due to unmet health and welfare needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060 (1)(k).

(3) DDA may consider persons who need the waiver services available in the basic plus or IFS waivers to maintain them in their family's home or in their own home.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0045, filed 9/20/21, effective 10/21/21. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0045, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0045, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0045, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0045, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-0045, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-0045, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0045, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0050 How do I request to be enrolled in a waiver?

(1) You can contact DDA and request to be enrolled in a waiver or to enroll in a different waiver at any time.

(2) If you are assessed as meeting ICF/IID level of care as defined in WAC 388-845-0070 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDA in a statewide database.

(3) For the children's intensive in-home behavioral support (CIIBS) waiver only, if you are assessed as meeting both ICF/IID level of care and CIIBS eligibility as defined in WAC 388-845-0030 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDA in a statewide database.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0050, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0050, filed 1/24/13, effective 2/24/13. Statutory Authority:

RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0050, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0050, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0050, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0070 What determines if I need ICF/IID level of care? DDA determines if you need ICF/IID level of care based on your need for waiver services. To reach this decision, DDA uses the DDA assessment as specified in chapter 388-828 WAC.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0070, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0070, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0070, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0070, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0100 What determines which waiver I am assigned to? DDA will assign you to the waiver with the minimum service package necessary to meet your health and welfare needs, based on its evaluation of your DDA assessment as described in chapter 388-828 WAC and the following criteria:

- (1) For the individual and family services waiver, you:
 - (a) Live in your family home; and
 - (b) Are assessed to need a waiver service to remain in the family home.
- (2) For the basic plus waiver your health and welfare needs require a waiver service to remain in the community.
- (3) For the core waiver:
 - (a) You are at immediate risk of out-of-home placement; or
 - (b) You have an identified health and welfare need for residential services that cannot be met by the basic plus waiver.
- (4) For the community protection waiver, refer to WAC 388-845-0105 and chapter 388-831 WAC.
- (5) For the children's intensive in-home behavioral support waiver, you:
 - (a) Are age eight or older but under age (~~eighteen~~) 18;
 - (b) Live with your family;
 - (c) Are assessed at high or severe risk of out-of-home placement due to challenging behavior per chapter 388-828 WAC; and
 - (d) Have a signed family participation agreement from your parent or guardian and primary caregiver, if other than parent or guardian.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-0100, filed 2/18/20, effective 3/20/20. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0100, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0100, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0100, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0100, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0100, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0105 What criteria determine assignment to the community protection waiver? DDA may assign you to the community protection waiver only if you are at least (~~eighteen~~) 18 years of age, not currently residing in a hospital, jail or other institution, and (~~meet the following criteria~~):

- (1) You have been identified by DDA as a person who meets one or more of the following:
 - (a) You have been (~~convicted of or charged~~) charged or convicted with a crime of sexual violence as defined in chapter 71.09 RCW;
 - (b) You have been (~~convicted of or charged~~) charged or convicted with acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;
 - (c) You have been (~~convicted of or charged~~) charged or convicted with a sexually violent offense, ~~(and/)~~ or a predatory act, or both, and may constitute a future danger as determined by a qualified professional;
 - (d) You have not been (~~convicted and/or charged~~) charged or convicted, but you have a history of stalking, violent, sexually violent, predatory, ~~(and/)~~ or opportunistic behavior which demonstrates a likelihood to commit a sexually violent (~~and/~~) or predatory act based on current behaviors that may escalate to violence, as determined by a qualified professional; or
 - (e) You have committed one or more violent offense, as defined in RCW 9.94A.030;
- (2) You receive or agree to receive residential services from certified residential community protection provider-intensive supported living services (CP-ISLS); and
- (3) You (~~comply with~~) agree to follow the specialized supports and restrictions in one or more of the following:
 - (a) Your person-centered service plan (PCSP);
 - (b) Your individual instruction and support plan (IISP); or
 - (c) Your treatment plan provided by DDA approved certified individuals and agencies.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0105, filed 9/20/21, effective 10/21/21. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0105, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0105, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0105, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0105, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0105, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0110 What are the limits to the waiver services you may receive? The following limits apply to the waiver services you may receive:

(1) A service must be available in your waiver and address an unmet need identified in your DDA assessment and person-centered service plan.

(2) Stabilization services may be added to your person-centered service plan after the services have been provided.

(3) Waiver services are limited to services required to prevent placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

(4) The daily cost of your waiver services must not exceed the average daily cost of care in an ICF/IID.

(5) Waiver services must not replace or duplicate other available paid or unpaid supports or services. Before DDA will cover a service through waiver services, you must first request and be denied all applicable covered benefits through private insurance, medicare, the medicaid state plan, and other resources.

(6) Waiver funding must not be authorized for treatments determined by DSHS to be experimental or investigational under WAC 182-531-0050.

(7) For the individual and family services (IFS) waiver, basic plus waiver, and children's intensive in-home behavioral support waiver, services must not exceed the yearly limits specified in these programs for specific services or combinations of services.

(8) Your choice of qualified providers and services is limited to the most cost-effective option that meets your unmet need identified in your DDA assessment and person-centered service plan.

(9) Services, with the exception of respite care, must be provided in integrated settings.

~~((9))~~ (10) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care ~~((and personal care))~~ during vacations of not more than ~~((thirty))~~ 30 consecutive days.

~~((10))~~ (11) You may receive services in a recognized out-of-state bordering city under WAC 182-501-0175.

~~((11))~~ (12) Other out-of-state waiver services require an approved exception to rule before DDA will authorize payment.

~~((12))~~ (13) Waiver services do not cover:

- (a) Copays;
- (b) Deductibles;
- (c) Dues;
- (d) Membership fees; or
- (e) Subscriptions.

~~((13))~~ (14) Waiver services do not cover a product unless the product is:

- (a) The most basic model of the product available that can meet your health and safety need related to your intellectual or developmental disability;
- (b) The least restrictive means for meeting that need; and
- (c) Requested by you.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0110, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0110, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0110, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0110, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0110, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0110, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0111 Are there limitations regarding who can provide services? The following limitations apply to providers for waiver services:

- (1) Your spouse must not be your paid provider for any waiver service.
- (2) If you are under age ~~((eighteen))~~ 18, your natural, step, or adoptive parent must not be your paid provider for any waiver service.
- (3) If you are age ~~((eighteen))~~ 18 or older, your natural, step, or adoptive parent must not be your paid provider for any waiver service with the exception of:
 - ~~((a) Personal care;))~~
 - ~~((b))~~ (a) Transportation to and from a waiver service per WAC 388-845-2200 through 388-845-2210;
 - ~~((e))~~ (b) Residential habilitation services per WAC 388-845-1510 if your parent is certified as a residential agency per chapter 388-101 WAC; or
 - ~~((d))~~ (c) Respite care if you and the parent who provides the respite care live in separate homes.
- (4) If you receive CIIBS waiver services, your legal representative or family member per WAC 388-845-0001 must not be your paid provider for any waiver service with the exception of:
 - (a) Transportation to and from a waiver service per WAC 388-845-2200 through 388-845-2210; and
 - (b) Respite per WAC 388-845-1605 through 388-845-1620.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0111, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0111, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0111, filed 9/26/07, effective 10/27/07.]

NEW SECTION

WAC 388-845-0113 When may I receive waiver services through teleservice? (1) Teleservice is a remote service delivery method that uses a HIPAA-compliant technology system approved by DDA.

(2) The following services may be delivered through teleservice:

- (a) Assistive technology;
- (b) Community engagement;
- (c) Individualized technical assistance;
- (d) Music therapy;
- (e) Occupational therapy;
- (f) Peer mentoring;
- (g) Person-centered plan facilitation;
- (h) Physical therapy;
- (i) Positive behavior support and consultation until August 31,

2023;

- (j) Specialized evaluation and consultation;
- (k) Specialized habilitation;
- (l) Speech, hearing, and language services;
- (m) Supported employment;
- (n) Supported parenting; and
- (o) Staff and family consultation.

(3) A waiver service may be delivered through teleservice if:

- (a) The waiver participant chooses that service delivery method;
- (b) DDA determines through the person-centered planning process

that the waiver service can be adequately provided remotely based on the reason for the service request;

(c) There is no risk to the waiver participant's health or safety as a result of the waiver service being provided remotely; and

(d) The waiver participant's person-centered service plan indicates each waiver service that will be provided through teleservice.

(4) For each waiver service that occurs regularly over the course of the plan year and is being delivered remotely, the service must be delivered in-person at least one time per plan year.

[]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0210 What services are available under the basic plus waiver? The following services are available under the basic plus waiver:

SERVICE	YEARLY LIMIT
AGGREGATE SERVICES: <u>Assistive technology</u> Extermination of cimex lectularius (bedbugs) Community engagement Environmental adaptations Occupational therapy Physical therapy ((Positive behavior support and consultation)) <u>Remote support</u> Skilled nursing Specialized equipment and supplies Specialized habilitation Speech, hearing, and language services Staff and family consultation Transportation Wellness education	Total costs must not exceed ((six thousand one hundred ninety-two dollars)) <u>\$6,192</u> per year per participant
Therapeutic adaptations	Limited to a single one-time authorization every five years and limited to funds available in the client's aggregate and emergency funding
EMPLOYMENT SERVICES: Individual technical assistance Supported employment	Limits determined by DDA assessment and employment status
Community inclusion	Limits determined by the person-centered service plan
STABILIZATION SERVICES: Crisis diversion bed Specialized habilitation Staff and family consultation	Limits determined by ((a)) the person-centered service plan
Respite care	Limits determined by DDA assessment
Risk assessment	Limits determined by DDA

SERVICE	YEARLY LIMIT
Community engagement	((Six thousand dollars)) <u>\$6,000</u> per year for emergency assistance funding
Environmental adaptations	
Occupational therapy	
Physical therapy	
((Positive behavior support))	
Specialized equipment and supplies	
Speech, hearing, and language services	
Skilled nursing	
Staff and family consultation	
<u>Therapeutic adaptations</u>	
Transportation	

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0210, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0210, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0210, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0210, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-0210, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-0210, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 07-05-014, § 388-845-0210, filed 2/9/07, effective 3/12/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0210, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0215 What services are available under the core waiver? (1) The following services are available under the core waiver:

SERVICE	YEARLY LIMIT
<u>Assistive technology</u> Extermination of cimex lectularius (bedbugs) Community engagement Community transition Environmental adaptations Occupational therapy Physical therapy ((Positive behavior support and consultation)) <u>Remote support</u> Residential habilitation Risk assessment Skilled nursing Specialized equipment and supplies <u>Specialized habilitation</u> Speech, hearing, and language services Staff and family consultation <u>Supported parenting</u> Transportation Wellness education	Determined by the person-centered service plan
((Specialized habilitation	Limited to four thousand dollars per waiver year))
EMPLOYMENT SERVICES: Individualized technical assistance Supported employment	Limits determined by DDA assessment and employment status
Community inclusion	Limits determined by the person-centered service plan
STABILIZATION SERVICES: Crisis diversion bed Specialized habilitation Staff and family consultation	Limits determined by the person-centered service plan
Respite care	Limits determined by DDA assessment

(2) A participant's core waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's core waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0215, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0215, filed 6/20/18, effective 7/21/18. Statutory Authority:

2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0215, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0215, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0215, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0215, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0220 What services are available under the community protection waiver? (1) The following services are available under the community protection waiver:

SERVICE	YEARLY LIMIT
<u>Assistive technology</u> Extermination of cimex lectularius (bedbugs) Community transition Environmental adaptations Occupational therapy Physical therapy Positive behavior support and consultation Residential habilitation Risk assessment Skilled nursing Specialized equipment and supplies <u>Specialized evaluation and consultation</u>	Determined by the person-centered service plan
Speech, hearing, and language services Staff and family consultation Transportation	
EMPLOYMENT SERVICES: Individual technical assistance Supported employment	Limits determined by DDA assessment and employment status
STABILIZATION SERVICES: Crisis diversion bed Specialized habilitation Staff and family consultation	Limits determined by the person-centered service plan

(2) A participant's community protection waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's community protection waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0220, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0220, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0220, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0220, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0220, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0220, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0225 What services are available under the children's intensive in-home behavioral support (CIIBS) waiver? (1) The following services are available under the children's intensive in-home behavioral support (CIIBS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology Environmental adaptations Nurse delegation Specialized clothing Specialized equipment and supplies Specialized habilitation Staff and family consultation Transportation Vehicle modifications	((Fifteen thousand dollars)) \$15,000 per year for any combination of services
Respite care	Limits determined by the DDA assessment.
STABILIZATION SERVICES: Crisis diversion bed Specialized habilitation Staff and family consultation	Limits determined by the person-centered service plan
Risk assessment ((Positive behavior support))	Limits determined by DDA

SERVICE	YEARLY LIMIT
Environmental adaptations (Accessibility and repairs) Specialized habilitation Staff and family consultation Vehicle modifications	((Six thousand dollars)) \$6,000 per year for emergency assistance funding
<u>Equine therapy</u> Music therapy ((Equine therapy)) <u>Peer mentoring</u> <u>Person-centered plan facilitation</u>	((Five thousand dollars)) \$5,000 per year for <u>any</u> combination of services
Therapeutic adaptations	Limited to a single, one-time authorization not to exceed ((fifteen thousand dollars)) \$15,000 every five waiver years

(2) A participant's CIIBS waiver services are subject to additional limits under this chapter.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0225, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0225, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0225, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0225, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0225, filed 11/1/10, effective 12/2/10.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0230 What services are available under the individual and family services (IFS) waiver? (1) The following services are available under the individual and family services (IFS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology Community engagement Environmental adaptations <u>Nurse delegation</u> Occupational therapy Peer mentoring Person-centered plan facilitation Physical therapy ((Positive behavior support and consultation)) <u>Remote support</u> Respite care Skilled nursing Specialized clothing Specialized equipment and supplies Specialized habilitation Speech, hearing, and language services Staff and family consultation Supported parenting services Transportation Vehicle modifications Wellness education	Total cost of waiver services must not exceed annual allocation determined by the person-centered service plan
Therapeutic adaptations	Limited to a one-time authorization every five years and limited to funds available in the client's ((aggregate and emergency services)) <u>annual allocation</u>
Risk assessment	Limits determined by the person-centered service plan. <u>Costs are excluded from the annual allocation.</u>
STABILIZATION SERVICES: Crisis diversion bed Specialized habilitation Staff and family consultation	Limits determined by the person-centered service plan. Costs are excluded from the annual allocation.

(2) Your IFS waiver services annual allocation is based upon the DDA assessment under chapter 388-828 WAC. The DDA assessment determines your service level and annual allocation based on your assessed need. Annual allocations are as follows:

- (a) Level 1 = ~~((one thousand two hundred dollars))~~ \$1,560;
- (b) Level 2 = ~~((one thousand eight hundred dollars))~~ \$2,340;
- (c) Level 3 = ~~((two thousand four hundred dollars))~~ \$3,120; or

(d) Level 4 = (~~three thousand six hundred dollars~~) \$4,680.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0230, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-0230, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0230, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0230, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0415 What is assistive technology? (1) Assistive technology consists of items, equipment, or product systems, not related to a client's physical health, that are used to directly support the client to:

~~((1))~~ (a) Increase, maintain, or improve functional capabilities; ~~((of waiver participants,))~~

(b) Improve client safety; or

(c) Increase social engagement in the community. ~~((as well as supports to directly assist the participant to select, acquire, and use the technology.))~~

(2) Assistive technology also includes supports to directly assist the client to select, acquire, and use the technology.

(3) Assistive technology is available ~~((in the CIIBS and IFS))~~ on all DDA HCBS waivers, and includes the following:

~~((1))~~ (a) The evaluation of the client's needs ~~((of the waiver participant)),~~ including a functional evaluation of the ~~((participant))~~ client in the ~~((participant's))~~ client's customary environment;

~~((2))~~ (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;

~~((3))~~ (c) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

~~((4))~~ (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

~~((5))~~ (e) Training or technical assistance for the ~~((participant))~~ client and ~~((or))~~ if appropriate, the ~~((participant's))~~ client's family; and

~~((6))~~ (f) Training or technical assistance for professionals, including ~~((individuals))~~ people providing education and rehabilitation services, employers, or other ~~((individuals))~~ people who provide services to, employ, or are otherwise involved in the assistive technology related life functions of ~~((individuals))~~ people with disabilities.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-0415, filed 2/18/20, effective 3/20/20. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0415, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194,

and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0415, filed 11/1/10, effective 12/2/10.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0425 Are there limits to the assistive technology you may receive? The assistive technology you may receive has the following limits:

(1) Assistive technology is limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

(2) Clinical and support needs for assistive technology must be identified in your DDA assessment and documented in the person-centered service plan.

(3) DDA requires a (~~treating~~) professional's written recommendation regarding your need for the technology. This recommendation must take into account that:

(a) The (~~treating~~) professional has personal knowledge of and experience with the requested assistive technology; and

(b) The (~~treating~~) professional has recently (~~examined~~) evaluated you, reviewed your medical records, and conducted (~~a functional~~) an evaluation of (~~your use of~~) the equipment and determined its effectiveness in meeting your identified need.

(4) If the technology is related to expressive or receptive communication or other complex support needs, the recommendation under subsection (3) of this section must be from a credentialed professional evaluating your needs within their scope of practice.

(~~4~~) (5) Assistive technology exceeding \$550 requires prior approval by the DDA regional administrator or designee.

(~~5~~) (6) DDA may require a written second opinion from a DDA-selected professional.

(~~6~~) (7) The dollar amounts for your individual and family services (IFS) waiver annual allocation limit the amount of assistive technology you are authorized to receive.

(~~7~~) (8) Assistive technology excludes any item that is for recreational, leisure, or diversion purposes such as a television, cable, bicycle, or DVD player.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0425, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-0425, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0425, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0425, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0425, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0425, filed 11/1/10, effective 12/2/10.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0500 What is positive behavior support and consultation? (1) Positive behavior support and consultation is ~~((available on all of the DDA HCBS waivers. A participant is eligible for positive behavior support and consultation if the participant is:~~

~~(a) Under age 21 and currently authorized to receive positive behavior support and consultation for the support of behavioral health or autism treatment when unable to access through the medicaid state plan; or~~

~~(b) On the community protection waiver and requires behavior support to address sexual aggression, arson, or assaultive behaviors which make the client eligible for the community protection waiver)) a service available only on the community protection waiver. Effective September 1, 2022, this service is no longer available on any other waiver.~~

(2) Positive behavior support and consultation includes the development and implementation of programs designed to support waiver participants using:

(a) Individualized strategies for effectively relating to caregivers and other people in the waiver participant's life; and

(b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling, conducting a functional assessment, and development and implementation of a positive behavior support plan).

(3) Effective September 1, 2022, positive behavior support and consultation is available to a community protection waiver participant if the participant:

(a) Is currently authorized to receive positive behavior support and consultation; and

(b) Is receiving positive behavior support and consultation for the sexual aggression, arson, or assaultive behaviors that make the participant eligible for the community protection waiver.

(4) Effective September 1, 2022, a community protection participant currently receiving positive behavior support and consultation shall only be eligible for that service until the end of their waiver year.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0500, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0500, filed 6/20/18, effective 7/21/18. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0500, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0500, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0500, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0500, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0505 Who is a qualified provider of positive behavior support and consultation? Under the ~~((basic plus, core,))~~ community protection (CP) waiver, ~~((and individual and family services (IFS) waivers,))~~ the provider of positive behavior support and consultation must be one of the following professionals contracted with DDA and duly licensed, registered, or certified as a:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) Counselor registered or certified under chapter 18.19 RCW; ~~((11) Polygrapher;))~~ or ~~((12))~~ (11) State-operated positive behavior support agency qualified to provide behavioral health stabilization services.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0505, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0505, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0505, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0505, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0505, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0510 Are there limits to the positive behavior support and consultation you may receive? (1) Clinical and support needs for positive behavior support and consultation must be identified in your DDA assessment and documented in the person-centered service plan.

(2) DDA determines the amount of positive behavior support and consultation you may receive based on your needs and information from your treating professional.

(3) ~~((The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts in the annual allocation for the individual and family services (IFS) waiver limit the amount of service unless provided as a stabilization service.))~~ Positive behavior support and consultation is closed to new enrollment effective September 1, 2022.

(4) DDA must not authorize positive behavior support and consultation for service dates on or after September 1, 2023.

(5) Effective September 1, 2022, a community protection participant currently receiving positive behavior support and consultation shall only be eligible for that service until the end of their waiver year.

~~((4)) (6) DDA may require a second opinion from a DDA-selected provider.~~

~~((5) Positive behavior support and consultation requires prior approval by the DDA regional administrator or designee for the following waivers:~~

~~(a) Basic plus;~~

~~(b) Core;~~

~~(c) Children's intensive in-home behavior support (CIIBS); and~~

~~(d) IFS.)~~

~~((6) Positive behavior support and consultation services are limited to services:~~

~~(a) Consistent with waiver objectives of avoiding institutionalization; and~~

~~(b) That are not a covered benefit under the medicaid state plan.)~~

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0510, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0510, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0510, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0510, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0510, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0510, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0510, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0515 What is extermination of bedbugs? (1) Extermination of cimex lectularius (bedbugs) is professional extermination of bedbugs.

(2) DDA covers professional extermination of bedbugs in your primary residence if you:

(a) ~~((Receive residential habilitation services))~~ Live with a non-relative primary caregiver; or

(b) Live in a private house or apartment for which you are financially responsible.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0515, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0515, filed 6/20/18, effective 7/21/18.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0525 Are there limits to the extermination of bedbugs services I may receive? (1) Extermination of bedbugs is available on the following waivers:

- (a) Core;
- (b) Basic plus; and
- (c) Community protection.

~~((1))~~ (2) Extermination of bedbugs services covers only:

- (a) The assessment or inspection by the qualified provider;
- (b) The application of chemical-based pesticide or heat treatment; and
- (c) One follow-up visit.

~~((2))~~ (3) Extermination of bedbugs is limited to two (treatments) treatment cycles per plan year.

~~((3))~~ (4) Extermination of bedbugs excludes:

- (a) Lodging during the extermination process; and
- (b) Preparatory housework associated with the extermination process.

~~((4))~~ (5) DDA does not cover extermination of bedbugs for a participant who lives:

- (a) With their family; or
- (b) In an adult family home, assisted living, group home, group training home, licensed staffed residential home, or other facility contractually obligated to provide housing.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0525, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0525, filed 6/20/18, effective 7/21/18.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0650 What is community engagement? (1) Community engagement ((is designed to increase a waiver participant's connection to and engagement in formal and informal community supports by connecting the participant to community resources)) connects a waiver participant to activities, resources, events, and services in the community that the participant is interested in exploring. It is intended to assist the participant with fully accessing their community and reducing isolation.

~~(2) ((Community engagement is designed to develop creative, flexible, and supportive community resources and relationships for individuals with developmental disabilities.~~

~~(3) Waiver participants are introduced to the community resources and supports that are available in their area.~~

~~(4) Participants are supported to develop identified skills that will facilitate integration into their community as described in the person-centered service plan.~~

~~(5))~~ This service is available on the:

- (a) IFS waiver;
- (b) Basic plus waiver; and

(c) Core waiver when the participant is not receiving residential habilitation services.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0650, filed 9/20/21, effective 10/21/21. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0650, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0660 Are there limits to the community engagement you may receive? (1) Community engagement is limited to the support needs identified in your DDA assessment and documented in your person-centered service plan.

(2) The dollar amounts in the annual allocation for the individual and family services waiver limit the amount of community engagement you may receive.

(3) ~~((Community engagement is limited to the community where you live.~~

~~(4))~~ Community engagement does not cover:

- (a) Membership fees or dues;
- (b) Equipment related to activities; or
- (c) The cost of any activities.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0660, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0660, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0660, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0800 What is emergency assistance funding? Emergency assistance funding is a temporary increase of ~~((ninety))~~ 90 days or less to the yearly basic plus or CIIBS waiver aggregate dollar limit when additional waiver aggregate services under WAC 388-845-0820 are required to avoid placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0800, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0800, filed 6/20/18, effective 7/21/18. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0800, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0800, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030,

71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0800, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0805 Who is a qualified provider of emergency assistance funding? The provider of the service you need to meet your emergency must meet the provider qualifications for that service.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0805, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0810 How do I qualify for emergency assistance funding? You qualify for emergency assistance funding only if you have used all of your CIIBS or basic plus aggregate funding and your current situation meets one of the following criteria:

- (1) You involuntarily lose your present residence for any reason either temporary or permanent;
- (2) You lose your present caregiver for any reason, including death;
- (3) There are changes in your caregiver's mental or physical status resulting in the caregiver's inability to perform effectively for the individual; or
- (4) There are significant changes in your emotional or physical condition that requires a temporary increase in the amount of a waiver service.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0810, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0810, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0810, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0820 Are there limits to your use of emergency assistance funding? All of the following limits apply to the emergency assistance funding you may receive.

- (1) Prior approval by the DDA regional administrator or designee is required based on a reassessment of your person-centered service plan to determine the need for emergency assistance.
- (2) Payment authorizations are reviewed every (~~thirty~~) 30 days and must not exceed (~~six thousand dollars~~) \$6,000 per (~~twelve~~) 12

months based on the effective date of your current person-centered service plan.

(3) Emergency assistance funding is limited to the following aggregate services when on the basic plus waiver:

- (a) Community engagement;
- (b) Environmental adaptations;
- (c) Occupational therapy;
- (d) Physical therapy;
- (e) (~~Positive behavior support and consultation;~~) Remote support;
- (f) Skilled nursing;
- (g) Specialized equipment and supplies;
- (h) Speech, hearing, and language services;
- (i) Staff and family consultation, which excludes individual and family counseling;
- (j) Transportation; and
- (k) Therapeutic adaptations.

(4) Emergency assistance funding is limited to the following services when on the CIIBS waiver:

- (a) Environmental adaptations;
- (b) Specialized habilitation;
- (c) Staff and family consultation; and
- (d) Vehicle modifications.

(5) Emergency assistance funding may be used for interim services until:

- (a) The emergency situation has been resolved;
- (b) You are transferred to alternative supports that meet your assessed needs; or
- (c) You are transferred to an alternate waiver that provides the service you need.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0820, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0820, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0820, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0820, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0820, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0820, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0900 What are environmental adaptations? (1) Environmental adaptations provide minimum necessary physical adaptations to the existing home and existing rooms within the home required by the individual's person-centered service plan needed to:

- (a) Ensure the health, welfare, and safety of the individual;
- (b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home; and

(c) Increase the individual's independence inside or outside the home to allow the individual to physically enter and move within the home.

(2) Examples of environmental adaptations include installing stair lifts, installing ramps and grab bars, widening doorways, modifying the individual's primary bathroom, or installing specialized electrical or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

(3) Environmental adaptations are available in all of the DDA HCBS waivers.

(4) ~~((Only the children's intensive in-home behavioral support (CIIBS) and individual and family services waivers may include))~~ Adaptations to the home necessary to prevent or repair damage to the structure of the home caused by the participant's behavior, as addressed in the participant's behavior support plan, are available on the children's intensive in-home behavioral support, individual and family services, core, and community protection waivers.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0900, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-0900, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0900, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0900, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0900, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0900, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0900, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0900, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0900, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0910 What limits apply to environmental adaptations?

The following service limits apply to environmental adaptations:

(1) Clinical and support needs for an environmental adaptation must be identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) Environmental adaptations require prior approval by the DDA regional administrator or designee.

(3) Environmental adaptations ((and)) must be supported by itemized and written bids from licensed contractors. For an adaptation that costs:

(a) ~~((One thousand five hundred dollars))~~ \$1,500 or less, one bid is required;

(b) More than (~~one thousand five hundred dollars~~) \$1,500 and equal to or less than (~~five thousand dollars~~) \$5,000, two bids are required; or

(c) More than (~~five thousand dollars~~) \$5,000, three bids are required.

~~((3))~~ (4) All bids must include:

(a) The cost of all required permits and sales tax; and

(b) An itemized and clearly outlined scope of work.

~~((4))~~ (5) DDA may require an occupational therapist, physical therapist, or other professional to review and recommend an appropriate environmental adaptation statement of work prior to the waiver participant soliciting bids or purchasing adaptive equipment.

~~((5))~~ (6) Environmental adaptations to the home are excluded if they are of general utility without direct benefit to the individual as related to the individual's developmental disability, such as cosmetic improvements to the home, or general home improvements, such as carpeting, roof repair, or central air conditioning.

~~((6))~~ (7) Environmental adaptations must meet all local and state building codes. Evidence of any required completed inspections must be submitted to DDA prior to final payment for work.

~~((7))~~ (8) Environmental adaptations must not be performed while other adaptations or remodeling projects are in process.

~~((8))~~ (9) Environmental adaptations must not be approved if the existing residence condition is impacted by hazardous mold, asbestos, or home dilapidation.

~~((9))~~ (10) Location of the home in a flood plain, landslide zone, or other hazardous area may limit or prevent any environmental adaptations at the discretion of DDA.

~~((10))~~ (11) Written consent from the home's landlord is required prior to starting any environmental adaptations for a rental property. The landlord must not require removal of the environmental adaptations at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's home.

~~((11))~~ (12) Environmental adaptations must not add to the total square footage of the home, convert nonliving space to living space, or create a new room.

~~((12))~~ (13) The amount of service you may receive is limited to the dollar amounts for aggregate services in your basic plus waiver, CIIBS waiver, or the dollar amount of your annual IFS waiver allocation.

~~((13))~~ (14) For core and community protection waivers, annual environmental adaptation costs must not exceed (~~twelve thousand one hundred ninety-two dollars~~) \$12,192.

~~((14))~~ (15) Damage prevention and repairs under the CIIBS, ~~(and)~~ IFS, core, and CP waivers are subject to the following restrictions:

(a) Limited to the cost of restoration to the original function;

~~((b) Limited to the dollar amounts of the participant's annual allocation;)~~

~~((e))~~ (b) Behaviors of waiver participants that resulted in damage to the home must be addressed in a (~~positive~~) behavior support plan prior to the repair of damages;

~~((d))~~ (c) Repairs to personal property such as furniture and appliances are excluded; and

~~((e))~~ (d) Repairs due to normal wear and tear are excluded.

~~((15))~~ (16) Noncovered environmental adaptations include:

- (a) Building fences and fence repairs;
- (b) Carpet or carpet replacement;
- (c) Air conditioning, heat pumps, generators, or ceiling fans;
- (d) Roof repair or siding;
- (e) Deck construction or repair; and
- (f) Jetted tubs or saunas.

~~((16))~~ (17) Environmental adaptations are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0910, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-0910, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0910, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-0910, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0910, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0910, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0910, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0910, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0940 Are there limits to the equine therapy I may receive? The following limits apply to your receipt of equine therapy:

(1) Support needs for equine therapy are limited to those identified in your DDA assessment and documented in the person-centered service plan.

(2) The department requires ~~((your))~~ a written recommendation from a ((behavior)) behavioral health or related provider. The recommendation must include a description of ((specialist's written recommendation regarding)) your need for the service((. This recommendation must)) and take into account that the service is expected to complement the existing ~~((behavior))~~ behavioral health support plan ~~((to address behavior support needs))~~.

~~((3) Equine therapy requires prior approval by the DDA regional administrator or designee.)~~

~~((4))~~ (3) DDA may require a second opinion by the department-selected provider.

~~((5))~~ (4) Equine therapy services must not exceed the CIIBS combined specialized-hourly services allocation of ~~((five thousand dollars))~~ \$5,000 per ~~((plan))~~ waiver year.

~~((6))~~ (5) Equine therapy services must not be used to provide hippotherapy, which is an occupational therapy service.

~~((7))~~ (6) The department reserves the right to terminate the authorization for equine therapy services if there is not a demonstra-

ble improvement in behavior as documented by the contracted equine therapist or other treatment provider.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0940, filed 9/20/21, effective 10/21/21.]

NEW SECTION

WAC 388-845-0945 What is remote support? (1) Remote support is supervision, coaching, and consultation from a contracted remote support provider to a waiver participant from a distant location.

(2) The provider uses HIPAA-compliant technology and secure data storage to support the waiver participant to increase their independence and safety in their home and community when not engaged in other DDA-paid services or informal supports.

(3) Remote support includes equipment as needed to deliver the supervision, coaching, and consultation. Equipment may include one or more of the following components:

- (a) Motion-sensing system;
- (b) Radio frequency identification;
- (c) Video calling via assistive technology;
- (d) Live audio feed; and
- (e) Web-based monitoring systems.

[]

NEW SECTION

WAC 388-845-0950 Who are qualified providers of remote support?

(1) The provider of remote support must be an entity contracted with DDA to provide remote support.

(2) A guardian, legal representative, parent, or other family member cannot provide remote support to a waiver participant.

[]

NEW SECTION

WAC 388-845-0955 Are there limits to the remote support I may receive? The following limits apply to your receipt of remote support:

(1) Remote support must never be used to restrict people from their home, community, or body autonomy.

(2) Before DDA authorizes remote support, a safety plan must be established and documented in the waiver participant's person-centered service plan.

(3) The need for remote support must be identified in the waiver participant's person-centered service plan.

(4) Remote support cannot pay for internet, data plans, or wi-fi access.

(5) Remote support requires prior approval by the regional administrator or designee.

(6) For basic plus, remote support is limited to the aggregate budget.

(7) For IFS, remote support is limited to the annual allocation.

(8) Remote support must not replace, duplicate, or be the delivery method for other available paid or unpaid supports or services.

(9) Remote support must not be authorized to waiver participants receiving residential habilitation.

[]

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

WAC 388-845-1030 What are individualized technical assistance services? Individualized technical assistance services:

(1) Provide short-term, professional expertise to identify and address barriers to employment services or community inclusion; and

(2) Are available in addition to supports received through supported employment services and community inclusion for an individual who has not yet achieved his or her goal.

[Statutory Authority: RCW 71A.12.030, 71A.12.040, 2015 3rd sp.s. c 4, and 42 C.F.R. § 441.301 (c)(4)-(5). WSR 18-03-174, § 388-845-1030, filed 1/23/18, effective 2/23/18. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1030, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-1030, filed 8/1/12, effective 9/1/12.]

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

WAC 388-845-1040 Are there limits to the individualized technical assistance services you may receive? (1) The developmental disabilities administration (DDA) may authorize a maximum of (~~three~~) six months of individualized technical assistance services at a time, not to exceed six months in the (~~plan~~) waiver year.

(2) Individualized technical assistance services are available on the basic plus, core, and community protection waivers.

(3) Individualized technical assistance services are available only to (~~individuals~~) clients who are receiving supported employment or community inclusion services, unless approved by the regional administrator or his or her designee.

(4) Individualized technical assistance services are limited to additional hours under WAC 388-828-9355 and 388-828-9360.

[Statutory Authority: RCW 71A.12.030, 71A.12.040, 2015 3rd sp.s. c 4, and 42 C.F.R. § 441.301 (c)(4)-(5). WSR 18-03-174, § 388-845-1040, filed 1/23/18, effective 2/23/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1040, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, §

388-845-1040, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-1040, filed 8/1/12, effective 9/1/12.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1163 Are there limits to the music therapy I may receive? The following limits apply to your receipt of music therapy:

(1) Support needs for music therapy are limited to those identified in your DDA assessment and documented in the person-centered service plan.

(2) The department requires ~~((your behavior specialist's))~~ a written recommendation ~~((regarding your need for the service))~~ from a behavioral health or related provider. ~~((This))~~ The recommendation must include a description of your need for the services and take into account that music therapy is expected to complement the existing ~~((behavior))~~ behavioral health ~~((support))~~ plan ~~((to address behavior support needs))~~.

~~((3))~~ Music therapy requires prior approval by the DDA regional administrator or designee.)

~~((4))~~ (3) DDA may require a second opinion by a department-selected provider.

~~((5))~~ (4) Music therapy must not exceed the CIIBS combined specialized-hourly services allocation of ~~((five thousand dollars))~~ \$5,000 per year.

~~((6))~~ (5) The department reserves the right to terminate the service authorization for music therapy if there is not a demonstrable improvement in behavior as documented by the certified music therapist or other treatment provider.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1163, filed 9/20/21, effective 10/21/21.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1190 What is peer mentoring? (1) Peer mentoring is a form of mentorship that takes place between a person who has lived through an experience (peer mentor) and a person who is new to that experience (mentee). Peer mentors use their experience to inform, support, and train mentees to successfully navigate new experiences related to or impacted by their disability.

(2) A peer mentor may provide support and guidance to a ~~((waiver participant and))~~ client, the ~~((participant's))~~ client's family, or both.

(3) A peer mentor may connect a waiver participant to local community services, programs, and resources and answer participant questions or suggest other sources of support.

(4) Peer mentoring is available in the IFS and CIIBS ~~((waiver))~~ waivers.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-1190, filed 2/18/20, effective 3/20/20. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1190, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1192 What limits apply to peer mentoring? (1) Support needs for peer mentoring are limited to those identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) DDA does not contract with a peer mentor to mentor a member of the mentor's own family.

(3) ((A)) An IFS waiver participant's peer mentoring services are limited to the participant's annual IFS waiver allocation.

(4) A CIIBS waiver participant's peer mentoring services must not exceed the CIIBS combined specialized hourly services allocation of \$5,000 per year.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-1192, filed 2/18/20, effective 3/20/20. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1192, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1195 What is person-centered plan facilitation? (1) Person-centered plan facilitation is an approach to forming life plans that is centered on the individual. It is used as a life planning process to enable individuals with disabilities to increase personal self-determination. Person-centered plan facilitation is available in the IFS (~~waiver~~) and CIIBS waivers.

(2) Person-centered plan facilitation typically includes:

(a) Identifying and developing a potential circle of people who know and care about the individual;

(b) Exploring what matters to the waiver participant by listening to and learning from the person;

(c) Developing a vision for a meaningful life, as defined by the waiver participant, which may include goals for education, employment, housing, relationships, and recreation;

(d) Discovering capacities and assets of the waiver participant, and his or her family, neighborhood, and support network;

(e) Generating an action plan; and

(f) Facilitating follow-up meetings to track progress toward goals.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1195, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1197 What ((limitations are there)) are the limits for person-centered plan facilitation? (1) Support needs for person-centered planning facilitation are limited to those identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) Person-centered plan facilitation may include follow up contacts with the waiver participant and his or her family to consult on plan implementation.

(3) ~~((The dollar amounts for the waiver participants' annual allocation in the IFS waiver limit the amount of person-centered plan facilitation service the individual is authorized to receive.))~~ An IFS waiver participant's person-centered plan facilitation is limited to the participant's annual allocation.

(4) A CIIBS waiver participant's person-centered plan facilitation must not exceed the CIIBS combined specialized hourly services allocation of \$5,000 per year.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1197, filed 9/20/21, effective 10/21/21. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1197, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-1600 What is respite care? (1) Respite care is short-term intermittent care to provide relief for a person who lives with you, is your primary care provider, and is:

(a) Your family member and your paid or unpaid care provider;
 (b) A nonfamily member who is not paid to provide care for you;
 (c) A contracted companion home provider paid by DDA to provide support to you; or

(d) A licensed children's foster home provider paid by DDA to provide support to you.

(2) Respite care is available in the:

(a) Basic plus waiver;
 (b) Children's intensive in-home behavioral support (CIIBS) waiver;

(c) Core waiver; and

(d) Individual and family services (IFS) waiver.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1600, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c

4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1600, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1600, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-1600, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-1600, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-1600, filed 9/22/08, effective 10/23/08. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1600, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1607 Can someone who lives with you be your respite provider? A person who lives with you (~~(must not)~~) may be your respite care provider if the person is not:

- (1) Your primary care provider;
- (2) Providing any other DSHS paid service to you in the month that person provides respite care to you; or
- (3) (~~(Unqualified to provide waiver)~~) Excluded from providing services based on the limits (~~(listed in)~~) under WAC 388-845-0111.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1607, filed 9/20/21, effective 10/21/21. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1607, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1607, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-1607, filed 1/24/13, effective 2/24/13.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-1620 Are there limits to the respite care you may receive? The following limits apply to the respite care you may receive:

- (1) For basic plus, core, and the children's intensive in-home behavioral support (CIIBS) waivers, the developmental disabilities administration (DDA) assessment will determine how much respite you may receive under chapter 388-828 WAC.
- (2) For the individual and family services (IFS) waiver, the dollar amount for your annual allocation in your IFS waiver limits the amount of respite care you may receive.
- (3) Respite must not replace:
 - (a) Day care while your parent or guardian is at work; or
 - (b) Personal care hours available to you.
- (4) If you receive respite in a private home, the home must be licensed to provide respite care unless the home is:
 - (a) Your private home; or

- (b) The home of a relative under WAC 388-825-345.
- (5) If you receive respite from a provider who requires licensure, the respite services are limited to activities and age-specific criteria contained in the provider's license.
- (6) Your individual respite provider must not provide:
- (a) Other DDA services for you during your respite care hours; or
- (b) DDA paid services to other persons during your respite care hours.
- (7) Your primary caregivers must not provide other DDA services for you during your respite care hours.
- (8) If your personal care provider is your parent and you live in your parent's adult family home you must not receive respite.
- (9) DDA must not pay for fees - such as a membership or insurance fee - associated with your respite care.
- (10) If you require respite care from a licensed practical nurse (LPN) or a registered nurse (RN), respite services may be authorized using an LPN or RN. Respite services are limited to the assessed respite care hours identified in your person-centered service plan. Respite provided by an LPN or RN requires a prior approval by the regional administrator or designee.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1620, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1620, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1620, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-1620, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-1620, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-1620, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-1620, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1620, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-1660 Are there limits to the risk assessment you may receive? (1) Clinical and support needs for a risk assessment are limited to those identified in your DDA assessment and documented in your person-centered service plan.

(2) A risk assessment must meet requirements under WAC ((246-930-320)) 388-831-0060.

(3) A risk assessment requires prior approval by the DDA regional administrator or designee.

(4) The cost of a risk assessment does not count toward the:

- (a) Dollar limit for aggregate services in the basic plus waiver;
- (b) Annual allocation in the individual and family services waiver; or

(c) ((Monthly average cost limit)) Aggregate budget amounts available in the children's intensive in-home behavior support waiver.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1660, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1660, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1660, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-1660, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-1660, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1660, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1800 What are specialized equipment and supplies?

(1) Specialized equipment and supplies are ~~((durable and nondurable medical equipment, or nonmedical equipment))~~ specialized items necessary to prevent institutionalization((,)) that are not ((available)) covered, or are in excess of what is covered, through the medicaid state plan. ~~((or are in excess of what is available through the medicaid state plan benefit, which enables individuals:))~~ Types of specialized equipment and supplies include:

(a) Durable medical equipment;

(b) Nondurable medical equipment designed to directly improve an activity of daily living or instrumental activity of daily living need; and

(c) Nonmedical, specialized equipment designed to directly assist an individual in tasks affected by a functionally limiting disability.

(2) An item purchased under specialized equipment and supplies must directly enable a client to:

~~((a))~~ (a) Increase their abilities to perform their activities of daily living;

~~((b))~~ (b) Perceive, control, or communicate with the environment in which they live; or

~~((c))~~ (c) Improve daily functioning through sensory integration identified in a written therapeutic plan by the current treating professional.

~~((2))~~ (3) Specialized equipment and supplies are available in all DDA HCBS waivers.

~~((3))~~ (4) Durable medical equipment and medical supplies are defined in WAC 182-543-1000 and 182-543-5500, respectively.

~~((4))~~ (5) Also included in specialized equipment and supplies are items necessary for life support and ancillary supplies and equipment necessary to the proper functioning of the equipment and supplies described in subsection (1) of this section.

~~((5))~~ (6) Specialized equipment and supplies include the maintenance and repair of specialized equipment not covered through the medicaid state plan.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1800, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-1800, filed 2/18/20, effective 3/20/20. Statutory Authority:

2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1800, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1800, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-1800, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-1800, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-1800, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1800, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1805 Who are the qualified providers of specialized equipment and supplies? (1) To be a qualified provider of specialized durable or nondurable medical equipment, the provider must be a medical equipment supplier currently contracted:

- (a) With DDA as a specialized equipment and supplies vendor; and
- (b) As a Title XIX vendor.

(2) The provider of specialized nonmedical equipment (~~(may)~~) must be a provider contracted with DDA as (~~(a)~~):

- (a) A purchasing goods and services ((shopper)) vendor;
- (b) A specialized equipment and supplies vendor; or
- (c) (~~(a provider)~~) A vendor who satisfies the requirements of

(~~(WAC 388-845-1805(1))~~) subsection (1) of this section.

(3) (~~(The provider of)~~) To provide specialized equipment and supplies under WAC 388-845-1800 (~~((1))~~) (2) (c) (~~(may be contracted with DDA as)~~), a provider (~~(of)~~) may hold a specialized goods and services (~~(or specialized equipment and supplies for IFS and CIIBS waiver clients only)~~) contract.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1805, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-1805, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1805, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1805, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1810 Are there limits to the specialized equipment and supplies you may receive? The following limits apply to the specialized equipment and supplies you may receive:

(1) Habilitative support needs for specialized equipment and supplies are limited to those identified in your DDA person-centered assessment and documented in your person-centered service plan.

(2) Specialized equipment and supplies over \$550 require prior approval by the DDA regional administrator or designee (~~for each authorization~~).

(3) When your medical professional recommends specialized equipment and supplies for you, DDA may require a second opinion by a DDA-selected provider.

(4) Items must be of direct medical or remedial benefit to you or required to prevent institutionalization and necessary as a result of your disability.

(5) Items requested to address a sensory integration need must have an accompanying therapeutic plan written by a current treating professional.

~~((5))~~ (6) Medications, first aid supplies, antiseptic supplies, personal hygiene products, supplements, and vitamins are excluded.

~~((6))~~ (7) The dollar amounts for aggregate services in your basic plus or CIIBS waiver limit the amount of service you may receive.

~~((7))~~ (8) The dollar amounts for your annual allocation in your individual and family services (IFS) waiver limit the amount of service you may receive.

~~((8))~~ (9) Items excluded from specialized equipment and supplies include:

(a) Items of general utility;

(b) Items that do not directly support the client as described in WAC 388-845-1800; and

~~((b))~~ (c) Nonspecialized recreational or exercise equipment, including but not limited to trampolines, treadmills, swing sets, and hot tubs.

~~((9))~~ (10) Specialized equipment and supplies are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1810, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-1810, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1810, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1810, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1810, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-1810, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1810, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-1865 Are there limits to your receipt of specialized clothing? (1) The following limits apply to specialized clothing you may receive:

(a) Clinical and support needs for specialized clothing are limited to those identified in your DDA assessment and documented in your person-centered service plan.

(b) DDA requires written documentation from an appropriate health professional regarding your need for the service. This recommendation must take into account that the health professional has recently examined you, reviewed your medical records, and conducted an assessment.

(c) DDA may require a second opinion from a DDA-selected provider.

(2) For the IFS waiver, the dollar amount for your annual allocation limits the amount of service you may receive.

(3) For the CIIBS waiver, the dollar amount for your aggregate services limits the amount of service you may receive.

~~((3))~~ (4) You must receive prior approval from the DDA regional administrator or designee to receive specialized clothing.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1865, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-1865, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1870 What are specialized habilitation services?

(1) Specialized habilitation services provide community-based and individualized support with the intent of reaching an identified habilitative goal in the person-centered service plan.

(2) Service must assist a client to learn or maintain skills in ~~((the category))~~ categories of:

(a) Self-empowerment((τ));

(b) Safety awareness((τ)) and self-advocacy((τ));

(c) Interpersonal effectiveness((τ)) and effective social communication((τ));

(d) ((appropriate)) Coping strategies for everyday life changes((τ)); and

(e) Managing daily tasks((τ-øτ)) and acquiring adaptive skills.

(3) Specialized habilitation must promote inclusion in the community.

(4) Specialized habilitation services are available on the basic plus, IFS, core, and CIIBS waivers.

(5) Specialized habilitation, when authorized as a stabilization service, is available on all five HCBS waivers.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1870, filed 9/20/21, effective 10/21/21.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1880 Who are qualified providers of specialized habilitation services? To provide specialized habilitation services, a

provider must be contracted with DDA for this service, have one year of experience working with people with a developmental or intellectual disability, and be one of the following:

- (1) A certified life skills coach;
- (2) An individual with a bachelor's, master's, or doctoral degree in social work, sociology, psychology, education, child development, gerontology, nursing, or other related field; or
- (3) An individual enrolled and supervised in a university internship program for social work, sociology, psychology, education, child development, gerontology, sociology, or nursing.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1880, filed 9/20/21, effective 10/21/21.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1890 Are there limits to the specialized habilitation I may receive? The following limits apply to your receipt of specialized habilitation:

- (1) Specialized habilitation is limited to address a maximum of three goals at a time.
- (2) Specialized habilitation support needs must be identified in your DDA assessment and specialized habilitation must be documented in your person-centered service plan.
- (3) Specialized habilitation must not exceed:
 - (a) ~~((Four thousand dollars of your basic plus aggregate funding))~~ \$6,192 within your total basic plus aggregate budget;
 - (b) Your IFS annual allocation in combination with other waiver services; or
 - (c) ~~((Fifteen thousand dollars))~~ \$15,000 within your total CIIBS aggregate budget and ~~((six thousand dollars))~~ \$6,000 emergency assistance funding when eligible per WAC 388-845-0800 and 388-845-0820.
- (4) Specialized habilitation does not cover education, vocational, skills acquisition training through community first choice, behavioral health, ABA, skilled nursing, occupational therapy, physical therapy, or speech, language, and hearing services that are covered benefits through the medicaid state plan, including early and periodic screening, diagnosis, and treatment, and part B special education services.
- (5) Specialized habilitation must not be authorized ~~((to clients enrolled in))~~ for a client receiving residential habilitation, unless the client is receiving the service from a companion home provider.
- (6) Habilitation plans must be documented as formal plans as outlined in the provider's contract.
- (7) Specialized habilitation, not provided as a stabilization service, requires prior approval by the DDA regional administrator or designee.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1890, filed 9/20/21, effective 10/21/21.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-2000 What is staff and family consultation? (1)

Staff and family consultation is assistance, not covered by the medic-aid state plan, to families or direct service providers to help them meet the individualized and specific needs of a participant as outlined in the participant's person-centered service plan and necessary to improve the participant's independence and inclusion in their community.

(2) Staff and family consultation is available in all DDA HCBS waivers.

(3) Staff and family consultation is consultation and guidance to a staff member or family member about one or more of the following:

(a) Health and medication monitoring to track and report to healthcare provider;

(b) Positioning and transfer;

(c) Basic and advanced instructional techniques;

(d) Consultation with potential referral resources;

(e) Augmentative communication systems;

(f) Diet and nutritional guidance;

(g) Disability information and education;

(h) Strategies for effectively and therapeutically interacting with the participant;

(i) Environmental consultation;

(j) Assistive technology safety;

(k) (~~An existing plan of care~~) Parenting skills; and

(l) For the basic plus, IFS, and CIIBS waivers only, individual and family counseling.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2000, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-2000, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-2000, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-2000, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2000, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-2000, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-2000, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-2000, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2000, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-2005 Who is a qualified provider of staff and family consultation? To provide staff and family consultation, a provider

must be contracted with DDA and be one of the following licensed, registered, or certified professionals:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech-language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American Sign Language instructor;
- (13) Nutritionist;
- (14) Counselors registered or certified in accordance with chapter 18.19 RCW;
- (15) Certified dietician;
- (16) Recreation therapist registered in Washington and certified by the national council for therapeutic recreation;
- (17) ~~((Providers listed in WAC 388-845-0506 and contracted with DDA to provide CIIBS intensive services;~~
- ~~(18))~~ Certified music therapist (for CIIBS only);
- ~~((19))~~ (18) Psychiatrist;
- ~~((20))~~ (19) Professional advocacy organization;
- (20) DDA-contracted specialized habilitation provider; or
- (21) Teacher certified under chapter 181-79A WAC.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2005, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-2005, filed 2/18/20, effective 3/20/20. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-2005, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2005, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-2005, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1) (i), and Title 71A RCW. WSR 10-22-088, § 388-845-2005, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-2005, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2005, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-2010 Are there limits to the staff and family consultation you may receive? (1) Staff and family consultation are limited to supports identified in your DDA assessment and documented in the person-centered service plan.

(2) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff and family consultation.

(3) The dollar amounts for aggregate service in your basic plus or CIIBS waiver or the dollar amount of the annual allocation in your individual and family services (IFS) waiver limit the amount of staff and family consultation you may receive.

(4) (~~Under the basic plus waiver,~~) Individual and family counseling is limited to family members who:

(a) Live with the participant; and

(b) Have been assaulted by the participant and the assaultive behavior was:

(i) Documented in the participant's DDA assessment and person-centered service plan; and

(ii) Addressed in the participant's positive behavior support plan or therapeutic plan.

(5) Staff and family consultation does not provide training or consultation necessary to meet a provider's or staff's contractual licensing or certification requirements or to complete the necessary functions of their job.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2010, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-2010, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-2010, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-2010, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2010, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-2010, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2010, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-2130 What are supported parenting services? (1)

Supported parenting services are professional services offered to (~~participants~~) DDA clients who are parents or expectant parents.

(2) Services may include teaching, parent coaching, and other supportive strategies in areas critical to parenting, including child development, nutrition and health, safety, child care, money management, time and household management, and housing.

(3) Supported parenting services are designed to build parental skills and understanding around (~~the~~) a child's developmental domains of cognition, language, motor, social-emotional, and self-help.

(4) Supported parenting services are offered in the Core and IFS (~~waiver~~) waivers.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-2130, filed 8/4/16, effective 9/4/16.]

NEW SECTION

WAC 388-845-2141 What is specialized evaluation and consultation? (1) Specialized evaluation and consultation is direct, individualized, rehabilitative skill building support in the areas of sex education, fire safety, social skills training, and understandings of laws, rights, and responsibilities.

(2) Supports are provided in order to support a client to reduce the likelihood of:

(a) Fire setting; or

(b) Sexual or physical assault in the home and community.

(3) Supports must be used to promote safe engagement and participation in the community.

(4) Supports may be provided in an individual or group setting and includes a special needs evaluation to identify client goals and the specific support needs in order to reach those goals.

(5) Services must assist a client to learn to maintain skills using individual or group supports, treatment team participation, and plan writing.

(6) Specialized evaluation and consultation is available on the community protection waiver.

[]

NEW SECTION

WAC 388-845-2142 Who are qualified providers of specialized evaluation and consultation services? All specialized evaluation and consultation providers must be contracted with DDA and:

(1) Be licensed, registered, or certified in Washington state according to the standards of their approved profession in Title 18 RCW and Title 246 WAC; or

(2) Have a bachelor's degree or higher in social services and at least three years of prior experience working with individuals with developmental disabilities who engage in challenging behaviors.

[]

NEW SECTION

WAC 388-845-2143 What are the limits to specialized evaluation and consultation services? The following limits apply to your receipt of specialized evaluation and consultation:

(1) You must be enrolled on the community protection waiver.

(2) Specialized evaluation and consultation support needs must be identified in your DDA assessment and must be documented in your person-centered service plan.

(3) Specialized evaluation and consultation is limited to services that are:

(a) Consistent with waiver objectives of avoiding institutionalization; and

(b) Not a covered benefit under the medicaid state plan.

(4) This service must not replace one-on-one, group, or other treatments to address a mental health condition which are covered by the medicaid state plan.

[]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-2150 Who is a qualified provider of therapeutic adaptations? (1) A qualified provider of therapeutic adaptations installation is ~~((a person))~~ an entity who is contracted with DDA ~~((and:))~~ as an environmental adaptations vendor.

~~((a) A registered contractor per chapter 18.27 RCW and licensed and bonded to perform the specific type of work they are providing; or~~

~~(b) A medical equipment supplier with a state contract as a Title XIX vendor.~~

~~(2) A qualified provider of therapeutic adaptations may also be someone who is contracted with DDA as:~~

~~(a) A purchasing goods and services contractor; or~~

~~(b) A CIIBS goods and services contractor.)~~

(2) A qualified provider of therapeutic adaptation items and supplies is an entity contracted with DDA as:

(a) A specialized equipment and supplies vendor;

(b) A purchasing goods and services vendor;

(c) A specialized goods and services vendor; or

(d) An environmental adaptations vendor.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2150, filed 9/20/21, effective 10/21/21.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-2155 Are there limits to the therapeutic adaptations I may receive? The following limits apply to your receipt of therapeutic adaptations:

(1) Therapeutic adaptations are limited to one adaptation request every five waiver years.

(2) Funding is limited to the aggregate budget in the basic plus and IFS waiver or ~~((fifteen thousand dollars))~~ \$15,000 on the CIIBS waiver.

(3) Modifications may not add square footage to the home or convert nonliving space into living space.

(4) The department requires a written recommendation by a behavioral health provider, occupational therapist, or physical therapist within the waiver participant's current therapeutic plan.

(5) Therapeutic adaptations are limited to items not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

(6) Therapeutic adaptations require prior approval by the DDA regional administrator or designee.

(7) Therapeutic adaptations are limited to those identified in the client's person-centered service plan.

(8) Written consent from the home's landlord is required before starting any therapeutic adaptation for a rental property. The landlord must not require removal of the therapeutic adaptation at the end of the waiver participant's tenancy as a condition of the landlord approving the therapeutic adaptation to the waiver participant's home.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2155, filed 9/20/21, effective 10/21/21.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-2200 What are transportation services? Transportation services provide reimbursement to a provider when the transportation is required and specified in the (~~waiver~~) person-centered service plan. This service is available in all DDA HCBS waivers if the cost and responsibility for transportation is not already included in your provider's contract and payment.

(1) Transportation provides you access to waiver services, specified by your person-centered service plan.

(2) Whenever possible, you must use family, neighbors, friends, or community agencies that can provide this service without charge.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2200, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2200, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-2200, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-2200, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-2200, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2200, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-2205 Who is qualified to provide transportation services? (~~(+1)~~) The provider of transportation services can be an individual or agency contracted with DDA whose contract includes transportation in the statement of work.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2205, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2205, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-2210 Are there limitations to the transportation services you can receive? The following limitations apply to transportation services:

(1) Support needs for transportation services are limited to those identified in your DDA assessment and documented in your person-centered service plan.

(2) Transportation is limited to travel to and from a waiver service. When the waiver service is supported employment, transportation is limited to days when you receive employment support services.

(3) Transportation does not include the purchase of a bus pass.

(4) Reimbursement for provider mileage requires prior authorization by DDA and is paid according to contract.

(5) This service does not cover the purchase or lease of vehicles.

(6) Reimbursement for provider travel time is not included in this service.

(7) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(8) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

(9) The dollar limitations for aggregate services in your basic plus waiver or the dollar amount of your annual allocation in the IFS waiver limit the amount of service you may receive.

~~((10) If your individual waiver personal care provider uses his or her own vehicle to provide transportation to you for essential shopping and medical appointments as a part of your personal care service, your provider may receive up to one hundred miles per month in mileage reimbursement. If you work with more than one individual personal care provider, your limit is still a total of one hundred miles per month. This cost is not counted toward the dollar limitation for aggregate services in the basic plus waiver.))~~

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2210, filed 9/20/21, effective 10/21/21. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-2210, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2210, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-2210, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-2210, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2210, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-2260 What are vehicle modifications? (1) Vehicle modifications are adaptations or alterations to a vehicle required in order to accommodate the unique needs of the participant, enable full

integration into the community, and ensure the health, welfare, and safety of the participant or the safety of a caregiver.

(2) Vehicle modifications require prior approval from the DDA regional administrator or designee.

(3) Examples of vehicle modifications include:

- (a) Manual hitch-mounted carrier and hitch for all wheelchair types;
- (b) Wheelchair cover;
- (c) Wheelchair strap-downs;
- (d) Portable wheelchair ramp;
- (e) Accessible running boards and steps;
- (f) Assist poles and grab handles ~~((-))~~;
- (g) Power activated carrier for all wheelchair types;
- (h) Permanently installed wheelchair ramps;
- (i) Repairs and maintenance to vehicular modifications as needed for client safety; and
- (j) Other access modifications.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-2260, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-2260, filed 11/1/10, effective 12/2/10.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-2270 Are there ~~((limitations))~~ limits to your receipt of vehicle modification services? Vehicle modification services are only available on the CIIBS or IFS waiver. The following ~~((limitations))~~ limits apply:

(1) Vehicle modifications require prior approval from the DDA regional administrator or designee, except for repairs to existing vehicle modifications.

~~((1))~~ (2) Clinical and support needs for vehicle modification services are limited to those identified in your DDA assessment and documented in the person-centered service plan.

~~((2))~~ (3) Vehicle modifications are excluded if they are of general utility without direct medical or remedial benefit to you.

~~((3))~~ (4) If you are eligible for or enrolled with division of vocational rehabilitation (DVR) you must pursue this benefit through DVR first.

~~((4))~~ (5) Vehicle modifications must be the most cost-effective modification based upon a comparison of contractor bids as determined by DDA.

~~((5))~~ (6) Modifications will only be approved for a vehicle that serves as your primary means of transportation and is owned by you, your family, or both.

~~((6))~~ (7) DDA requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

~~((7))~~ (8) The department may require a second opinion from a department selected provider that meets the same criteria as subsection ~~((6))~~ (7) of this section.

~~((8))~~ (9) The dollar amount for your annual allocation in your IFS waiver limits the amount of vehicle modification service you are authorized to receive.

(10) The amount of vehicle modification service you are authorized to receive is limited to the dollar amount for your CIIBS waiver aggregate budget under WAC 388-845-0225.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2270, filed 9/20/21, effective 10/21/21. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-2270, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2270, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-2270, filed 11/1/10, effective 12/2/10.]

AMENDATORY SECTION (Amending WSR 16-05-053, filed 2/11/16, effective 3/13/16)

WAC 388-845-2283 How are my wellness educational materials selected? Individualized educational materials are selected for you by the wellness education provider's algorithm and are based on your DDA assessment. Goals, diagnoses, treatments, conditions, and other factors identified in your DDA assessment provide the basis for the algorithm to select educational materials for you. These goals, diagnoses, treatments, conditions, and other factors may include, but are not limited to the following:

- (1) Diabetes - IDDM;
- (2) Diabetes - NIDDM;
- (3) COPD;
- (4) Cardiovascular disease;
- (5) Rheumatoid arthritis;
- (6) Traumatic brain injury;
- (7) Cerebral palsy;
- (8) Alzheimer's disease;
- (9) Anxiety disorder;
- (10) Asthma;
- (11) Autism;
- (12) Stroke;
- (13) Congestive heart failure;
- (14) Decubitus ulcer;
- (15) Depression;
- (16) Emphysema;
- (17) GERD;
- (18) Hypertension;
- (19) Hypotension;
- (20) Down's syndrome;
- (21) Fragile X syndrome;
- (22) Prader-Willi;
- (23) ADD;
- (24) ADHD;

- (25) Post-traumatic stress disorder;
- (26) Asperger's syndrome;
- (27) Hepatitis;
- (28) Paraplegia;
- (29) Quadriplegia;
- (30) Fetal alcohol syndrome/fetal alcohol effect;
- (31) Epilepsy;
- (32) Seizure disorder;
- (33) Sleep apnea;
- (34) Urinary tract infection;
- (35) Multiple sclerosis;
- (36) Falls;
- (37) Smoking;
- (38) Alcohol abuse;
- (39) Substance abuse;
- (40) Bowel incontinence;
- (41) Bladder incontinence;
- (42) Diabetic foot care;
- (43) Pain daily;
- (44) Sleep issues;
- (45) BMI = or greater than 25;
- (46) BMI less than 18.5;
- (47) Skin care (pressure ulcers, abrasions, burns, rashes);
- (48) Seasonal allergies;
- (49) Edema;
- (50) Poor balance;
- (51) Recent loss/grieving;
- (52) Conflict management;
- (53) Importance of regular dental visits;
- (54) ADA diet;
- (55) Cardiac diet;
- (56) Celiac diet;
- (57) Low sodium diet;
- (58) Goals; and
- (59) Parkinson's disease.

[Statutory Authority: RCW 71A.12.030. WSR 16-05-053, § 388-845-2283, filed 2/11/16, effective 3/13/16.]

AMENDATORY SECTION (Amending WSR 16-19-031, filed 9/13/16, effective 10/14/16)

WAC 388-845-2285 Are there limits to wellness education? (1)

Wellness education is a once-a-month service.

(2) In the basic plus waiver, you are limited to the aggregate service expenditure limits defined in WAC 388-845-0210.

(3) The dollar amount for your individual and family services (IFS) waiver annual allocation defined in WAC 388-845-0230 limits the amount of service you may receive.

[Statutory Authority: RCW 71A.12.030 and CMS. WSR 16-19-031, § 388-845-2285, filed 9/13/16, effective 10/14/16. Statutory Authority: RCW 71A.12.030. WSR 16-05-053, § 388-845-2285, filed 2/11/16, effective 3/13/16.]

AMENDATORY SECTION (Amending WSR 16-05-053, filed 2/11/16, effective 3/13/16)

WAC 388-845-2290 Who are qualified providers of wellness education? The wellness education provider must have the ability and resources to:

- (1) Receive and manage client data in compliance with all applicable federal ((HIPAA)) HIPAA regulations, state law and rules, and ensure client confidentiality and privacy;
- (2) Translate materials into the preferred language of the participant;
- (3) Ensure that materials are targeted to the participant's assessment and person-centered service plan;
- (4) Manage content sent to participants to prevent duplication of materials;
- (5) Deliver newsletters and identify any undeliverable client/representative addresses prior to each monthly mailing and manage any returned mail in a manner that ensures participants receive the monthly information; and
- (6) Contract with AL TSA or DDA to provide this service.

[Statutory Authority: RCW 71A.12.030. WSR 16-05-053, § 388-845-2290, filed 2/11/16, effective 3/13/16.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-3055 What is a ((waiver)) person-centered service plan? (1) The person-centered service plan is the primary tool DDA uses to determine and document your needs and to identify the services to meet those needs.

- (2) Your person-centered service plan must include:
 - (a) Your identified health and welfare needs;
 - (b) Both paid and unpaid services and supports approved to meet your identified health and welfare needs as identified in WAC 388-828-8040 and 388-828-8060; and
 - (c) How often you will receive each waiver service, how long you will need it, and who will provide it.
- (3) For any person-centered service plan, you or your legal representative must sign the plan indicating your agreement to the receipt of services.
- (4) You may choose any qualified provider for the service, who meets all of the following:
 - (a) Is able to meet your needs within the scope of their contract, licensure, and certification;
 - (b) Is reasonably available;
 - (c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and
 - (d) Agrees to provide the service at department rates.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-3055, filed 9/20/21, effective 10/21/21. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-3055, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR

13-24-045, § 388-845-3055, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3055, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-3055, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-3055, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-3056 What if you need assistance to understand your person-centered service plan? If you are unable to understand your person-centered service plan and the individual who has agreed to provide assistance to you as your necessary supplemental accommodation representative is unable to assist you with understanding your person-centered service plan, DDA will take the following steps:

- (1) Consult with the office of the attorney general to determine if you require a legal representative or guardian to assist you with your person-centered service plan;
- (2) Continue your current waiver services; and
- (3) If the office of the attorney general or a court determines that you do not need a legal representative, DDA will continue to try to provide necessary supplemental accommodations in order to help you understand your person-centered service plan.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-3056, filed 9/20/21, effective 10/21/21. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-3056, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3056, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3056, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-3056, filed 9/26/07, effective 10/27/07.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-3065 How long is your plan effective? Your person-centered service plan is effective through the last day of the (~~twelfth~~) 12th month following the effective date or until another person-centered service plan is completed, whichever occurs sooner.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-3065, filed 9/20/21, effective 10/21/21. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-3065, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3065, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-3065, filed 9/26/07, effective 10/27/07. Statuto-

ry Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-3065, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-3075 What if your needs change? (1) You may request a review of your person-centered service plan at any time by calling your case manager.

(2) If there is a significant change in your condition or circumstances, DDA must reassess your person-centered service plan with you and amend the plan to reflect any significant changes.

(3) This reassessment does not affect the end date of your annual person-centered service plan.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-3075, filed 9/20/21, effective 10/21/21. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-3075, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3075, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3075, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-3075, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-3075, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-3080 What if my needs exceed the maximum yearly funding limit or the scope of services under the basic plus waiver?

(1) If you are on the basic plus waiver and your assessed need for services exceeds the maximum permitted, DDA will make the following efforts to meet your health and welfare needs:

(a) Identify more available natural supports;

(b) Initiate an exception to rule to access available nonwaiver services not included in the basic plus waiver other than natural supports;

(c) Authorize emergency assistance funding up to ((~~six thousand dollars~~)) \$6,000 per year if your needs meet the definition of emergency assistance funding in WAC 388-845-0800.

(2) If emergency assistance funding and other efforts are not sufficient to meet your needs, you will be offered:

(a) An opportunity to apply for an alternate waiver that has the services you need;

(b) Priority for placement on the alternative waiver when there is capacity to add people to that waiver;

(c) Placement in an ICF/IID.

(3) If none of the options in subsections (1) and (2) ((above)) in this section is successful in meeting your health and welfare needs, DDA may terminate your waiver eligibility.

(4) If you are terminated from a waiver, you will remain eligible for nonwaiver DDA services but access to state-only funded DDA services is limited by availability of funding.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3080, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3080, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-3080, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-4000 What are my appeal rights under the waiver? In addition to your appeal rights under WAC 388-825-120, you have the right to appeal the following decisions:

(1) Disenrollment from a waiver under WAC 388-845-0060, including a disenrollment from a waiver and enrollment in a different waiver.

(2) A denial of your request to receive ICF/IID services instead of waiver services; or

(3) A denial of your request to be enrolled in a waiver, subject to the limitations described in WAC 388-845-4005.

[Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-4000, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-4000, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-4000, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver? (1) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited to the decision that you are not eligible to have your request documented in a statewide database due to the following:

(a) You do not need ICF/IID level of care per WAC 388-845-0070, 388-828-8040, and 388-828-8060; or

(b) You requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.

(2) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited to the following:

(a) DDA's decision that the services contained in a different waiver are not necessary to meet your health and welfare needs and

that the services available on your current waiver can meet your health and welfare needs; or

(b) DDA's decision that you are not eligible to have your request documented in a statewide database because you requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.

(3) If DDA determines that the services offered in a different waiver are necessary to meet your health and welfare needs, but there is not capacity on the different waiver, you do not have the right to appeal any denial of enrollment on a different waiver when DDA determines there is not capacity to enroll you on a different waiver.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-4005, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-4005, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-4005, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-4005, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-4005, filed 12/13/05, effective 1/13/06.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|------------------|---|
| WAC 388-845-0501 | What is included in positive behavior support and consultation for the children's intensive in-home behavioral support (CIIBS) waiver? |
| WAC 388-845-0506 | Who is a qualified provider of positive behavior support and consultation for the children's intensive in-home behavioral support (CIIBS) waiver? |

WSR 23-19-006

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed September 6, 2023, 3:59 p.m., effective October 7, 2023]

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

Purpose: Currently, WAC 192-140-035 states that if an unemployment insurance claimant does not respond to a request for information, they are denied benefits "for an indefinite period of time" until they respond to the employment security department's (department) request for information. This rule amendment will explain the circumstances under which a claimant may requalify for benefits after previously being denied benefits due to failing to respond to a request for information from the department by formalizing two exceptions to the "indefinite period of time" time frame.

Citation of Rules Affected by this Order: Amending WAC 192-140-035.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, and 50.20.010.

Adopted under notice filed as WSR 23-14-118 on July 5, 2023.

A final cost-benefit analysis is available by contacting Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, phone 425-465-0313, fax 844-652-7096, TTY relay 771 [711], email stephanie.frazee@esd.wa.gov, website <https://www.esd.wa.gov/newsroom/ui-rulemaking/standard-occupational-code-reporting>.

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 0, Repealed 0.

Date Adopted: September 1, 2023.

Joy Adams
Acting Director
Employment System Policy
and Integrity Division

OTS-4570.2

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-035 What happens if I do not respond to a request for information? (1) The department will presume that you are disqualified from benefits if you provide potentially disqualifying information, or fail to provide necessary information, and then do not

respond to a request for specific information. The department will deny benefits under RCW 50.20.010.

(2) This denial is for an indefinite period of time and will continue until either:

(a) You provide the requested information;

(b) You qualify for a new, separate unemployment claim and the information requested under subsection (1) of this section is not relevant for your new claim; or

(c) The request for information was made pursuant to a quality control review under 20 C.F.R. § 602.11 and your response is no longer needed for the quality control review.

(3) Once you provide the requested information, the department may issue a redetermination under RCW 50.20.160. The department will issue a new decision allowing benefits if you provide enough information to establish your eligibility for benefits.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-140-035, filed 5/12/10, effective 6/12/10.]

WSR 23-19-010

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed September 7, 2023, 2:36 p.m., effective October 8, 2023]

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

Purpose: Creating rules to clarify the new law SSB 5152 from the 2021 legislative session, specifically its data sharing practices.

Citation of Rules Affected by this Order: New chapter 308-10A WAC, Data sharing.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority.

Adopted under notice filed as WSR 23-13-119 on June 21, 2023.

Changes Other than Editing from Proposed to Adopted Version: After reviewing the written and oral stakeholder feedback, the department of licensing has decided to remove the provisions regarding restricting access to commercial parking operators.

A final cost-benefit analysis is available by contacting Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, phone 360-902-0131, email rulescoordinator@dol.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 21, 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 21, 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: September 7, 2023.

Ellis Starrett
Rules and Policy Manager

OTS-3980.5

**Chapter 308-10A WAC
DATA SHARING**

NEW SECTION

WAC 308-10A-100 Definitions. For the purposes of RCW 46.22.010, the following definitions apply:

(1) "Access period" is a duration of time under the term of this agreement when recipient is granted access and use of protected personal information.

(2) "Agent" means a representative, or representatives, of a requestor that is under contract with the recipient or subrecipient to request driving or vehicle records on the requestor's behalf. "Agent" includes insurance pools established under RCW 48.62.031 of which the authorized recipient is a member.

(3) "Attorney," for the purposes of RCW 46.12.630 and 46.12.635, means an attorney functioning in a legal capacity when obtaining or using vehicle or vessel owner information from a recipient or subrecipient.

(4) "Authorized legal representative" means someone legally authorized under federal or state law to make decisions for the individual. An authorized legal representative is someone who:

(a) Can provide documentation that they have power of attorney; legal guardianship or conservatorship for the individual; executor, etc.; or

(b) Is a custodial parent of an individual who is under the age of 18.

(5) "Authorized use" means a permissible use granted to a recipient in a fully executed data sharing agreement with the department.

(6) "Bona fide research organization" means an entity, such as a university, that conducts noncommercial research using established scientific methods. There must be an intention to publish the research findings for wider scientific and public benefit, without restrictions or delay. Bona fide research organizations do not use protected personal information for commercial purposes.

(7) "Course of business" or other similar term means activities that are performed within the ordinary and necessary operations of the business and that pertain to the use of protected personal information as authorized by the recipient's data sharing agreement with the department.

(8) "Customers" means those entities that the recipient is providing services to using protected personal information but is not receiving protected personal information from the recipient. "Customers" does not include those entities receiving statistical reports that do not include protected personal information.

(9) "Data" means digital information contained in the department's electronic systems that may be disclosed to a recipient under state or federal law.

(10) "Data sharing agreement" means the written agreement between the department and recipient, or the recipient and subrecipient, that defines the terms and conditions which must be followed in order for the recipient or subrecipient to receive data originating from the department.

(11) "Governmental entity" means a federal agency, a state agency, board, commission, unit of local government, or quasi-governmental entity.

(12) "Independent third party" means any entity other than a member of the recipient or any of its stockholders, or any entity controlled by or under common control with any of the stockholders or the company group.

(13) "Individual registered or legal vehicle or vessel owner" or "individual vehicle or vessel owner" means a single vehicle or vessel owner, for the purposes of RCW 46.12.630.

(14) "List" means multiple records containing protected personal information, regardless of the method recipient uses to request or obtain records.

(15) "Misuse" means the access, disclosure, or use of protected personal information without the express, written authorization from the department in a data sharing agreement. "Misuse" also includes a violation of any privacy and security requirement outlined in a data sharing agreement.

(16) "Offshoring" means the electronic or hard copy transmission, accessing, viewing, capturing images, storage, or processing of protected personal information outside the United States.

(17) "Permissible use" means authorized or required uses as outlined in federal or state law.

(18) "Private investigator," for the purposes of RCW 46.12.630 and 46.12.635, has the same meaning as RCW 18.165.010(11), or as licensed by other authority.

(19) "Protected personal information" means collectively personal information and identity information originating from the department, as defined by RCW 46.04.209, 19.255.005, 42.56.590, and 18 U.S.C. Sec. 2725(3)-(4).

(20) "Recipient" means an entity with a permissible use who is directly receiving data from the department through a data sharing agreement.

(21) "Requestor" means an entity with an authorized permissible use to receive protected personal information from the department. A requestor may be an agent, subrecipient, or a recipient.

(22) "Regulatory bodies," for the purposes of RCW 46.52.130, means a body established by federal or state law and is responsible for regulating compliance with adopted rules or laws.

(23) "Statement of compliance" means an annual statement signed by an executive of an organization.

(24) "Subrecipient" means any entity outside a recipient's immediate organization that receives or has access to protected personal information including, but not limited to, subsidiaries, subcontractors, requestors, or agents.

[]

NEW SECTION

WAC 308-10A-201 Recipient compliance requirements. (1) Audits -

For a recipient receiving protected personal information:

(a) A recipient receiving recurring lists of protected personal information must undergo data security and permissible use audits as outlined in the data sharing agreement.

(b) A recipient receiving a one-time list containing protected personal information must demonstrate security controls are in place to protect the information and may be required to undergo audits as outlined in the data sharing agreement.

(c) A recipient receiving individual records of protected personal information is subject to audits.

(d) The department may conduct random audits of any recipient it deems necessary.

(e) The department will determine the frequency of all audits.

(f) The cost of all audits, including actual costs incurred by the department to coordinate, schedule, conduct, draft, receive, review, and report the audit up to the point when the department issues

the final audit review or report, is the responsibility of the recipient.

(g) The department may suspend or terminate a recipient's access to data if the recipient fails to provide or allow an acceptable audit by the due date established by the department.

(h) The department will only accept third-party audits that meet department audit standards and are performed by auditors that meet independent third-party auditor qualifications.

(2) Subrecipient lists - A recipient must provide the department with a list of:

(a) All subrecipients and secondary subrecipients that received protected personal information originating from the recipient in the time frame requested; and

(b) All customers.

[]

NEW SECTION

WAC 308-10A-202 Vetting of subrecipients. Before giving a subrecipient access to protected personal information, the recipient must validate that the subrecipient demonstrates the following minimum requirements:

(1) The subrecipient has a permissible use under federal or Washington state laws, whichever is more restrictive.

(2) The subrecipient is a qualified recipient under federal or Washington state laws.

(3) The subrecipient has sufficient protections in place to secure the privacy of the protected personal information in accordance with the data sharing agreement.

[]

NEW SECTION

WAC 308-10A-203 Subrecipient disqualification. When the department notifies a recipient that its subrecipient is ineligible to receive protected personal information, the recipient must immediately:

(1) Terminate the subrecipient's access to protected personal information; and

(2) Require the subrecipient destroy all protected personal information it obtained through the recipient.

[]

NEW SECTION

WAC 308-10A-204 Subrecipient audit requirements. (1) A recipient must have procedures to audit subrecipients for compliance with the terms and conditions of its contract with the subrecipient.

(2) The audit methodologies must be sufficient for a reasonable person to conclude a subrecipient is compliant with requirements in the data sharing agreement.

[]

NEW SECTION

WAC 308-10A-205 Required written consent audits. (1) Recipients who provide protected personal information to subrecipients when a person must sign a release form under RCW 46.52.130, must establish processes to hold all subrecipients accountable for:

(a) Obtaining and maintaining the release form prior to requesting protected personal information;

(b) Verifying the release form is properly executed before requesting the protected personal information; and

(c) The consent is rightfully executed by the named individual or their authorized legal representative.

(2) The process for requesting driving records must include verifying the consent forms contain the required information in WAC 308-10A-901.

(3) The recipient must make records available to the department demonstrating the process for obtaining consent is in use and is effective. The department will establish minimum requirements for such processes in its data sharing agreement with the recipient.

[]

NEW SECTION

WAC 308-10A-301 Recipient-subrecipient data sharing agreement.

(1) A recipient must have a data sharing agreement with a subrecipient before giving the subrecipient access to protected personal information. The data sharing agreement terms need not be in a stand-alone document, but may be included in a general contract.

(2) The subrecipient data sharing agreement must include those requirements that the department has identified in the recipient's data sharing agreement as those to be passed on to subrecipient. A subrecipient data sharing agreement that does not contain all necessary requirements will not be considered adequate.

[]

NEW SECTION

WAC 308-10A-401 Standards for audits of recipients. When the department requires an audit under this section, it may accept an audit performed in the previous 12 months when it meets standards in the data sharing agreement and is performed by an auditor that meets independent third-party auditor qualifications.

For recipients receiving lists:

(1) Audit procedures must test for the presence of required policies and administrative, technical, or physical controls to reasonably conclude the controls are effective and in use by the recipient.

(2) Audit reports must provide documentation on the procedures, and the results of such procedures, used to determine whether controls align with requirements in the data sharing agreement.

For recipients receiving individual records of protected personal information, audit reports must demonstrate reasonable procedures were used to conclude each recipient is compliant with requirements in the data sharing agreement.

[]

NEW SECTION

WAC 308-10A-402 Selection of an auditor. If the department chooses not to perform an audit, the recipient must select a qualified independent third-party auditor to conduct the audit.

[]

NEW SECTION

WAC 308-10A-403 Independent third-party auditor qualifications. Independent third-party auditors conducting data security audits must, at a minimum, hold one of the following qualifications:

(1) American Institute of Certified Public Accountants (AICPA);
(2) Certified Information Security Auditor (CISA/ISACA);
(3) ANSI-ASQ National Accreditation Board (ANAB); or
(4) Other nationally recognized information technology auditing certification.

(5) An internal audit organization that can attest it conforms with the international standards for the professional practice of internal auditing.

[]

NEW SECTION

WAC 308-10A-404 Statement of compliance. The recipient will:

(1) Perform an annual self-assessment to determine compliance with the requirements of the data sharing agreement.

(2) Confirm in writing to the department annually that it complies with requirements in the data sharing agreement.

(3) Document instances of noncompliance with the data sharing agreement and include a corrective action plan to correct all deficiencies.

(4) Include a declaration with their statement of compliance that affirms protected personal information is only used as authorized.

[]

NEW SECTION

WAC 308-10A-405 Corrective action plans. (1) When notifying the department of any noncompliance with the data sharing agreement, the notification must include a corrective action plan for each deficiency.

(2) The corrective action plan must identify the anticipated date the recipient will complete each action to either bring the recipient into compliance or eliminate the deficiency.

(3) The department may accept the recipient's action, and close the action item, or may require additional action.

(4) The department may take any other action described in the recipient's data sharing agreement, this chapter, or state or federal law, without accepting corrective action plans as it deems necessary for the safety and welfare of the public.

[]

NEW SECTION**WAC 308-10A-500 Permissible uses pertaining to RCW 46.12.630.**

(1) For the purposes of RCW 46.12.630(1): The sharing of protected personal information will be in accordance with the following vehicle and vessel regulations as they existed on January 1, 2023:

(a) For vehicles:

(i) Titles I and IV of the Anti-Car Theft Act of 1992;

(ii) The Automobile Information Disclosure Act (15 U.S.C. Sec. 1231 et seq.);

(iii) The Clean Air Act (42 U.S.C. Sec. 7401 et seq.); and

(iv) 49 U.S.C. Secs. 30101-30183, 30501-30505, and 32101-33118;

(b) For vessels:

(i) 46 U.S.C. Sec. 4310; and

(ii) Any relevant section of the Code of Federal Regulations adopted by the United States Coast Guard.

(2) For the purposes of RCW 46.12.630(2):

(a) "Federal, state, or local agency," "local governmental entity," "governmental agency," and "government agency" have the same meaning as "governmental entity." (See WAC 308-10A-805.)

(b) For purposes of section RCW 46.12.630 (2)(h), "other applicable authority" includes out-of-state or Canadian entities legally authorized to operate a toll facility.

[]

NEW SECTION

WAC 308-10A-700 Research. (1) The department may disclose protected personal information for research purposes to governmental entities and bona fide research organizations only when:

(a) The research cannot reasonably be conducted without the protected personal information, the recipient provides adequate information for the department to reasonably determine that the disclosure of protected personal information will not harm individuals, the benefits

to be derived from the disclosure are clearly in the public interest, and the results are not of a commercial interest; or

(b) The research purpose has been approved in writing by an authorized official in the department, legislature, or governor's office.

(2) The department may disclose pseudonymized data for research purposes on the condition the recipient will make no attempt to re-identify individuals.

[]

NEW SECTION

WAC 308-10A-801 Agents. Where agents are permitted, a requestor may access protected personal information through a chain of agents. For example, an employer (requestor) may use an employment agency (agent #1) to request records on its behalf. In turn, the employment agency may request the record through a recipient (agent #2).

[]

NEW SECTION

WAC 308-10A-802 Offshoring. Unless otherwise explicitly authorized in statute, or with prior written authorization from the department, recipients must:

(1) Only allow protected personal information to be transmitted, accessed, viewed, stored, or processed within the United States.

(2) Maintain the primary, backup, disaster recovery, and other sites for storage of protected personal information within the United States.

[]

NEW SECTION

WAC 308-10A-804 Notification of misuse or unauthorized disclosure. In the event of misuse or unauthorized disclosure of personal or identity information by either the recipient or its subrecipient the recipient must:

(1) Notify the department as outlined in its data sharing agreement with the department;

(2) Cooperate with all department requirements in responding to the event;

(3) Notify the department before notifying individuals or the public.

The subrecipient must notify the recipient of a misuse or unauthorized disclosure of personal or identity information.

[]

NEW SECTION

WAC 308-10A-805 Applications for data. (1) An application must be submitted to the department when requesting data.

(a) The department may reject incomplete applications.

(b) The department may close the application if the applicant does not provide sufficient information to complete the application process within 90 days of request.

(c) The department may close an approved application to receive data if the applicant does not execute the data sharing agreement within 30 days of department sending the agreement to the applicant for signature.

(2) In the event of a declared emergency, the department may allow a governmental entity to execute a data sharing agreement prior to submitting a formal application. The government entity must submit the application by a date designated by the department. The department may waive the requirement for an application or a complete application.

[]

NEW SECTION

WAC 308-10A-806 Consent. For the purposes of disclosing protected personal information, an individual's authorized legal representative may authorize the disclosure.

[]

NEW SECTION**WAC 308-10A-901 Authorization to request a driving abstract.**

(1) When the subject of a driver's abstract must authorize the release of the abstract under RCW 46.52.130, the party requesting the driver's abstract under the terms of a data sharing agreement may use the department's release form, or its own version of the release form provided it contains the information required by federal and state law, and the department. The party requesting the driver's abstract under the terms of a data sharing agreement must verify that its release form is consistent with federal and state law, and department requirements.

(2) If a recipient or subrecipient uses its own version of the release form, the form must not bear the department logo or otherwise indicate it is an official Washington state document.

(3) The release form may be signed in ink or electronically.

(4) A release form must:

(a) Include the name and signature of the person whose record is being requested, or the name and signature of their authorized legal representative.

(b) Include the date the signature was made.

(c) Be signed by the employer or volunteer organization, attesting to:

(i) For employment/prospective employment, driving is a condition of employment or otherwise at the direction of the employer, or the

employee or prospective employee handles or will be handling heavy equipment or machinery.

(ii) For volunteering, the information is necessary for purposes related to driving by the individual at the direction of the volunteer organization.

(iii) For employee/prospective employee releases.

(A) Include a statement that any information contained in the abstract related to an adjudication that is subject to a court order sealing the juvenile record of an employee or prospective employee may not be used by the employer or prospective employer, or an agent authorized to obtain this information on their behalf, unless required by federal regulation or law; and

(B) Provide instructions for how someone can demonstrate that an adjudication contained in the abstract is subject to a court order sealing the juvenile record.

(I) The name(s) of the agent(s) authorized to obtain the information on the requestor's behalf.

(II) Include information on where to send the form after it is properly executed.

(5) When the subject of a driver's abstract must authorize the release of the abstract under RCW 46.52.130, the party requesting the driver's abstract under the terms of a data sharing agreement must retain the signed release form for at least six years.

(6) The signed release form may be used for employment or volunteering purposes during the period the subject of the driver's abstract is under continuous employment or volunteering. The employer or volunteering organization must process a new release form for the subject of the driver's abstract when there is a break in continuous employment or volunteering.

(7) For the purposes of prospective employment or volunteering, the release form and the driving record must be disposed of after six months from the date the record was obtained, or as otherwise required by law, if the subject of the driver's abstract is not placed into a position with the employer or volunteer organization that involves driving as a function of the position.

[]

NEW SECTION

WAC 308-10A-902 Data retention and destruction. (1) The recipient and its subrecipients must adopt data retention and destruction policies that are in keeping with state and federal law including, but not limited to, chapter 19.215 RCW.

(2) Except as otherwise required by law or as provided in a data sharing agreement, protected personal information may be retained only until the permissible use has been fulfilled or 10 years. After the required permissible use or retention period has been met, the protected personal information must be destroyed.

[]

WSR 23-19-012
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-183—Filed September 7, 2023, 4:21 p.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: The purpose of the proposal is to change the permanent rules for the Lake Roosevelt white sturgeon fishery. The anticipated effect of this change is enhanced conservation of the white sturgeon population in Lake Roosevelt; specifically, protection for certain year-classes of high conservation value while allowing for harvest of overrepresented year-classes of hatchery-origin sturgeon and moving to a fall fishing season to take advantage of cooler water temperatures, minimizing stress on nonharvested sturgeon, including wild adults. The Lake Roosevelt sturgeon fishery is currently closed to fishing by permanent rule. Changes would include a fishing season of September 16 - November 30 and a harvest slot limit of 53 - 63 inches fork length. In addition, anglers would be required to cease fishing for the day after obtaining a daily limit and for the season after the annual limit has been taken. Other statewide rules would apply.

Citation of Rules Affected by this Order: Amending WAC 220-316-010 Sturgeon—Areas, seasons, limits, and unlawful acts.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, and 77.12.047.

Adopted under notice filed as WSR 23-15-097 on July 18, 2023.

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 0, Repealed 0.

Date Adopted: September 5, 2023.

Kelly Susewind
Director

OTS-4755.1

AMENDATORY SECTION (Amending WSR 20-05-022, filed 2/7/20, effective 3/9/20)

WAC 220-316-010 Sturgeon—Areas, seasons, limits and unlawful acts. (1) It is unlawful to fish for or retain green sturgeon.

(2) It is unlawful to fish for sturgeon with terminal gear other than bait and one single-point barbless hook.

(3) Any sturgeon that cannot lawfully be retained must be released immediately.

(4) It is unlawful to totally or partially remove oversized sturgeon from the water. Oversized sturgeon are defined as: Any sturgeon larger than 55 inches fork length.

(5) It is unlawful to use a gaff or other body-penetrating device while restraining, handling, or landing a sturgeon.

(6) The daily limit for white sturgeon is one fish.

(7) The annual limit for white sturgeon is two fish, regardless of where the angler takes the sturgeon. After an angler reaches their annual limit of white sturgeon, catch and release fishing is permitted in areas open to catch and release fishing.

(8) The possession limit is two daily limits of fresh, frozen, or processed white sturgeon.

(9) It is unlawful to possess sturgeon eggs in the field without retaining the intact carcass of the fish from which the eggs have been removed.

(10) Statewide night closure for white sturgeon fishing.

(11) Coastal marine areas: Open year-round catch and release only.

(12) Coastal tributaries:

(a) Open when season is open for salmon or game fish.

(b) Catch and release only.

(13) Puget Sound marine areas: Open year-round catch and release only.

(14) Puget Sound tributaries:

(a) Open when season is open for salmon or game fish; except: Snohomish River from mouth to Highway 9 Bridge: Open year-round.

(b) Catch and release only.

(15) Columbia River and tributaries (except Snake River):

(a) From a true north-south line through Buoy 10 (the mouth) upstream to a line crossing the Columbia River from navigation marker 82 on the Oregon shore, westerly to the boundary marker on the Washington shore upstream of Fir Point (navigational marker 82 line; including Vancouver Lake and all other waters west of Burlington Northern Railroad from the Columbia River drawbridge near Vancouver downstream to Lewis River (Clark County): Open year-round catch and release only when season is open for salmon or game fish.

(b) From a line crossing the Columbia River from navigation marker 82 on the Oregon shore, westerly to the boundary marker on the Washington shore upstream of Fir Point (navigational marker 82 line) to a boundary marker on the Washington shore approximately 4,000 feet below the fish ladder at the powerhouse, south to the downstream end of Cascade Island, and across to the Oregon angling boundary on Bradford Island (the Cascade Island-Bradford Island line):

(i) Open September 1 through April 30: Catch and release only when season is open for salmon or game fish.

(ii) May 1 through August 31: Closed.

(c) From a boundary marker on the Washington shore approximately 4,000 feet below the fish ladder at the new powerhouse, south to the downstream end of Cascade Island, and across to the Oregon angling boundary on Bradford Island (the Cascade Island-Bradford Island line) to the Bonneville Dam: Closed.

(d) From Bonneville Dam to a line from the east (upstream) dock at the Port of The Dalles boat ramp straight across to a marker on the Washington shore:

(i) Open January 1 through April 30 for retention: Minimum fork-length 38 inches and maximum fork-length 54 inches.

(ii) Open May 1 through December 31: Catch and release only when season is open for salmon or game fish.

(e) From a line from the east (upstream) dock at the Port of The Dalles boat ramp straight across to a marker on the Washington shore to The Dalles Dam:

(i) Open January 1 through April 30 for retention: Minimum fork-length 38 inches and maximum fork-length 54 inches.

(ii) May 1 through August 31: Closed.

(iii) Open September 1 through December 31: Catch and release only when season is open for salmon or game fish.

(f) From The Dalles Dam to a line crossing the Columbia River at a right angle to the thread of the river located at the west end of the grain silo at Rufus, Oregon:

(i) Open January 1 through April 30 for retention: Minimum fork-length 43 inches and maximum fork-length 54 inches.

(ii) Open May 1 through December 31: Catch and release only when season is open for salmon or game fish.

(g) From a line crossing the Columbia River at a right angle to the thread of the river located at the west end of the grain silo at Rufus, Oregon to John Day Dam:

(i) Open January 1 through April 30 for retention: Minimum fork-length 43 inches and maximum fork-length 54 inches.

(ii) May 1 through August 31: Closed.

(iii) Open September 1 through December 31: Catch and release only when season is open for salmon or game fish.

(h) From John Day Dam to a line from the grain elevators at Patterson Ferry Road on the Oregon shore, straight across to a marker on the Washington shore at the west end of the old concrete foundation:

(i) Open January 1 through April 30 for retention: Minimum fork-length 43 inches and maximum fork-length 54 inches.

(ii) Open May 1 through December 31: Catch and release only when season is open for salmon or game fish.

(i) From a line from the grain elevators at Patterson Ferry Road on the Oregon shore, straight across to a marker on the Washington shore at the west end of the old concrete foundations to McNary Dam:

(i) Open January 1 through April 30 for retention: Minimum fork-length 43 inches and maximum fork-length 54 inches.

(ii) May 1 through August 31: Closed.

(iii) Open September 1 through December 31: Catch and release only when season is open for salmon or game fish.

(j) From McNary Dam to Vernita Bridge: Open year-round catch and release only when season is open for salmon or game fish.

(k) From Vernita Bridge to Priest Rapids Dam:

(i) Open September 1 through April 30: Catch and release only when season is open for salmon or game fish.

(ii) May 1 through August 31: Closed.

(l) From Priest Rapids Dam to Chief Joseph Dam: Open year-round catch and release only when season is open for salmon or game fish.

(m) From Chief Joseph Dam to Grand Coulee Dam and tributaries: Closed.

(n) Roosevelt Lake (~~(and tributaries: Closed.)~~):

(i) Open September 16 through November 30 for retention: Minimum fork-length 53 inches and maximum fork-length 63 inches.

(ii) Anglers must cease fishing for the day after obtaining a daily limit and for the season after the annual limit has been taken.

(iii) December 1 through September 15: Closed.

(iv) Roosevelt Lake tributaries: Closed.

(16) Snake River and tributaries:

(a) From the Snake River mouth (from the Burbank to Pasco railroad bridge) upstream to the downstream end of Goose Island: Open year-round catch and release only when season is open for salmon or game fish.

(b) From the downstream end of Goose Island upstream to Ice Harbor Dam:

(i) Open September 1 through April 30: Catch and release only when season is open for salmon or game fish.

(ii) May 1 through August 31: Closed.

(c) From Ice Harbor Dam upstream to the border with Oregon: Open year-round catch and release only when season is open for salmon or game fish.

(17) A violation of this section is an infraction, punishable under RCW 77.15.160, unless the person has harvested sturgeon. If the person has harvested sturgeon, the violation is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the sturgeon are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty—Criminal wildlife penalty assessment.

(18) It is unlawful to possess sturgeon taken with gear in violation of the provisions of this section. Possession of sturgeon while using gear in violation of the provisions of this section is a rebuttable presumption that the sturgeon were taken with such gear. Possession of such sturgeon is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the sturgeon are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty—Criminal wildlife penalty assessment.

[Statutory Authority: RCW 77.04.012, 77.04.055, and 77.12.047. WSR 20-05-022 (Order 20-23), § 220-316-010, filed 2/7/20, effective 3/9/20. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-316-010, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012 and 77.12.047. WSR 16-06-073 (Order 16-30), § 220-56-282, filed 2/26/16, effective 7/1/16. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 15-13-081 (Order 15-177), § 220-56-282, filed 6/12/15, effective 7/13/15. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047. WSR 15-06-065 and 15-06-006 (Order 15-033), § 220-56-282, filed 3/4/15 and 2/20/15, effective 7/1/15; WSR 14-04-120 (Order 14-26), § 220-56-282, filed 2/4/14, effective 3/7/14. Statutory Authority: RCW 77.04.012 and 77.12.047. WSR 13-11-125 (Order 13-105), § 220-56-282, filed 5/21/13, effective 6/21/13. Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 12-18-006 (Order 12-190), § 220-56-282, filed 8/23/12, effective 9/23/12. Statutory Authority: RCW 77.04.012 and 77.12.047. WSR 12-05-082 (Order 12-17), § 220-56-282, filed 2/16/12, effective 3/18/12. Statutory Authority: RCW 77.12.047. WSR 08-05-039 (Order 08-23), § 220-56-282, filed 2/13/08, effective 1/1/09; WSR 07-05-051 (Order 07-22), § 220-56-282, filed 2/16/07, effective 3/19/07; WSR 06-09-021 (Order 06-67), § 220-56-282, filed 4/11/06, effective 5/12/06; WSR 05-05-035 (Order 05-15), § 220-56-282, filed 2/10/05, effective 5/1/05; WSR 04-07-009 (Order 04-39), §

220-56-282, filed 3/4/04, effective 5/1/04; WSR 03-21-133 (Order 03-273), § 220-56-282, filed 10/21/03, effective 4/1/04; WSR 03-18-006 (Order 03-209), § 220-56-282, filed 8/20/03, effective 9/20/03; WSR 02-08-048 (Order 02-53), § 220-56-282, filed 3/29/02, effective 5/1/02; WSR 01-06-036 (Order 01-24), § 220-56-282, filed 3/5/01, effective 5/1/01. Statutory Authority: RCW 75.08.080. WSR 95-04-066 (Order 95-10), § 220-56-282, filed 1/30/95, effective 5/1/95; WSR 91-08-054 (Order 91-13), § 220-56-282, filed 4/2/91, effective 5/3/91; WSR 90-06-026, § 220-56-282, filed 2/28/90, effective 3/31/90; WSR 89-07-060 (Order 89-12), § 220-56-282, filed 3/16/89.]

WSR 23-19-014

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed September 8, 2023, 9:17 a.m., effective October 9, 2023]

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

Purpose: The health care authority is amending these rules to update application information and to revise income and resource limits.

Citation of Rules Affected by this Order: Amending WAC 182-513-1625, 182-513-1635, and 182-513-1640.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-16-145 on August 2, 2023.

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 3, Repealed 0.

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

Date Adopted: September 8, 2023.

Wendy Barcus
Rules Coordinator

OTS-4345.3

AMENDATORY SECTION (Amending WSR 17-12-019, filed 5/30/17, effective 7/1/17)

WAC 182-513-1625 Tailored supports for older adults (TSOA)—Applications. (1) Applications for tailored supports for older adults (TSOA) are submitted:

(a) Online at Washington Connection at www.washingtonconnection.org;

(b) By sending a completed HCA ((~~18-008~~) 18-005) application for TSOA form to P.O. Box 45826, Olympia, WA 98605;

(c) By faxing a completed HCA ((~~18-008~~) 18-005) application for TSOA form to 1-855-635-8305;

(d) By contacting the local area agency on aging (AAA) office at 1-855-567-0252; or

(e) By contacting the local home and community services (HCS) office. To find the local HCS office, see ((~~www.altsa.dshs.wa.gov/Resources/clickmap.htm~~)) <https://www.dshs.wa.gov/AL TSA/resources>.

(2) Help filing an application:

(a) The medicaid agency or the agency's designee provides help with the application or renewal process in a manner that is accessible to people with disabilities, limitations, or other impairments as de-

scribed in WAC 182-503-0120 and to those who are limited-English proficient as described in WAC 182-503-0110;

(b) For help filing an application, a person may:

(i) Contact a local AAA office;

(ii) Contact a local HCS office; or

(iii) Have an authorized representative apply on the person's behalf.

(3) The following people can apply for the TSOA program:

(a) The applicant (the person receiving care);

(b) The applicant's spouse;

(c) The applicant's caregiver (person providing in-home caregiver services);

(d) A legal guardian; or

(e) An authorized representative, as defined in WAC 182-500-0010.

(4) A phone interview is required to establish TSOA financial eligibility, but may be waived if the applicant is unable to comply:

(a) Due to the applicant's medical condition; and

(b) Because the applicant does not have another person that is able to conduct the interview on the applicant's behalf.

(5) The agency or the agency's designee processes TSOA applications using the same timelines under WAC 182-503-0060.

(6) TSOA begins on the date the person is determined presumptively eligible for TSOA under WAC 182-513-1620, or on the date all eligibility requirements are established if the person is not found presumptively eligible.

(7) When the person withdraws an application for TSOA, or is determined ineligible for TSOA services, the agency or the agency's designee denies the application under WAC 182-503-0080.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2016 1st sp.s. c 36 § 213 (1)(e), section 1115 of the Social Security Act, and 42 C.F.R. §§ 431.400 through 431.428. WSR 17-12-019, § 182-513-1625, filed 5/30/17, effective 7/1/17.]

AMENDATORY SECTION (Amending WSR 17-12-019, filed 5/30/17, effective 7/1/17)

WAC 182-513-1635 Tailored supports for older adults (TSOA)—Income eligibility. (1) To determine income eligibility for the tailored supports for older adults (TSOA) program, the medicaid agency or the agency's designee uses the following rules depending on whether the person is single or married.

(2) If the TSOA applicant is single, the agency or the agency's designee:

(a) Determines available income under WAC 182-513-1325;

(b) Excludes income under WAC 182-513-1340; and

(c) Compares remaining gross nonexcluded income to ~~((the special income level (SIL)))~~ 400 percent of the federal benefit rate (FBR) for the supplemental security income (SSI) cash grant program. To be eligible, a person's gross income must be equal to or less than ~~((the SIL (three hundred percent)))~~ 400 percent of the ((federal benefit rate (FBR))) FBR.

(3) If the TSOA applicant is married, the agency or the agency's designee:

(a) Determines available income under WAC 182-513-1330 with the exception of subsections (5) and (6) of that section;

(b) Excludes income under WAC 182-513-1340; and

(c) Compares the applicant's remaining gross nonexcluded income to ~~((the SIL))~~ 400 percent of the FBR. To be eligible, a person's gross income must be equal to or less than ~~((the SIL (three hundred percent of the FBR)))~~ 400 percent of the FBR.

(4) The FBR changes annually on January 1st.

(5) The current TSOA income standard is found on the Washington apple health income and resource standards chart, institutional standards section; see www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2016 1st sp.s. c 36 § 213 (1)(e), section 1115 of the Social Security Act, and 42 C.F.R. §§ 431.400 through 431.428. WSR 17-12-019, § 182-513-1635, filed 5/30/17, effective 7/1/17.]

AMENDATORY SECTION (Amending WSR 17-12-019, filed 5/30/17, effective 7/1/17)

WAC 182-513-1640 Tailored supports for older adults (TSOA)—Resource eligibility. (1) The resource standard for a single applicant for tailored supports for older adults (TSOA) is ~~((\$53,100))~~ six times the Washington state average monthly private nursing facility rate, as determined by the department of social and health services under chapter 74.46 RCW.

(2) The resource standard for a married couple is ~~((\$53,100))~~ six times the Washington state average monthly private nursing facility rate, as determined by the department of social and health services under chapter 74.46 RCW, for the TSOA applicant plus the state spousal resource standard for the spousal impoverishment protections community (SIPC) spouse. The state spousal resource standard may change annually on July 1st. ~~((The resource standards are found at www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources.)~~)

(3) The medicaid agency or the agency's designee uses rules in WAC 182-513-1350 (1), (3) and (4) to determine general eligibility relating to resources, availability of resources, and which resources count.

(4) The TSOA recipient has one year from the date of initial eligibility of TSOA to transfer resources in excess of the TSOA standard to the SIPC spouse.

(5) The resource standard for TSOA changes annually on January 1st based on the current average private nursing facility rate, as determined by the department of social and health services under chapter 74.46 RCW.

(6) The current TSOA standards and the current average private nursing facility rate are found on the Washington apple health income and resource standards chart, institutional standards section; see www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2016 1st sp.s. c 36 § 213 (1)(e), section 1115 of the Social Security Act, and 42 C.F.R. §§ 431.400 through 431.428. WSR 17-12-019, § 182-513-1640, filed 5/30/17, effective 7/1/17.]

WSR 23-19-018

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed September 8, 2023, 3:05 p.m., effective October 9, 2023]

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

Purpose: The health care authority (agency) is amending WAC 182-550-2750 to correct a typographical error in a WAC reference. The rule references chapter 246-318 WAC; the correct citation is chapter 246-320 WAC. The agency is repealing WAC 182-550-4700 because the hospital selective contracting program to which it applies ended June 30, 2007. The agency is repealing WAC 182-550-5425 because the upper payment limit program to which it applies ended July 1, 2007. The agency is amending WAC 182-550-1100 by deleting subsection (3)(b) because it applies only to the agency's selective contracting program that ended June 30, 2007.

Citation of Rules Affected by this Order: Repealing WAC 182-550-4700 and 182-550-5425; and amending WAC 182-550-2750 and 182-550-1100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-14-023 on June 23, 2023.

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 2, Repealed 2.

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

Date Adopted: September 8, 2023.

Wendy Barcus
Rules Coordinator

OTS-4700.1

AMENDATORY SECTION (Amending WSR 23-04-049, filed 1/26/23, effective 2/26/23)

WAC 182-550-1100 Hospital care—General. (1) The medicaid agency:

(a) Pays for an eligible Washington apple health client's admission to a hospital only when the client's attending physician orders admission and when the admission and treatment provided:

(i) Are covered under WAC 182-501-0050, 182-501-0060 and 182-501-0065;

(ii) Are medically necessary as defined in WAC 182-500-0070;

(iii) Are determined according to WAC 182-501-0165 when prior authorization is required;

(iv) Are authorized when required under this chapter; and

(v) Meet applicable state and federal requirements.

(b) For hospital admissions, defines "attending physician" as the client's primary care provider, or the primary provider of care to the client at the time of admission.

(2) Medical record documentation of hospital services must meet the requirements in WAC 182-502-0020.

(3) The agency(~~(+~~

~~(a-))~~ pays for a hospital covered service provided to an eligible apple health client enrolled in an agency-contracted managed care organization (MCO) plan, under the fee-for-service program if the service is excluded from the MCO's capitation contract with the agency and meets prior authorization requirements. (See WAC 182-550-2600 for inpatient psychiatric services.)

~~((b) Does not pay for nonemergency services provided to an apple health client from a nonparticipating hospital in a selective contracting area (SCA) unless exclusions in WAC 182-550-4700 apply. The agency's selective contracting program and selective contracting payment limitations end for hospital claims with dates of admission before July 1, 2007.))~~

(4) The agency pays up to 26 days of inpatient hospital care for hospital-based withdrawal management, medical stabilization, and drug treatment for chemical dependent pregnant clients eligible under the substance-using pregnant people (SUPP) program.

See WAC 182-533-0701 through 182-533-0730.

(5) The agency pays for inpatient hospital withdrawal management of acute alcohol or other drug intoxication when the services are provided to an eligible client:

(a) In a withdrawal management unit in a hospital that has a withdrawal management provider agreement with the agency to perform these services and the services are approved by the division of behavioral health and recovery (DBHR) within the health care authority (HCA); or

(b) In an acute hospital and all the following criteria are met:

(i) The hospital does not have a withdrawal management specific provider agreement with DBHR;

(ii) The hospital provides the care in a medical unit;

(iii) Nonhospital-based withdrawal management is not medically appropriate for the client;

(iv) The client does not require medically necessary inpatient psychiatric care and it is determined that an approval from the agency or the agency's designee as an inpatient stay is not indicated;

(v) The client's stay qualifies as an inpatient stay;

(vi) The client is not participating in the agency's substance-using pregnant people (SUPP) program; and

(vii) The client's principal diagnosis meets the agency's medical inpatient withdrawal management criteria listed in the agency's published billing instructions.

(6) The agency covers medically necessary dental-related services provided to an eligible client in a hospital-based dental clinic when the services:

(a) Are provided under chapter 182-535 WAC; and

(b) Are billed on the American Dental Association (ADA) or health care financing administration (HCFA) claim form.

(7) The agency pays a hospital for covered dental-related services, including oral and maxillofacial surgeries, that are provided in the hospital's operating room, when:

- (a) The covered dental-related services are medically necessary and provided under chapter 182-535 WAC;
- (b) The covered dental-related services are billed on a UB claim form; and
- (c) At least one of the following is true:
- (i) The dental-related service(s) is provided to an eligible apple health client on an emergency basis;
 - (ii) The client is eligible under the division of developmental disability program;
 - (iii) The client is age eight or younger; or
 - (iv) The dental service is prior authorized by the agency.
- (8) For inpatient voluntary or involuntary psychiatric admissions, see WAC 182-550-2600.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 23-04-049, § 182-550-1100, filed 1/26/23, effective 2/26/23; WSR 21-15-128, § 182-550-1100, filed 7/21/21, effective 8/21/21. Statutory Authority: RCW 41.05.021, 41.05.160, 2014 c 225. WSR 16-06-053, § 182-550-1100, filed 2/24/16, effective 4/1/16. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-18-065, § 182-550-1100, filed 8/27/15, effective 9/27/15. WSR 11-14-075, recodified as § 182-550-1100, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 07-14-053, § 388-550-1100, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. WSR 01-16-142, § 388-550-1100, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090. WSR 01-02-075, § 388-550-1100, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-1100, filed 12/18/97, effective 1/18/98.]

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

WAC 182-550-2750 Hospital discharge planning services. For discharge planning service requirements, see chapter ((246-318)) 246-320 WAC.

[WSR 11-14-075, recodified as § 182-550-2750, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-2750, filed 12/18/97, effective 1/18/98.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|------------------|---|
| WAC 182-550-4700 | Payment—Non-SCA participating hospitals. |
| WAC 182-550-5425 | Upper payment limit (UPL) payments for inpatient hospital services. |

WSR 23-19-019
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed September 8, 2023, 3:12 p.m., effective December 31, 2023]

Effective Date of Rule: December 31, 2023.

Purpose: The repeal of WAC 357-28-245 is to allow general government employers the flexibility to manage overtime eligibility rather than require approval from the director of the office of financial management. The amendment to WAC 357-58-160 is to remove the reference to WAC 357-28-245 due to the repeal of WAC 357-28-245. General government employers will no longer be required to request director approval when a nonrepresented employee's position is changed from overtime eligible to overtime exempt.

Citation of Rules Affected by this Order: Repealing WAC 357-28-245; and amending WAC 357-58-160.

Statutory Authority for Adoption: RCW 41.06.133.

Adopted under notice filed as WSR 23-12-084 on June 6, 2023.

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

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

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

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

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

Date Adopted: September 8, 2023.

Nathan Sherrard
Assistant Legal Affairs Counsel

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

WAC 357-58-160 How are hours of work established for WMS employees? Agencies must assign each WMS position to one of the overtime eligibility designations identified in the compensation plan and determine the position's work week.

For overtime eligible employees, compensation must be in accordance with the following sections of chapter 357-28 WAC:

((~~WAC 357-28-245~~))

WAC 357-28-250

WAC 357-28-255

WAC 357-28-260

WAC 357-28-265

WAC 357-28-275

WAC 357-28-280

WAC 357-28-285

[Statutory Authority: Chapter 41.06 RCW. WSR 05-12-069, § 357-58-160, filed 5/27/05, effective 7/1/05.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-28-245	Is approval required when a general government employer changes a position's overtime eligibility designation?
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WSR 23-19-024

PERMANENT RULES

SKAGIT VALLEY COLLEGE

[Filed September 10, 2023, 12:38 p.m., effective October 11, 2023]

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

Purpose: 2SHB 1751, Sam's Law, the new antihazing legislation recently adopted in Washington state, is named after Sam Martinez, a freshman at Washington State University who died of alcohol poisoning at a fraternity party in November 2019. The new law updates the definition of hazing and requires institutions of higher education (IHEs) to implement antihazing programming for employees and students. It also requires IHEs to publish an annual report identifying student organizations, athletic teams, and living groups found responsible for engaging in hazing.

Citation of Rules Affected by this Order: Amending WAC 132D-150-050(9), Hazing.

Statutory Authority for Adoption: RCW 28B.10.901 and 28B.10.902.

Adopted under notice filed as WSR 23-12-016 [23-16-136] on August 2 [May 25], 2023.

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

Number of Sections Adopted at the Request of a 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 1, Repealed 0.

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

Date Adopted: September 12, 2023.

Pam Davis
Executive Assistant to the President
Rules Coordinator

OTS-4453.1

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-050 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruption.** Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is severe or pervasive physical or verbal abuse involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical, religious, or other purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self defense.

(9) **Hazing.** (~~Hazing includes, but is not limited to, any initiation into a student organization~~) Any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious (~~mental~~) psychological or emotional harm, to any student or other person attending a public institution of higher education in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including (~~twenty-five~~) 25 feet from entrance

ces, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" includes, but is not limited to, cigarettes, pipes, bidi, clove cigarettes, water-pipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

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

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

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that

person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of sexual harassment. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic.

(15) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[Statutory Authority: RCW 28B.50.150. WSR 16-04-102, § 132D-150-050, filed 2/2/16, effective 3/4/16.]

WSR 23-19-026
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Massage)

[Filed September 11, 2023, 5:47 p.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: Health equity continuing education (CE) for massage therapists. RCW 43.70.613 (3)(b) directs the rule-making authority for each health profession licensed under Title 18 RCW that is subject to CE to adopt rules requiring a licensee to complete health equity CE training at least once every four years. The statute also directs the department of health (department) to create model rules establishing the minimum standards for health equity CE programs. The department filed model rules for health equity CE minimum standards on November 23, 2022, under WSR 22-23-167. Any rules developed for massage therapists must meet or exceed the minimum standards in the model rules in WAC 246-12-800 through 246-12-830.

The board of massage (board) in coordination with the department, is adopting amendments to WAC 246-830-475 to implement ESSB 5229 (chapter 276, Laws of 2021). The board and department are adopting the health equity model rules, WAC 246-12-800 through 246-12-830, for massage therapy to comply with RCW 43.70.613. The adopted rule adds two hours of health equity education to be completed as part of the current CE requirements every two years.

The adopted rule does not change total CE hours, but requires two hours in health equity CE every two years, which is absorbed into the existing number of CE hours required. The health equity CE requirement is counted under existing, unspecified CE requirements for the profession.

Citation of Rules Affected by this Order: Amending WAC 246-830-475.

Statutory Authority for Adoption: RCW 43.70.613 and 18.108.025.

Adopted under notice filed as WSR 23-12-095 on June 6, 2023.

Changes Other than Editing from Proposed to Adopted Version: It is not a substantive change because it does not change the overall requirement of CE hours for massage therapists.

WAC 246-830-475 (2)(c) was amended to require a minimum of two hours in health equity CE every two years. The proposed version required a minimum of four hours in health equity CE every two years.

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

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

Number of Sections Adopted at the Request of a 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: September 11, 2023.

Heidi Williams, LMT
Board of Massage Chairperson
and Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-4459.3

AMENDATORY SECTION (Amending WSR 21-02-012, filed 12/24/20, effective 9/1/21)

WAC 246-830-475 Continuing education requirements. (1) To renew a license, a massage therapist must complete (~~twenty-four~~) 24 hours of continuing education every two years, as provided in (~~chapter 246-12 WAC, Part 7~~) WAC 246-12-170 through 246-12-240. Continuing education must be provided by an individual who has at least three years of professional experience in the subject area being taught. Massage therapists have a duty to ensure the continuing education they complete meets the requirements in this section.

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

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

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

(c) A minimum of two hours must be in health equity continuing education training as described in WAC 246-12-800 through 246-12-830; and

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

(3) For the purposes of this chapter, the remaining hours of continuing education are defined as any of the following activities reasonably related to massage therapy knowledge, skills, and business practices:

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

(b) First aid certification or emergency related courses;

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

The required documentation for this activity is a one page, single spaced, (~~twelve~~) 12 point font synopsis of what was learned written by the licensee. The time spent writing the synopsis is not reportable. Two hours of credit is allowed per report, and no more than two separate reports may be submitted per reporting period;

(d) Teaching a course for the first time;

(e) Business and management courses;

(f) Distance learning. Distance learning includes, but is not limited to, correspondence course, multimedia or webinar, print, audio or video broadcasting, audio or video teleconferencing, computer aided instruction, e-learning or on-line-learning, or computer broadcasting or webcasting; or

(g) Active service on boards or participation in professional or government organizations specifically related to the practice of massage.

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

(a) Transcripts;

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

(c) Certificate of attendance or completion; or

(d) Other formal documentation that includes the following:

(i) Participant's name;

(ii) Course title;

(iii) Course description;

(iv) Date or dates of course;

(v) Number of hours;

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

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

(viii) Instructor or sponsor contact information; and

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

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

[Statutory Authority: RCW 18.108.085 (1)(a), 18.108.025 (1)(a), chapter 18.108 RCW and 2020 c 76. WSR 21-02-012, § 246-830-475, filed 12/24/20, effective 9/1/21. Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-475, filed 6/29/17, effective 7/30/17. Statutory Authority: RCW 18.108.025, 18.108.125, and 43.70.250. WSR 09-11-016, § 246-830-475, filed 5/7/09, effective 6/7/09. Statutory Authority: RCW 18.108.025(1). WSR 95-11-108, § 246-830-475, filed 5/23/95, effective 6/23/95; WSR 94-13-181, § 246-830-475, filed 6/21/94, effective 7/22/94.]

WSR 23-19-028
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Office of the Secretary)

(Office of Information Governance)

[Filed September 12, 2023, 9:57 a.m., effective October 13, 2023]

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

Purpose: The rules add language to clarify, update, and ensure clear policies for responding to public records requests under chapter 42.56 RCW and align policy to comply with new statutes. The amendments repeal redundant language of WAC 388-01-050.

Citation of Rules Affected by this Order: Repealing WAC 388-01-050; and amending WAC 388-01-005 (recodified under WAC 388-01-010), 388-01-010 (recodified under WAC 388-01-005), 388-01-020, 388-01-030, 388-01-060, 388-01-080, 388-01-090, 388-01-100, 388-01-120, 388-01-130, 388-01-150, [388-01-160,] 388-01-170, 388-01-180, 388-01-190, and 388-01-200.

Statutory Authority for Adoption: RCW 42.56.040.

Adopted under notice filed as WSR 23-10-046 on April 27, 2023.

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 15, 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: September 12, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4974.2

Chapter 388-01 WAC
((~~DSHS ORGANIZATION/DISCLOSURE OF~~) PUBLIC RECORDS
—DISCLOSURE

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-005 (~~(What definitions apply to this chapter?)~~) Definitions. The following definitions apply to this chapter:

(1) "Authorization" means a detailed document that gives DSHS permission to use or disclose confidential information and records for specified purposes and within a designated time frame.

(2) "Business days" means Monday through Friday, excluding legal holidays.

(3) "Client" means a person who receives services or benefits from DSHS. Clients include but are not limited to, consumers, recipients, applicants, residents of DSHS facilities or institutions, patients, ~~((parents and children involved with child welfare services, juveniles involved with the juvenile justice system,))~~ parents receiving support enforcement services, persons who previously received services or benefits, and persons applying for benefits or services.

(4) "DSHS" means the department of social and health services.

(5) "Public records coordinator" means a person designated to respond to public records requests within an organizational unit or who are appointed as responsible for a local office, unit, region, program, or facility.

(6) "Public records officer" means the person designated as the public records officer for the DSHS under RCW 42.56.580. The DSHS public records officer has primary responsibility for management, oversight, and monitoring of DSHS's public records request process.

(7) "Redact" means deleting or marking out exempt information from a public record.

(8) "Third party notice" means notifying affected persons or entities of a public records request to allow the opportunity to enjoin disclosure of the records under RCW 42.56.540.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-005, filed 2/9/18, effective 3/12/18.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-010 What ((are)) is the ((purposes)) purpose of this chapter? The ((purposes)) purpose of this chapter ~~((are to:~~

~~(1) Describe the organization of the department of social and health services (DSHS); and~~

~~(2) Explain how an individual or organization may obtain public records.))~~ is to ensure compliance by the department of social and health services with the provisions of the Public Records Act, chapter 42.56 RCW.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-010, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-010, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-015 Does any provision in this title create a cause of action? Except where otherwise provided, no provision in Title 388 WAC:

- (1) Creates or is intended to create any right or cause of action;
- (2) Adds to or intends to add to any existing right or cause of action; or
- (3) Compels the establishment of any program or special entitlement.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-015, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 43.17.060. WSR 02-15-119, § 388-01-015, filed 7/18/02, effective 8/18/02.]

AMENDATORY SECTION (Amending WSR 19-02-018, filed 12/21/18, effective 1/21/19)

WAC 388-01-020 How is DSHS organized? DSHS is organized into administrations which direct the provision of food and cash assistance, long-term care, vocational rehabilitation, services for people with intellectual and developmental disabilities, and behavioral health treatment for people in state-operated psychiatric hospitals as well as those with criminal justice involvement, and waiting to receive competency evaluation and restoration services. DSHS contracts with local government, private, and nonprofit contractors to deliver these services, and operates over 140 field offices and 12 state-run facilities throughout Washington.

~~((1))~~ DSHS's current organizational structure can be located at the following link: <https://www.dshs.wa.gov/office-of-the-secretary/organizational-chart>.

~~((2) You may also request organizational charts by writing to:
DSHS, office of the secretary
P.O. Box 45010
Olympia, WA 98504-5010.)~~

[Statutory Authority: RCW 42.56.040 and chapter 42.56 RCW. WSR 19-02-018, § 388-01-020, filed 12/21/18, effective 1/21/19. Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-020, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-020, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 19-02-018, filed 12/21/18, effective 1/21/19)

WAC 388-01-030 What public records are available? (1) DSHS prepares and ~~((keeps))~~ maintains public records that relate to the programs it administers. All records DSHS uses to conduct business are public records.

DSHS public records may include documents, audio and video recordings, pictures, email, ~~((computer disks,))~~ and electronic data.

(2) DSHS public records are available to the public unless a law exempts them from disclosure. Some DSHS records are confidential and not available to everyone. Records exempt from public disclosure are

listed under chapter 42.56 RCW, WAC 388-01-120, and other federal and state laws applicable to DSHS.

(3) Clients, or someone authorized to act for a client, may access confidential records about the client that are exempt from disclosure to the public unless specifically prohibited by law.

(4) Upon request, DSHS may provide access to records such as rules, policies, indexes, interpretive statements, pamphlets, forms, and other publications at cost under WAC 388-01-180 without using the public records request process.

[Statutory Authority: RCW 42.56.040 and chapter 42.56 RCW. WSR 19-02-018, § 388-01-030, filed 12/21/18, effective 1/21/19. Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-030, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 41.17.020 [42.17.250], 41.17.260 [42.17.260], and 41.17.300 [42.17.300]. WSR 03-17-014, § 388-01-030, filed 8/12/03, effective 9/12/03. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-030, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 19-02-018, filed 12/21/18, effective 1/21/19)

WAC 388-01-060 How may an individual request a public record?

(1) An individual may request a public record (~~orally~~) verbally or in writing from the DSHS public records officer using the following contact information:(-)

DSHS public records officer
Office of information governance
P.O. Box 45135
Olympia WA 98504-5135
Telephone: (360) 902-8484
Fax: (360) 902-7855
Email: DSHSPublicDisclosure@dshs.wa.gov.

DSHS prefers that all public record requests be in writing on the "request for DSHS records" form, DSHS 17-041(~~(-X)~~). Individuals may locate this form on the DSHS website at (~~(https://www.dshs.wa.gov/fsa/forms)~~) https://www.dshs.wa.gov/office-of-the-secretary/forms or request it from(~~(-~~

~~DSHS public records officer~~
~~Services and enterprise support administration~~
~~Information governance unit~~
~~P.O. Box 45135~~
~~Olympia, WA 98504-5135~~
~~Telephone: (360) 902-8484~~
~~Fax: (360) 902-7855~~

~~Email: DSHSPublicDiselosure@dshs.wa.gov.)~~ the DSHS public records officer.

(2) If an individual does not use the DSHS form, the written public record request should include the following information:

(a) The requester's name, organization, mailing address, telephone number, fax number, and email address;

(b) The date of the request;

(c) A detailed description of the identifiable public record being requested;

(d) The email or mailing address where DSHS should send copies of the records, or if the requester wants to inspect the record at DSHS; and

(e) The requester's signature.

(3) An individual may fill out a record request at a DSHS office or send it by regular mail, email, or fax to the public records officer (~~listed in WAC 388-01-050~~).

(4) Requests by third parties for confidential client records must be accompanied by a valid authorization as set forth in WAC 388-01-150.

(5) DSHS may ask an individual requesting a public record for personal identification when the law makes a record disclosable to a specific person.

(6) DSHS may deny a "bot" request, which is one of multiple requests from a requester within a (~~twenty-four~~) 24 hour period, if responding to multiple requests would cause excessive interference with other essential DSHS functions.

[Statutory Authority: RCW 42.56.040 and chapter 42.56 RCW. WSR 19-02-018, § 388-01-060, filed 12/21/18, effective 1/21/19. Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-060, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-060, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-070 When may a public record be inspected? (1) Individuals may inspect public records during DSHS office hours. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. Contact the public records coordinator in the appropriate office to arrange a time to inspect the public record.

(2) In order to preserve the record or prevent interference in the performance of departmental duties, DSHS reserves the right to restrict an individual's ability to inspect or copy public records. This does not prevent DSHS from providing copies of the public record by mail or email.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-070, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-070, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-080 Does DSHS charge for inspecting or providing public records? (1) There is no fee for inspecting public records.

(2) Pursuant to RCW 42.56.120 (2)(b), DSHS does not calculate the actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) DSHS does not have the resources to conduct a study to determine all of its actual copying costs; and
 (b) To conduct such a study would interfere with other essential agency functions.

(3) DSHS may do one or more of the following:

(a) Charge for copies of records according to the default fees in RCW 42.56.120 (2) (b), (c) and (d);

(b) Charge for customized services pursuant to RCW 42.56.120(3);

(c) Charge other copy fees authorized by statutes outside of chapter 42.56 RCW;

(d) Enter into an alternative fee agreement with a requester under RCW 42.56.120(4).

(e) Charge for an advanced deposit of 10% of the estimated fees, including a customized service charge, as allowable under RCW 42.56.120(4).

(4) Responsive records may be provided in installments as allowable under RCW 42.56.120(4). Each installment must be either paid for or inspected prior to fulfilling the remainder of the request.

(5) Payment must be made by check or money order to the department of social and health services.

(6) The department will close a request as abandoned when the requester fails within 30 days to pay for a request, or an installment, or for the required 10% deposit.

~~((4))~~ (7) DSHS may waive copying fees in one or more of the following circumstances:

(a) Clients or someone having a valid authorization or court order to act for a client receiving the first copy of their client file;

(b) Producing records assists in managing a program;

(c) The expense of billing exceeds the cost of producing records ~~((--))~~;

(d) Fees totaling less than \$2.00.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-080, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-080, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-090 When and how must DSHS respond to a public record request? (1) Within five business days after DSHS receives a public record request, DSHS must:

(a) Produce responsive public records;

(b) Acknowledge receipt of the request and provide an estimated date for first response;

(c) Provide an internet address and link to the specific records requested;

(d) Seek clarification of an unclear request; or

(e) Deny the request in writing, noting the reason(s) for denial.

(2) DSHS may produce records in installments, as appropriate.

(3) A request received after office hours will be considered to have been received on the following business day.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-090, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-090, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-100 When may DSHS need to extend the time to respond to a public record request? (1) DSHS may extend its estimated response time to:

- (a) Locate and gather responsive records;
 - (b) Notify an individual or organization identified in the records or affected by the request;
 - (c) Determine whether requested records are exempt and whether all or part of the records may be released;
 - (d) Contact the requester to clarify the intent, scope, or specifics of the request.
- (2) If a requester does not clarify an unclear request under subsection (1)(d) of this section, DSHS does not have to respond to the unclear parts of the request.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-100, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-100, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-110 What if a requester disputes production time estimates? If a requester thinks DSHS's time estimate for producing records under chapter 42.56 RCW is unreasonable, the requester may:

- (1) Petition the public records coordinator to reduce the time estimate; or
- (2) File a lawsuit in superior court under RCW 42.56.550(2).

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-110, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-110, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-120 What if the public record contains information that is exempt from public disclosure? (1) Public records and information may be exempt from disclosure or production under chapter 42.56 RCW or other state or federal laws. Commonly applicable exemptions include, but are not limited to, the following:

(a) Under RCW 42.56.230(1), personal information in files maintained for welfare recipients and patients or clients of public institutions or public health agencies. Personal information includes, but is not limited to:

- (i) Names;
- (ii) Telephone numbers;
- (iii) Fax numbers;
- (iv) Email addresses;
- (v) Social Security numbers;
- (vi) Medical record numbers;
- (vii) Health plan beneficiary numbers;
- (viii) Account numbers;
- (ix) Certificate or license numbers;
- (x) Vehicle identifiers and serial numbers, including license plate numbers;
- (xi) Device identifiers and serial numbers;
- (xii) Web universal resource locators (URLs);
- (xiii) Internet protocol (IP) address numbers;
- (xiv) Biometric identifiers, including finger and voice prints;
- (xv) Full face photographic images and any comparable images;
- (xvi) Any other unique identifying number, characteristic, or code;
- (xvii) All geographic subdivisions smaller than a state, including street address, mailing address, city, county, precinct, geocodes, and zip code, except for the initial three digits of a zip code; and
- (xviii) All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death.

(b) Under RCW 74.04.060 and related federal laws, information and records about applicants and recipients of public assistance and other services provided and received under Title 74 RCW.

(c) Under chapter 13.50 RCW and related federal laws, information and records about juvenile offender and child welfare cases.

(d) Under chapter 26.23 RCW and related federal laws, information and records about child support enforcement.

(e) Under chapter 26.33 RCW and related federal laws, information and records about adoption.

(f) Under chapter 70.02 RCW and related federal laws, protected health care information and medical records.

(g) Under RCW 74.34.095, information and records about alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

(h) Under RCW 42.56.230(3), personal information in files maintained for DSHS employees or elected officials to the extent that disclosure would violate their right to privacy.

(i) Under RCW 42.56.250, the following information from personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency:

- (A) Residential addresses;
- (B) Residential phone numbers;
- (C) Personal wireless telephone numbers;
- (D) Personal email addresses;
- (E) Social Security numbers;
- (F) Driver's license numbers;
- (G) Identocard numbers;
- (H) Personal demographic details;

(I) Photographs and month and year of birth, except the news media shall have access to the photographs and full dates of birth;

~~((H))~~ (J) Emergency contact information; and

~~((I))~~ (K) Names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency.

(j) Under RCW 42.56.640 and 43.17.410, sensitive personal information of vulnerable individuals and in-home caregivers for vulnerable populations, except as allowed under subsection (3) of this section.

(2) If the requested public record contains information that is exempt from public disclosure, DSHS may:

(a) As appropriate, release the nonexempt portion, explaining what exemptions apply to redacted portions of the record;

(b) As appropriate, deny release of the entire record, sending a written explanation and citing the exemption that applies to the denial; or

(c) Neither confirm or deny the existence of the requested records and provide the legal basis for confidentiality as if the responsive records existed, when a denial would reveal information that is confidential and must not be disclosed.

(3) Sensitive personal information under subsection (1)(j) of this section may be disclosed or produced if DSHS determines that the requester:

(a) Meets the criteria under RCW 42.56.645; and

(b) Has complied with any procedures developed by DSHS to protect the confidentiality of the information.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-120, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-120, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-130 What are a requester's options if DSHS denies a public record request? (1) After DSHS takes final action to deny all or a portion of a public record request, a requester may do any one or more of the following:

(a) Petition for agency review by the denying public records coordinator or an approved designee. The written request must specifically refer to the written statement by the public records coordinator that constituted or accompanied the denial.

(b) Ask the office of the attorney general to review the public record request.

(i) Send a copy of the denied public record request and the DSHS written denial to:

Office of the attorney general
Public records review
P.O. Box 40100
Olympia(~~7~~) WA 98504-0100.

(ii) The office of the attorney general will review the request and DSHS denial. The office of the attorney general issues a written opinion as to whether the requested public record is excluded from disclosure.

(c) File a lawsuit for judicial review under the Public Records Act in superior court in the county where the public record is located.

(2) "Final action" occurs when DSHS indicates that it will not provide responsive records. When DSHS produces installments of records, final action occurs when DSHS produces its last installment or indicates that it will not reconsider a denial. Before DSHS produces its last installment, DSHS may cure deficiencies within prior installments. DSHS encourages requesters to contact the public records coordinator with questions or concerns about installments prior to final action.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-130, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-130, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-140 If a public record identifies or pertains to an individual or organization, other than the requester, is that individual or organization notified? (1) If records responsive to a public records request identify or pertain directly to an individual or organization other than the requester, DSHS may notify the named individual or organization about the request.

(2) DSHS's third party notice may include:

(a) A copy of the original request;

(b) If appropriate, the records that identify or pertain to the third party;

(c) The date DSHS intends to release the record; and

(d) A statement that the third party may prevent release of the record by agreement or by bringing a lawsuit and getting an injunction against DSHS and the requester under RCW 42.56.540 prior to the intended release date.

(3) DSHS may inform the requester that:

(a) A third party has been notified of the request;

(b) DSHS provided the third party with a due date for objecting to disclosure; and

(c) In the absence of an agreement with the requester, the third party may bring a lawsuit against the requester and DSHS under RCW 42.56.540 to stop disclosure.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-140, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-140, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-150 May a third party request a client's record? (1)

A third party, such as a DSHS client's attorney or lay representative, may access confidential records about a DSHS client with a valid authorization.

(2) The authorization should:

(a) Identify the client;

(b) Identify the individual(s) or organization(s) authorized to receive the records;

(c) State that DSHS may disclose the information to the requester;

(d) Identify the record(s) that the client wants DSHS to release;

(e) State the date the authorization expires or an expiration event that relates to the client or the purpose of the use of disclosure;

(f) State the reason for disclosure;

(g) State the right to revoke;

(h) State the potential for redisclosure;

(i) As appropriate, include specific language authorizing DSHS to release any one or more of the following to the requester: (~~Chemical dependency~~) substance use disorder records, HIV or STD records, or mental health records; and

(j) Include a dated verified signature of the individual with legal authority to authorize the release of records.

(3) DSHS may ask for additional proof to verify the third party's authority to access confidential records.

(4) In general, a parent may access confidential records about a child under age (~~eighteen~~) 18. But a child must consent to disclosure of the following confidential records:

(a) At any age, birth control or abortion records (see RCW 9.02.100);

(b) If over age (~~thirteen~~) 13, (~~chemical dependency~~) substance use disorder or mental health records (see (~~RCW 70.96A.230 and~~) RCW 71.34.530);

(c) If over age (~~fourteen~~) 14, sexually transmitted disease records (see RCW 70.24.110); and

(d) If over age (~~eighteen~~) 18, all client records held by DSHS.

(5) Legal guardians authorized by court order to act on behalf of a client are not considered to be a third party request.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-150, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-150, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-160 Is DSHS required to create public records for requesters? (1) DSHS is only required to provide access to existing, identifiable public records in its possession at the time of the request (see RCW 42.56.080).

(2) DSHS is not required to collect information to create a public record that does not exist at the time the public record request is received.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-160, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-160, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-170 May DSHS release information or public records outside of the Public Records Act? (1) A request for information is not a Public Records Act request.

(2) A request to access records under authority other than the Public Records Act is not a Public Records Act request, including but not limited to the following examples:

(a) Requests by current employees to access their personnel files under RCW 49.12.240;

(b) Requests by employees and labor unions to access employment records under collective bargaining agreements;

(c) Requests by qualified individuals and organizations to access confidential juvenile offender and child welfare records under chapter 13.50 RCW and related federal laws;

(d) Requests by qualified individuals or organizations to access confidential child support enforcement records under chapter 26.23 RCW and related federal laws;

(e) Requests by qualified individuals or organizations to access confidential adoption records under RCW 26.33.340;

(f) Requests for public access to confidential child welfare records under RCW 74.13.500 through 74.13.525;

(g) Requests by qualified individuals and organizations to access confidential health care information and medical records under chapter 70.02 RCW and related federal laws;

(h) Requests for records pursuant to a contract; and

(i) A legal subpoena or court order for DSHS records.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-170, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-170, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-180 Who should an individual contact to review or get a copy of an interpretive or policy statement index? DSHS issues administrative policy statements that apply to the whole department. Administrations may issue policies and interpretive statements that relate to their own programs. (See RCW 34.05.010.)

(1) To receive a copy of a DSHS administrative policy, send a written request to:

Office of ((Policy and External Relations)) justice and civil rights

Rules and policies assistance unit
 P.O. Box 45850
 Olympia((7)) WA 98504-5850.

(2) To receive a copy or review a specific administration's policies or interpretive statements, send a written request to the administration.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-180, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-180, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-190 How can an individual get an index of DSHS significant decisions? (1) The DSHS board of appeals reviews and selects orders and creates an index of significant decisions that substantially affect DSHS performance (see RCW 42.56.070).

(2) The index:

- (a) Is divided into program categories;
- (b) Contains a copy or synopsis of the order; and
- (c) Is updated, as needed.

(3) An individual can view the index on the boards of appeals website at

((<https://www.dshs.wa.gov/node/4060/board-appeals>)) <https://www.dshs.wa.gov/of> or inspect or request a copy by contacting the board of appeals at:

Board of appeals
 1115 Washington Street S.E.
 Olympia((7)) WA 98504-5803
 Telephone: (360) 664-6100
Fax: (360) 664-6187

Mailing address:
 Board of appeals
 P.O. Box 45803
 Olympia((7)) WA 98504-5803.

(4) An individual may ask the board of appeals to index an order as a significant decision by sending a written request with a copy of the order to the mailing address.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-190, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-190, filed 7/19/99, effective 8/19/99.]

AMENDATORY SECTION (Amending WSR 18-05-021, filed 2/9/18, effective 3/12/18)

WAC 388-01-200 How may an individual file a petition for declaratory order by DSHS? An individual may file a petition for declaratory order by DSHS as follows:

(1) Read the information on declaratory orders in RCW 34.05.240 and WAC 10-08-250, 10-08-251, and 10-08-252; and

(2) File the petition with the DSHS rules and policies assistance unit at:

DSHS Rules and policies assistance unit
P.O. Box 45850
Olympia((7)) WA 98504-5850.

[Statutory Authority: RCW 42.56.040. WSR 18-05-021, § 388-01-200, filed 2/9/18, effective 3/12/18. Statutory Authority: RCW 42.17.250 and 34.05.220. WSR 99-15-065, § 388-01-200, filed 7/19/99, effective 8/19/99.]

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
388-01-005	388-01-010
388-01-010	388-01-005

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-01-050 Who should be contacted to request a public record?

WSR 23-19-038
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed September 13, 2023, 1:00 p.m., effective October 14, 2023]

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

Purpose: The WAC changes are [necessary] to meet the legislative requirements of HB [SHB] 1132 (2023) to certify limited authority peace officers who have the powers of arrest and carry a firearm as part of their duties. This includes hearing processes, processes for certification, and determining training. The WAC changes also included requiring reserve officers to report use of force, suspension, and misconduct.

Citation of Rules Affected by this Order: Amending WAC 139-01-310, 139-05-200, 139-05-210, 139-06-210, 139-06-040, 139-06-050, 139-06-070, and 139-06-100.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 23-16-060 on July 26, 2023.

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 8, 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 8, 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 8, Repealed 0.

Date Adopted: September 13, 2023.

Derek Zable
 Records Manager

OTS-4790.1

AMENDATORY SECTION (Amending WSR 23-01-086, filed 12/16/22, effective 1/16/23)

WAC 139-01-310 Definitions for Title 139 WAC. The following definitions apply to Title 139 WAC, unless otherwise defined in a specific chapter or subchapter of this title.

(1) **Affiliation** means advocating for or providing material support or resources to extremist organizations by:

(a) Knowingly or publicly displaying, posting, or wearing associated items, symbols, costumes, insignias, slogans, tattoos, or body modifications on public property, private property, online, or digitally;

(b) Making public statements in support of an extremist group's activities including, but not limited to, online statements;

(c) Fund-raising for, or making personal contributions through donations, services, or payments of any kind to a group or organization that engages in extremist activities;

(d) Organizing or participating in the activities of an extremist organization;

(e) Recruiting or training others to engage in extremist activities;

(f) Recruiting or training others on behalf of an extremist organization;

(g) Creating, organizing, or taking a leadership role in a group or organization that engages in or advocates for extremist activities; or

(h) Actively demonstrating or rallying in support of extremist activities.

(2) **Applicant** means an individual who must satisfy the requirements of RCW 43.101.095 as a condition of employment.

(3) **Certified limited authority peace officer** means any limited authority Washington peace officer as defined in subsection (22) of this section who as a normal part of their duties has powers of arrest and carries a firearm.

(4) **Certified officer**, unless otherwise specified, means any full-time, general authority peace officer, certified limited authority peace officer, certified tribal police officer (~~(with a recognized certified tribe)~~), and corrections officer as defined in RCW 43.101.010 (6), (10), and (12).

~~((4))~~ (5) **Certified tribal law enforcement agency** means any tribal law enforcement agency in Washington who has signed a tribal certification agreement with the commission as outlined in WAC 139-06-015 and who is currently in good standing.

(6) **Certified tribal police officer** means any police officer employed by a certified tribal law enforcement agency who has completed the requirements of certification.

(7) **Commission** means the Washington state criminal justice training commission.

~~((5))~~ (8) **Conclusion** means the final disposition issued by an employing agency after it has conducted an investigation into alleged misconduct or policy violation.

~~((6))~~ (9) **Day** means one calendar day. Computation of time does not include the day of the act or event from which the designated period of time begins to run. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next weekday that is not a legal holiday.

~~((7))~~ (10) **Denial** means a commission decision to refuse to grant certification to a prospective certified officer.

~~((8))~~ (11) **Discipline** means an oral reprimand (where a written record of the reprimand has been placed in an employee's file), written reprimand, suspension, demotion, or termination. Discipline does not include performance reviews, work plans, or corrective actions that do not include a reprimand or other adverse employment action.

~~((9))~~ (12) **Executive** means the head of a law enforcement agency, such as chiefs, sheriffs, directors, or other equivalent positions.

~~((10))~~ (13) **Expired certification** means that a certified officer has had a break in service of over 60 months and their certification is no longer valid.

~~((11))~~ (14) **Extremist organization** means an organization or persons that:

(a) Seeks to undermine the democratic process through intimidation, violence, unlawful threat, or by depriving individuals of their rights under the United States Constitution or Washington state Constitution;

(b) Promotes the changing of American government structures through undemocratic means involving violence, unlawful threat, or intimidation;

(c) Promotes hatred, intolerance, unlawful discrimination, intimidation or violence against, public marginalization, or disenfranchisement of protected classes, including on the basis of sex, sexual orientation, gender, perceived gender, or gender expression, race, color, religion, ability, or national origin and other protected classes under RCW 49.60.030 and 43.101.105 (3) (h);

(d) Espouses, advocates, or engages in using force, violence, or unlawful threat to further explicit racism, antisemitism, anti-Muslim, white supremacy or any white nationalist ideology, or any ideology that discriminates based on religion or belief; or

(e) Espouses or advocates that the powers held by local law enforcement executives, and their interpretation of the law, supersedes those of any other federal, state, or local authority.

~~((12))~~ (15) **Final disposition** means an employing agency's final decision on a misconduct investigation. The final disposition is not dependent upon any appeals brought by an officer.

~~((13))~~ (16) **Findings or findings of fact and conclusion of law** means a determination based on a preponderance of the evidence whether alleged misconduct occurred; did not occur; occurred but was consistent with law and policy; or can neither be proven or disproven.

~~((14))~~ (17) **General authority Washington law enforcement agency** means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement agency. The Washington state patrol and the department of fish and wildlife are general authority Washington law enforcement agencies.

~~((15))~~ (18) **General authority Washington peace officer** means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

~~((16))~~ (19) **Lapsed certification** means that a certified officer has had a break in service of at least 24 months, but no more than 60 months, and that as a condition of continuing employment the officer must complete the commission's equivalency process.

~~((17))~~ (20) **Law enforcement personnel** means any person elected, appointed, or employed as a general authority Washington peace officer or certified limited authority peace officer.

(21) **Limited authority Washington law enforcement agency** means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws

relating to limited subject areas including, but not limited to, the state department of natural resources and social and health services, the state gambling commission, the state department of corrections, and the office of independent investigations.

~~((18))~~ (22) **Limited authority Washington peace officer** means any full-time fully compensated officer of a limited authority Washington law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible.

~~((19))~~ (23) **Peace officer** means any officer of general authority or certified limited authority as defined in subsections (18) and (22) of this section respectively.

(24) **Petitioner** means the commission's certification division.

~~((20))~~ (25) **Probationary periods or probationary terms** means a determination by a hearing panel that a certified officer may work under supervision based on agreed-upon terms.

~~((21))~~ (26) **Recruit** means an individual registered for, selected for, accepted to, enrolled in, or required to complete a basic training academy.

~~((22))~~ (27) **Reserve officer** means any person who does not serve as a peace officer of this state on a full-time basis, but who, when called by an agency into active service, is fully commissioned on the same basis as full-time officers to enforce criminal laws of this state.

~~((23))~~ (28) **Respondent** means the certified officer against whom the petitioner has filed a statement of charges.

~~((24))~~ (29) **Retraining** means the teaching or reteaching of skills and conduct required to succeed as a certified officer and imposed by the commission's hearings panel in a final order pursuant to RCW 43.101.105.

~~((25))~~ (30) **Revocation** means to cancel a certified officer's certification.

~~((26))~~ (31) **Serious injury** means **substantial bodily harm** and **great bodily harm** as defined in RCW 9A.04.110 (4) (b) and (c).

~~((27))~~ (32) **Specially commissioned Washington peace officer** means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under as a general authority Washington peace officer for that commissioning agency, specifically including reserve peace officers, and specifically commissioned full-time, fully compensated peace officers duly commissioned by the states of Oregon and Idaho or any such peace officer commissioned by a unit of local government of Oregon or Idaho.

~~((28))~~ (33) **Surrender** means that a holder of a certificate voluntarily relinquishes their certificate. This may happen while pending potential discipline or for any other reason.

~~((29))~~ (34) **Suspension** means a determination by a hearing panel on agreed-upon terms that a certified officer's certification will be withheld and the officer will be temporarily prevented from performing the duties of a certified officer during the determined period.

[Statutory Authority: RCW 43.101.080. WSR 23-01-086, § 139-01-310, filed 12/16/22, effective 1/16/23. Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-01-310, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-01-310, filed 9/10/86.]

OTS-4791.2

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-05-200 Requirement of basic law enforcement training for officers. (1) A peace officer or tribal police officer whose certification has been denied, revoked (~~((\oplus))~~), suspended, or is under review by this state or any other state or territory, is not eligible for a basic law enforcement academy diploma.

(2) (a) As a condition of continued employment, unless exempted by the commission, all general authority peace officers must commence training in the basic law enforcement academy or the basic law enforcement equivalency academy within the initial six-month period of employment and then successfully complete the training.

(b) As a condition of continued employment, unless exempted by the commission, all limited authority peace officers subject to certification whose employment commences on or after July 1, 2023, must commence training in the basic law enforcement academy or the basic law enforcement equivalency academy within the initial 12-month period of employment and then successfully complete the training.

(c) As a condition of continued certification, all certified limited authority peace officers whose employment commenced prior to July 1, 2023, must submit to the commission documentation of any prior training received and complete any supplemental training deemed necessary by the commission by December 31, 2024, unless otherwise waived or extended by the commission.

(3) Law enforcement personnel exempted from the requirements of subsection (2) of this section include commissioned personnel:

(a) Who have met the training requirements in subsection (2) of this section and who have been employed with no break in service in this state for more than 24 months.

(b) Who have met the training requirements of subsection (2) of this section and within 24 months of completion are employed as a peace or tribal officer (~~((with a general authority law enforcement agency))~~). This includes any limited authority personnel as defined in RCW 10.93.020 and in the definitions of this chapter.

(4) Law enforcement agencies must use an approved form to immediately notify the commission when an officer subject to certification begins ongoing regular employment with the agency.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-05-200, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080 and 43.101.200. WSR 19-07-036, § 139-05-200, filed 3/13/19, effective 4/13/19. Statutory Authority: RCW 43.101.080. WSR 06-17-021, § 139-05-200, filed 8/7/06, effective 9/7/06; WSR 05-20-029, § 139-05-200, filed 9/28/05, effective 10/29/05; WSR 03-19-123, § 139-05-200, filed 9/17/03, effective 10/18/03; WSR 00-17-017, § 139-05-200, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 89-13-024 (Order 14D), § 139-05-200, filed 6/13/89; WSR 87-19-104 (Order 14-D), § 139-05-200, filed 9/18/87; WSR 86-19-021 (Order 1-B), § 139-05-200, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 23-01-086, filed 12/16/22, effective 1/16/23)

WAC 139-05-210 Process for equivalency. (1) (~~(A)~~) A peace officer, tribal police officer, or corrections officer whose certification, commission, or licensing has been revoked or suspended, or is under review by this state or any other state or territory is not eligible to receive certification through an equivalency academy, regardless of the officer's prior years of service.

(2) A diploma of equivalent basic law enforcement academy or corrections officers academy is issued to recruits who successfully complete the equivalency process as required by the commission. For this purpose, the term "process" includes all documentation and prerequisites set forth in subsection (9) of this section and successful completion of all knowledge and skills requirements within the equivalency academy.

(3) Participation in the equivalency process is limited to:

(a) Certified officers whose certification, commission, or licensing has lapsed because of a break in service in Washington or any other state or territory for more than 24 months but less than 60 months;

(b) Fully commissioned officers of a general authority, limited authority, or certified tribal law enforcement agency in Washington state who otherwise are eligible to attend the basic law enforcement academy;

(c) Fully commissioned officers who have been certified by completing a basic training program in Washington or another state;

(d) Limited authority officers who have been certified by completing a basic training program in Washington or another state;

(e) Corrections officers as defined in RCW 43.101.010(6) who otherwise are eligible to attend the corrections officers academy;

(~~(e)~~) (f) Corrections officers who have successfully completed an approved corrections officers academy in Washington or another state; or

(~~(f)~~) (g) Persons who have not attained commissioned officer status but have successfully completed a basic law enforcement academy recognized as fully equivalent to Washington's basic law enforcement academy by the commission and within 12 months of the date of completion has received a conditional offer of employment as a fully commissioned, or certified limited authority, officer in Washington state.

(4) For the purposes of this section, the term "basic training program" does not include any military or reserve training or any federal training program not otherwise approved by the commission.

(5) Recruits who must participate in the equivalency academy to become a certified officer must attend an academy within six months of hire as a condition of employment.

(6) It is the responsibility of a recruit's agency to ensure that all necessary backgrounding forms and documentation are completed and submitted to the commission in a timely manner and all requirements within this section are met.

(7) The decision to request an officer's participation in the equivalency process is at the discretion of the sheriff or chief of the officer's employing agency who must advise the commission of that decision. The commission has final approval of the officer's acceptance into the equivalency academy.

(8) The commission shall have authority to approve a recruit for participation in the equivalency process.

(9) The recruit's employing agency must submit to the commission the following documentation as a condition of participating in the equivalency process:

- (a) A statement of the recruit's health and physical condition including a physician signature;
- (b) A liability release agreement by the recruit;
- (c) Previous employment agencies with dates of employment;
- (d) Documentation of completion of the previous training program;
- (e) Written syllabus detailing specific areas of training and hours of training;
- (f) Documentation of current certification status; and
- (g) For peace and tribal officers:
 - (i) A record of the recruit's firearms qualification; and
 - (ii) Verification of comparable emergency vehicle operations (EVO) training (~~(EVOC)~~).

If this has not been completed previously, the recruit must complete the commission's current basic law enforcement (~~(EVOC)~~) EVO training, either by an instructor certified by the commission or through the Washington state patrol; all costs associated with this training will be the responsibility of the law enforcement agency.

(10) Upon completion of the equivalency process and review and evaluation of the recruit's performance, the commission shall issue a diploma and a certificate of certification.

(11) If the recruit has not met the qualifications to satisfactorily complete an equivalency academy, the commission shall:

- (a) Issue a diploma and certificate of certification upon satisfactory completion of any required additional training; or
- (b) Require the recruit to attend the basic law enforcement academy or the corrections officers academy.

[Statutory Authority: RCW 43.101.080. WSR 23-01-086, § 139-05-210, filed 12/16/22, effective 1/16/23. Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-05-210, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 14-01-044, § 139-05-210, filed 12/11/13, effective 1/11/14. Statutory Authority: RCW 43.101.080 and [43.101].085. WSR 08-20-010, § 139-05-210, filed 9/18/08, effective 10/19/08. Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-210, filed 9/28/05, effective 10/29/05; WSR 04-13-070, § 139-05-210, filed 6/15/04, effective 7/16/04; WSR 03-07-099, § 139-05-210, filed 3/19/03, effective 4/19/03; WSR 00-17-017, § 139-05-210, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-210, filed 9/10/86.]

OTS-4792.1

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-06-020 Agency reporting requirements—Force, separation, and investigation. (1) Within 15 days the employing agency of either

a certified officer or reserve officer shall use an approved form to notify the commission of the following occurrences:

(a) When a certified officer or reserve officer is separated from the agency for any reason;

(b) When the agency first learns of a use of force by a certified officer or reserve officer, including canine bites, that caused serious injury or death;

(c) When the agency first learns that a certified officer or reserve officer has been charged with a crime. An employing agency shall have written policies that require a certified officer or reserve officer to immediately report any pending criminal charges and any conviction, plea, or other case disposition to their agency; and

(d) When the agency makes an initial disciplinary decision for alleged misconduct by a certified officer or reserve officer that is noncriminal and may constitute misconduct within RCW 43.101.105.

(2) An employing agency shall provide timely updates to the commission on the status of a reported internal investigation until the investigation concludes.

(3) If the employing agency accepts a certified officer's or reserve officer's resignation or retirement in lieu of termination, the employing agency shall report the reasons and rationale in the information provided to the commission including the findings from any internal or external investigations into alleged misconduct.

(4) If the totality of the circumstances supports a conclusion that a certified officer or reserve officer resigned or retired in anticipation of discipline, the agency who employed the officer at the time of the misconduct shall timely conduct and complete an internal investigation and provide all relevant information to the commission as it would if the (~~certified~~) officer were still employed by the agency, regardless of whether the misconduct was discovered at the time:

(a) When such discipline if carried forward would more likely than not have led to discharge; or

(b) If the certified officer or reserve officer was laid off when disciplinary investigation or action was imminent or pending which could have resulted in the (~~certified~~) officer's suspension or discharge.

(5) Within 15 days of the conclusion of its internal investigation, the agency shall provide the commission with a summary of findings.

(a) If sustained misconduct results in separation, then a commission separation form is also required.

(b) The commission will review the separation form and may request investigative files for review of certification misconduct.

(6) The agency shall, upon request by the commission, provide any records and information the commission deems necessary to determine whether the certified officer committed misconduct that falls within RCW 43.101.105.

(7) In addition to disciplinary action authorized in RCW 43.101.105, the commission may impose a civil penalty not to exceed \$10,000 for the failure by a certified officer, reserve officer, or an employing agency to timely and accurately report information pursuant to this section.

(8) Pursuant to RCW 43.101.135(7) an employing agency may not enter into any agreement or contract with a certified officer, reserve officer, or labor union that:

(a) Agrees not to report conduct, or to delay reporting, or to preclude disclosure of any relevant information to the commission, including any promise not to inform the commission that a certified officer or reserve officer may have committed misconduct in exchange for allowing that (~~certified~~) officer to resign or retire or for any other reason; or

(b) Allows the agency to destroy or remove any personnel record while the certified officer or reserve officer is employed and for 10 years thereafter. Such records must include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, investigatory files, and any other disciplinary appeals and litigation records.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-020, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-020, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-06-040 Investigation and appeal—Procedures for misconduct. (1) Commission investigations are to determine whether there is preponderance of the evidence to believe the certified officer's certification should be denied, revoked, or suspended.

(2) Investigations may commence on the commission's own initiative under RCW 43.101.105, or upon receiving a complaint per WAC 139-17-010.

(3) The commission may conduct its investigation before, during, or after any internal or criminal investigation by another agency, except in cases where a revocation decision requires a finding that the certified officer's conduct violated policy or law under RCW 43.101.105 (2) or (3).

(4) The commission may investigate any instance where there is a pattern of acts by a certified officer that may have not resulted in formal adjudication of wrongdoing but when considered together demonstrate conduct that would constitute a violation of RCW 43.101.105 (2) or (3).

(5) The commission may initiate a certification hearing by preparing a statement of charges regardless of the status or posture of any internal disciplinary action by the employing agency.

(6) Upon a determination by the commission that there is a preponderance of the evidence to believe that a certified officer's certification should be denied, revoked, or suspended, the commission shall prepare a statement of charges and commence proceedings under RCW 43.101.155.

(7) Upon a determination by the commission that there is not preponderance of the evidence to revoke, suspend, or deny the certified officer's certification, a copy of the decision not to proceed, with a brief statement of the reasons for the decision, shall be furnished to the certified officer's employing agency and the complainant, if any.

(8) The certified officer's employing agency, or the complainant, if any, may request a review by the executive director of the commis-

sion, or their designee, of a determination that there is not preponderance of the evidence to revoke or suspend the certified officer's certification, by making such request in writing within 14 days of the receipt of written notification of the decision not to proceed.

(9) The commission's final order is subject to the judicial review provisions of the Administrative Procedure Act, RCW 34.05.510 through 34.05.598.

(10) The commission shall maintain all records obtained during an investigation in a permanent file in accordance with the retention schedule provided in RCW 43.101.400.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-040, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-040, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-06-050 Statement of charges and notification for hearing. (1) The commission shall prepare a statement of charges providing the grounds for denial, suspension, or revocation of the certified officer's certification under RCW 43.101.105.

(a) The statement of charges shall include a notice informing the certified officer that they are entitled to a hearing on the denial, suspension, or revocation of their certification, the steps to request a hearing, and that failure to request or attend a hearing will cause their certification to be denied or revoked.

(b) The statement of charges shall be sent to the certified officer and to the agency that employed the certified officer at the time of the alleged misconduct. If the certified officer is employed by a different law enforcement agency at the time the statement of charges is issued, that agency shall also be sent a copy of the statement of charges.

(2) A request for a hearing on the potential denial, suspension, or revocation of certification must be made by the certified officer on an approved form and received by the commission within 60 days from the date of sending the statement of charges.

(a) If a hearing is requested, the officer must provide an email address that constitutes the officer's legal address for purposes of any subsequent communication from the commission.

(b) If a hearing is requested, the first prehearing conference shall be held within 14 days of receipt of the hearing request form. The hearing shall occur within 90 days of the first prehearing conference.

(c) Any date related to the hearing schedule including, but not limited to, the dates of prehearing and status conferences, due dates for pleadings, briefings, and exhibits and the date of the hearing itself may be extended upon mutual agreement of the parties or for good cause.

(3) Failure by the certified officer to request a hearing within 60 days of sending of the statement of charges, or failure by the certified officer or their counsel to appear at any prehearing or status conference, shall constitute default and the commission shall enter an order of default and final order under RCW 34.05.440.

(4) Failure of the certified officer to appear at the scheduled hearing shall constitute default and the hearing panel shall enter an order of default and final order under RCW 34.05.440.

(5) The certified officer may waive the right to a hearing on an approved form. By waiving the right to a hearing, the certified officer acknowledges that their certification will be revoked, suspended, or denied and that the commission shall enter an order of default and a final order under RCW 34.05.440.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-050, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-050, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-06-070 Conference and hearings procedures. (1) An administrative law judge (ALJ) shall preside over all prehearing conferences, status conferences, and the hearing itself.

(2) The attorney general's office shall represent the commission in all adjudicative proceedings before the commission.

(3) Once the commission hearings coordinator receives the request for hearing, the first prehearing conference shall be held within 14 days unless that time is extended by mutual agreement of the parties or for good cause.

(a) Prior to the first prehearing conference, the parties shall receive timely notice of prehearing conference. The notice will contain the date and time for the first prehearing conference as well as sign-on information and the names of the hearing panel members for the hearing.

(b) Any motion for disqualification of a panel member must be filed prior to the first prehearing conference.

(4) The first prehearing conference is administrative. Its primary purpose is to schedule the hearing date, which must occur within 90 days of the first prehearing conference unless that time is extended on mutual agreement of the parties or for good cause.

(a) During the first prehearing conference, the administrative law judge (ALJ) may schedule due dates for the filing of any prehearing briefs, witness lists, exhibit lists and exchange of exhibits, objections to witnesses and exhibits, and prehearing motions. The ALJ will also schedule a second prehearing conference.

(b) The ALJ shall issue a prehearing conference order within one week of the conclusion of the first prehearing conference. The prehearing conference order shall describe the action taken at the conference and the agreements made by the parties.

(5) The purpose of the second prehearing conference will be to address any objections to the parties' witnesses and exhibits and ascertain the parties' readiness to proceed to hearing. During the second prehearing conference, parties shall be prepared to discuss any remaining matters including any objections to (~~witness~~) witnesses or exhibits, and any remaining motions.

(a) The ALJ will make any necessary rulings on motions and objections to witnesses and exhibits.

(b) An order shall be issued by the ALJ within 10 days of the conclusion of the second prehearing conference.

(c) After the second prehearing (~~(teleconference)~~) conference, the panel members will be provided with all materials admitted into evidence, to include witness list and copies of the statement of charges, as well as all briefings submitted by the parties.

(6) Failure of the respondent or the respondent's attorney to attend or participate in any scheduled prehearing conference will result in a finding of default and an order will be entered under RCW 34.05.440.

(7) Hearings may be held in person or virtually.

(a) Once the hearing date has been set, a written notice will appear on the commission website with the date, time, and location of the hearing.

(b) Hearings are open to the public and accommodations will be made for public attendance of virtual meetings.

(c) The commission shall create audio or video recordings of all prehearing conferences and hearings.

(8) If an in-person hearing is scheduled, the hearings coordinator will provide an admitted exhibits binder including all admitted exhibits from both parties. The admitted exhibits binder shall be used by both parties to reference or display any admitted exhibits during the hearing. If a virtual hearing is scheduled, the parties shall maintain control of their exhibits and, if necessary, will be required to share their screens when referencing or displaying an admitted exhibit during the proceeding. Parties are forbidden from screen sharing any exhibits or any versions of exhibits not previously admitted.

(9) If an in-person hearing is scheduled, the respondent must attend the proceeding in person. Respondents who fail to comply with this attendance requirement will result in the revocation, suspension, or denial of certification and the hearings panel shall enter an order of default and final order under RCW 34.05.440.

(a) In person hearings will be conducted at the training commission located at: 19010 1st Avenue South, Burien, Washington, 98148.

(b) If a virtual hearing is scheduled, the respondent shall remain visible on screen at all times the parties are on the record. Respondents who fail to comply with this attendance requirement will result in the revocation, suspension, or denial of certification and the hearings panel shall enter an order of default and final order under RCW 34.05.440.

(10) Regardless of whether a hearing is scheduled in-person or virtually, witnesses may testify at the hearing in-person, by telephone, or virtually.

(11) A five-member hearings panel shall hear the case and will make the commission's final administrative decision based on a majority of the vote.

(12) The standard of proof in actions before the commission is a preponderance of the evidence. RCW 43.101.380(1).

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-070, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-070, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 23-01-086, filed 12/16/22, effective 1/16/23)

WAC 139-06-100 Outcomes for determinations of misconduct—~~Denial, suspension, ((probation)) revocation, retraining, or dismissal of the statement of charges.~~ (1) When an applicant or certified officer is found to have committed misconduct listed under RCW 43.101.105(3), the commission may convene a hearing panel to review the facts and, with any finding of misconduct, determine any appropriate outcomes. Outcomes include any or multiple of the following: Denial, suspension(~~, probation~~), revocation of certification, remedial training, or dismissal of the statement of charges. In determining an appropriate outcome following a finding of misconduct, the hearings panel shall review the following evidence, if admitted:

- (a) Information provided by the complainant(s), if any;
- (b) The final disposition and all supporting documentation and information submitted to the commission and the basis for the final disposition following an investigation by a law enforcement or corrections agency regarding alleged misconduct;
- (c) The final disposition and any documentation submitted to the commission and the basis for the final disposition of any due process hearing or disciplinary appeals hearing provided such hearing has occurred prior to the commission's action;
- (d) Any information obtained by the commission through its own investigation or research;
- (e) Any discipline or training ordered by the employing agency regarding the alleged misconduct; and
- (f) Whether the employing agency bears any responsibility for the situation.

(2) Additional bases for determining appropriate outcomes shall be developed by the commission.

(3) The fact that the commission has suspended the certified officer's certification is not in and of itself a bar to the employing agency's maintenance of the officer's health and retirement benefits.

(4) Any suspension imposed by the commission shall run concurrently to any leave or discipline imposed by the employing agency for the same incident.

(5) An agency may not terminate the certified officer based solely on imposition of suspension or probation by the commission.

(6) This subsection does not prohibit a law enforcement agency from terminating the certified officer based on the underlying acts or omissions for which the commission took such action.

(7) Reserve officers are subject to the same commission actions as certified officers based on alleged misconduct listed in RCW 43.101.105 (2) and (3) if the reserve officers are certified pursuant to RCW 43.101.095.

[Statutory Authority: RCW 43.101.080. WSR 23-01-086, § 139-06-100, filed 12/16/22, effective 1/16/23. Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-100, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-100, filed 12/20/02, effective 1/20/03.]

WSR 23-19-039
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed September 13, 2023, 1:01 p.m., effective October 14, 2023]

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

Purpose: To establish the rules and processes to carry out RCW 43.101.480 to certify, train, or exempt from training medical examiners, coroners, and medicolegal investigators.

Citation of Rules Affected by this Order: New WAC 139-27-010, 139-27-020, 139-27-030, 139-27-040, 139-27-050, 139-27-060, 139-27-070, 139-27-100, 139-27-110 and 139-27-120; and amending WAC 139-03-030.

Statutory Authority for Adoption: RCW 43.101.080.

Other Authority: RCW 43.101.480.

Adopted under notice filed as WSR 23-16-057 on July 26, 2023.

Changes Other than Editing from Proposed to Adopted Version: WAC 139-27-010 (2)(b), removal of subsection (2)(b)[(c)] from good standing due to a lack of legal authority to have ethics requirements as a condition of certification.

WAC 139-27-020(3), the notice of ineligibility was added to establish the responsibility of the agency to notify the commission of ineligibility of a certificant at any time during the certification period.

WAC 139-27-120, added to require the Washington state criminal justice training commission (commission) to collaborate with interstate and local agencies regarding certification eligibility regarding the status of their required industry licenses and/or certifications.

Decrease in recertification time: The time frame between recertification was reduced from five years to three years (with a corresponding decrease of continuing education from 45 hours to 30 hours). This was done to reflect the concerns by the commission of a long period between recertification and subsequent confirmation that the certificant has maintained their good standing. This recertification standard follows industry standards and the guidelines suggested by the National Commission on Forensic Science.

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 10, Amended 1, 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 10, 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 10, Amended 1, Repealed 0.

Date Adopted: September 13, 2023.

Derek Zable
Records Manager

OTS-4501.1

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-03-030 Request for exemption, waiver, extension or variance. (1) Requests for exemption, waiver, extension or variance from the commission's regulations may be pursued only under this section.

(2) A request for exemption, waiver, extension or variance may be made only by the head of a law enforcement or corrections agency or head of an agency responsible for death investigations, on behalf of an employee or employees directly affected by the regulation. Where a request for an exemption or variance is on behalf of a chief of police or chief medical examiner, such request shall be made by the appointing authority. Requests under this section shall be for mitigation only and shall not raise questions of law or of fact. Such requests shall be submitted in writing to the executive director of the commission and shall include, where applicable:

(a) The particular regulation from which exemption, waiver, extension or variance is sought;

(b) The nature of the exemption, waiver, extension or variance which is sought;

(c) The mitigating factors in the particular case;

(d) The name and mailing address of the requesting party and any person who will personally appear in support of the requesting party, including legal counsel;

(e) A statement that the person signing the request has read it and that to the best of his or her knowledge or information and belief the contents thereof are true.

(3) Upon receipt of a request under this section which satisfies the requirements of subsection (2) of this section, the executive director shall schedule the request for full consideration at the next commission meeting. If it is determined by the chair that circumstances justify expedited review, the chair may schedule a special meeting for the sole purpose of effecting review. After full consideration of the matter, the commission shall deny the request, grant the request or provide alternative mitigating relief.

[Statutory Authority: RCW 43.101.080. WSR 00-17-017, § 139-03-030, filed 8/4/00, effective 9/4/00.]

OTS-4502.4

**Chapter 139-27 WAC
MEDICOLEGAL FORENSIC INVESTIGATION TRAINING AND CERTIFICATION**

NEW SECTION

WAC 139-27-010 Definitions. (1) **Coroner** means the elected or appointed official tasked with overseeing the medicolegal system of a county, whose principal duty is to investigate death.

(2) **Good standing** means a member of a profession regulated by this chapter who:

(a) Does not have their professional license(s) or certification(s) suspended or revoked; and

(b) Is in compliance with their employing agency's training requirements.

(3) **Medical examiner** means a physician who is responsible for examining bodies postmortem to determine the cause and manner of death.

(4) **Medicolegal forensic investigation training** means training designated to provide tools, resources, and standards to individuals who perform medicolegal death investigations.

(5) **Medicolegal investigative personnel** means personnel whose role is to investigate any death that falls under the jurisdiction of a coroner's or medical examiner's office, including all unnatural, suspicious, or violent deaths.

(6) **Part-time** means any personnel who work less than full-time hours. Full-time hours are defined by their employer. For the purposes of this chapter, a single day of work in a month will count as employment for that month.

[]

NEW SECTION

WAC 139-27-020 Notice of hire/separation and ineligibility. (1) Coroner's and medical examiner's offices must use an approved form to notify the commission within 15 days when mandated personnel begin ongoing regular employment or appointment with the agency.

(2) Upon separation of a coroner, medical examiner, or medicolegal investigative personnel from a coroner's or medical examiner's office, or upon their movement or rotation, for any reason, to a position within that office that does not require certification, the agency shall notify the commission via an approved form within 15 days of the separation date.

(3) Upon an agency receiving notice or making a final determination on any matter that is defined in WAC 139-27-010(2) that would otherwise make a certificant ineligible to receive certification, an agency shall notify the commission via an approved form within 15 days of the notice or final determination date. If the employee is separated or removed from their position as stated in subsection (2) of this section, the requirements of that section shall be followed.

[]

NEW SECTION

WAC 139-27-030 Certifications. (1) All coroners, medical examiners, and medicolegal investigative personnel who are employed in a

coroner's or medical examiner's office, must maintain certification as a condition of continued employment.

(2) The commission shall issue a certificate if:

(a) The individual has completed the core medicolegal forensic investigation training developed and delivered by the commission; or

(b) The individual has been granted exemption following the requirements of WAC 139-27-110.

(3) Certificates shall be valid for a period of three years from the date of initial certification.

(4) Certifications may be revoked during their three-year period upon notice that the individual is ineligible or no longer in good standing for certification.

(5) Certification shall be revoked for the following reasons:

(a) No longer maintaining eligibility for certification due to the revocation of required existing license or certification.

(b) Admission by the employing agency that the certificant is not in good standing.

(c) Determination that the certificant was not eligible to receive a certificate at the time of its issuance.

[]

NEW SECTION

WAC 139-27-040 Continuing education conditions and requirements.

(1) After the initial training period, continuing education is necessary to maintain knowledge and update skills in new technology, equipment, methods, and practices. Every coroner, medical examiner, and medicolegal investigative personnel required to satisfy RCW 43.101.480 must complete a minimum of 30 continuing education hours every three years to be eligible for recertification.

(a) Training may be obtained through the commission or other training resources.

(b) All courses must be relevant to medicolegal forensic death investigation.

(c) Courses must be taught by instructors who are subject matter experts, qualified by industry standards, and are not involved in controversy over their instruction.

(2) Continuing education hours accrued will only count towards recertification if they are attained after the date of initial certification and before the expiration date.

(3) Continuing education credits must be provided by an accredited institution or agency and approved by the commission including, but not limited to: American Board of Medicolegal Death Investigators, American Medical Association, American Osteopathic Association, American Nursing Association, American Academy of Physician Assistants, American Society for Clinical Pathology, American Bar Association, College of American Pathologists, Emergency Medical Services, Federal Emergency Management Agency, International Association for Continuing Education and Training, Peace Officer Standards and Training (or equivalent), Pennsylvania Coroner's Education Board, U.S. Department of Homeland Security or a postsecondary institution recognized by a national educational accrediting agency.

(4) Medical examiner's who maintain certification as a board-certified forensic pathologist certified from the American Board of Pathology meet the continuing education requirements.

[]

NEW SECTION

WAC 139-27-050 Recertification eligibility and requirements.

(1) All medicolegal forensic death investigation certificates have a three-year duration from the date issued, after which individuals who continue to meet the requirements of WAC 139-27-100 or 139-27-030 must seek recertification. Recertification will begin six months prior to the certification expiration date, and materials must be received by or before the expiration date. The recertification process is provided in WAC 139-27-060. To be eligible for recertification, individuals must meet these requirements:

(a) A medical examiner must:

(i) Maintain employment by a coroner's or medical examiner's office in Washington state.

(ii) Maintain their status as a board-certified forensic pathologist certified by the American Board of Pathology or has completed continuing education following WAC 139-27-040.

(iii) Maintain their license by the Washington state medical commission.

(iv) Be in good standing with their agency of employment.

(b) A coroner or medicolegal investigative personnel must:

(i) Maintain employment by a coroner's or medical examiner's office in Washington state.

(ii) Complete 30 hours of continuing education following WAC 139-27-040 over the three-year certification period.

(iii) Be in good standing with their agency of employment.

(2) If certification lapses, the coroner, medical examiner, or medicolegal investigative personnel will be required to complete the initial certification process again. If certification lapses by one year or more, the individual will be required to attend the core medicolegal forensic investigation training regardless of previous attendance.

[]

NEW SECTION

WAC 139-27-060 Recertification process. (1) Requests for recertification must be submitted by the employing agency designee for any coroner, medical examiner, or medicolegal investigative personnel directly affected by the regulation.

(2) Requests shall be submitted in writing, with appropriate documentation, to the commission. Requests shall be accepted up to six months prior to the expiration date and due by or before the expiration date.

(3) Request for recertification:

(a) For a medical examiner:

(i) Proof of continued board certification as a forensic pathologist by the American Board of Pathology or proof of 45 hours of continuing education, for which documentation shall include:

(A) Certificate of completion or other documentation showing completion;

(B) Course description;

(C) Agenda/syllabus/program;

(D) Number of education hours.

(ii) Proof of continued licensure by the Washington state medical commission.

(iii) Proof of good standing by the employing agency on agency letterhead.

(b) For a coroner or medicolegal investigation personnel:

(i) Proof of 30 hours of continuing education. Documentation shall include:

(A) Certificate of completion or other documentation showing completion;

(B) Course description;

(C) Agenda/syllabus/program;

(D) Number of education hours.

(ii) Proof of good standing by the employing agency on agency letterhead.

(4) Upon submission of the appropriate documentation, the commission shall review and evaluate relevant materials and issue recertification, if applicable, within 60 days.

(5) If the applicant has not met the qualifications to receive recertification, the commission shall:

(a) Issue recertification upon satisfactory completion of acceptable continuing education to be completed within six months from time application for recertification is deemed not to have met the qualifications, or submission of needed materials; or

(b) Require attendance of the core medicolegal forensic investigation training regardless of previous attendance if certification has lapsed by one year or more.

(6) During the six-month period to complete or rectify missing eligibility requirements for recertification required by the commission as provided in subsection (5)(a) of this section, expiration of the current certificate will be delayed until the end of this six-month period or upon the issuance of a new certificate.

[]

NEW SECTION

WAC 139-27-070 Core medicolegal forensic death investigation training curriculum. The core medicolegal forensic death investigation training shall include, but is not limited to, the following subject areas:

(1) Medicolegal systems;

(2) Ethics;

(3) Cause and manner of death;

(4) Sharp force trauma;

(5) Blunt force trauma;

(6) Gunshot wounds;

(7) Identification;

- (8) Drowning/water related deaths;
- (9) Fire deaths;
- (10) Decomposition and postmortem changes;
- (11) Infant death investigations;
- (12) Next of kin;
- (13) Report writing;
- (14) Photography;
- (15) Missing persons;
- (16) Toxicology.

[]

NEW SECTION

WAC 139-27-100 Exemption eligibility and requirements. (1) As a condition of continued employment, unless exempted by the commission under this section, all coroners, medical examiners, and medicolegal investigative personnel employed at a county coroner's or medical examiner's office must complete training and receive certification within 12 months of hire for full-time personnel or 18 months of hire for part-time personnel.

(2) Requirements for exemption:

(a) A medical examiner who:

(i) Is employed by a coroner's or medical examiner's office in Washington state.

(ii) Is a board-certified forensic pathologist certified by the American Board of Pathology (ABP), maintains their certification, and who shows proof of certification.

(iii) Is licensed by the Washington state medical commission, maintains their license, and who shows proof of license.

(iv) Is in good standing with their agency of employment.

(b) A coroner or medicolegal investigative personnel who:

(i) Has been employed as a coroner or medicolegal investigative personnel by a county coroner's or medical examiner's office for at least 12 months as a full-time employee or 18 months as a part-time employee.

(ii) Is certified (minimum registry certification required) by the American Board of Medicolegal Death Investigators (ABMDI).

(iii) Has attended a basic, introductory, or core training course or program or has attended an accumulation of courses which is equivalent to a basic, introductory, or core training course or program within the last five years. The courses/program substitution must be comparable in content and quality to that produced by the commission for the core medicolegal forensic investigation training.

(iv) Is in good standing with their agency of employment.

[]

NEW SECTION

WAC 139-27-110 Exemption process. (1) Requests for exemption must be submitted by the employing agency designee for any coroner, medical examiner, or medicolegal investigative personnel directly af-

affected by the regulation who wish to receive exemption from the initial certification training requirement. Requests shall be submitted in writing with appropriate documentation to the commission.

(2) Request for exemption:

(a) For a medical examiner:

(i) Proof of board certification as a forensic pathologist by the American Board of Pathology.

(ii) Proof of licensure by the Washington state medical commission.

(iii) Proof of good standing by the employing agency on agency letterhead.

(b) For a coroner or medicolegal investigative personnel:

(i) Proof of employment as a coroner or medicolegal investigative personnel by a county coroner's or medical examiner's office for at least 12 months as a full-time employee or 18 months as a part-time employee.

(ii) Proof of certification (minimum registry) by the American Board of Medicolegal Death Investigators.

(iii) Proof of medicolegal forensic investigation training comparable to that offered by the commission. Documentation shall include:

(A) Certificate of completion or other documentation showing completion;

(B) Course description;

(C) Agenda/syllabus/program;

(D) Number of education hours.

(iv) Proof of good standing by the employing agency on agency letterhead.

(3) Upon submission of the appropriate documentation, the commission shall review and evaluate relevant materials and issue a certificate if applicable within 60 days (days calculated per RCW 1.12.040).

(4) If the individual has not met the qualifications to receive exemption, the commission shall:

(a) Issue a certificate upon satisfactory completion of required training or submission of needed materials; or

(b) Require the individual to attend the core medicolegal forensic investigation training produced by the commission in conjunction with the Washington Association of Coroners and Medical Examiners (WACME).

(5) Issuance of a certificate through the exemption process does not exempt the individual from recertification requirements of WAC 139-27-050 or the continuing education requirements of WAC 139-27-040.

[]

OTS-4785.1

NEW SECTION

WAC 139-27-120 Collaboration with interstate and local agencies regarding certification eligibility. Commission staff shall work with other licensing state agencies and commissions to determine if individuals can be and continue to be eligible for certification including, but not limited to:

- (1) Inquiring about potential revocations;
- (2) Receiving determinations on revocations of other certifications or licenses; or
- (3) Sharing and receiving records on a case-by-case basis when necessary.

[]

WSR 23-19-056
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 15, 2023, 9:47 a.m., effective October 16, 2023]

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

Purpose: The department is amending WAC 388-414-0001 Do I have to meet all eligibility requirements for basic food? These amendments replace an obsolete link with an updated Health and Human Services Poverty Guideline URL and do not change the effect of the rule.

Citation of Rules Affected by this Order: Amending WAC 388-414-0001.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, 74.08A.250; and 7 C.F.R. 273.11(r).

Adopted under notice filed as WSR 23-07-098 on March 17, 2023.

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 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: September 15, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4975.1

AMENDATORY SECTION (Amending WSR 20-02-018, filed 12/19/19, effective 1/20/20)

WAC 388-414-0001 Do I have to meet all eligibility requirements for basic food? (1) What is "categorically eligible" (CE)?

(a) Being categorically eligible (CE) means that you have already met requirements for the program. If you are CE, you do not have to meet **every** program requirement to be eligible for basic food.

(b) If your assistance unit (AU) is CE, you automatically meet the following requirements for basic food:

(i) Countable resource limit under WAC 388-470-0005;

(ii) Maximum gross monthly income under WAC 388-478-0060; and

(iii) Maximum net monthly income under WAC 388-478-0060.

(c) If your AU is CE and the information is available from another program, you do not need to provide the following for basic food:

(i) Social Security number information under WAC 388-476-0005;

(ii) Sponsored alien information under WAC 388-450-0155; and

(iii) Residency under WAC 388-468-0005.

(d) Being CE does not mean that your AU is guaranteed to get basic food benefits. If your AU is CE:

(i) You must still meet the other basic food program requirements under WAC 388-400-0040; and

(ii) If you meet the other program requirements, we must budget your AU's income to determine the amount of benefits your AU will receive.

(2) **Who is categorically eligible for basic food?** Your basic food AU is CE when your household meets the conditions in subsection (2)(a) or (b) (~~(below)~~) of this section:

(a) Your AU's income that we do not exclude under WAC 388-450-0015 is at or under (~~(two hundred percent)~~) 200% of the federal poverty guidelines we use for department programs.

(i) The federal government publishes the federal poverty guidelines on the health and human services website. These are currently posted at <http://aspe.hhs.gov/poverty/index.shtml>) <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

(ii) The department uses the monthly value of the income guidelines for the current year beginning the first of April every year.

(iii) If your income is not over (~~(two hundred percent)~~) 200% of the federal poverty guidelines, we provide your AU information about the department programs and resources in the community.

(b) Everyone in your AU receives one of the following cash assistance programs:

(i) Temporary assistance for needy families (TANF)/state family assistance (SFA) or tribal TANF under WAC 388-400-0005 and WAC 388-400-0010;

(ii) Aged, blind, or disabled (ABD) cash assistance under WAC 388-400-0060;

(iii) Supplemental security income (SSI) under Title XVI of the Social Security Act; or

(iv) Diversion cash assistance (DCA) under WAC 388-432-0005. DCA makes the basic food AU CE for the month it receives DCA and the following three months.

(3) **Who is not CE even if my AU meets the above criteria?**

(a) Even if your AU is CE, members of your AU are not eligible for basic food if they:

(i) Are not eligible because of their alien or student status;

(ii) Were disqualified from basic food under WAC 388-444-0055 for failing work requirements;

(iii) Are not eligible for failing to provide or apply for a Social Security number;

(iv) Receive SSI in a cash-out state (state where SSI payments are increased to include the value of the client's food stamp allotment); or

(v) Live in an institution not eligible for basic food under WAC 388-408-0040.

(b) If a person in your AU is not eligible for basic food, we do not include them as an **eligible member** of your CE AU.

(c) Your AU is not CE if:

(i) Your AU lost eligibility due to substantial lottery or gambling winnings as indicated under WAC 388-483-0005;

(ii) Your AU is not eligible because of striker requirements under WAC 388-480-0001;

- (iii) Your AU is ineligible for knowingly transferring countable resources in order to qualify for benefits under WAC 388-488-0010;
- (iv) Your AU refused to cooperate in providing information that is needed to determine your eligibility;
- (v) The head of household for your AU failed to meet work requirements; or
- (vi) Anyone in your AU is disqualified because of an intentional program violation under WAC 388-446-0015.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, 74.08A.250, and 7 C.F.R. 273.11(r), 84 F.R. 15083. WSR 20-02-018, § 388-414-0001, filed 12/19/19, effective 1/20/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090 and 7 C.F.R. 273.2 and 273.3. WSR 15-05-010, § 388-414-0001, filed 2/5/15, effective 3/8/15. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. 273.2(j). WSR 14-15-070, § 388-414-0001, filed 7/15/14, effective 8/15/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 7 C.F.R. 273.2(j), 273.8(a), 273.9(a), 273.10. WSR 08-15-137, § 388-414-0001, filed 7/22/08, effective 10/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 05-23-081, § 388-414-0001, filed 11/15/05, effective 1/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 24. WSR 04-14-038, § 388-414-0001, filed 6/29/04, effective 8/1/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 04-07-139, § 388-414-0001, filed 3/22/04, effective 5/1/04. Statutory Authority: RCW 74.08.090, 74.04.510. WSR 01-07-054, § 388-414-0001, filed 3/16/01, effective 3/29/01; WSR 00-11-035, § 388-414-0001, filed 5/10/00, effective 8/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-414-0001, filed 7/31/98, effective 9/1/98.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 23-19-059

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed September 15, 2023, 2:25 p.m., effective October 16, 2023]

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

Purpose: The board of osteopathic medicine and surgery and the department of health are removing references to osteopathic physician assistants by adopting changes to WAC 246-853-290, 246-853-300, 246-853-630, 246-853-640, 246-853-662, 246-853-750, and 246-853-990. The adopted amendments will remove obsolete language and align the rules with recent statute changes.

Citation of Rules Affected by this Order: Amending WAC 246-853-290, 246-853-300, 246-853-630, 246-853-640, 246-853-662, 246-853-750, and 246-853-990.

Statutory Authority for Adoption: SHB 2378 (chapter 80, Laws of 2020).

Other Authority: SHB 2378 (chapter 80, Laws of 2020).

Adopted under notice filed as WSR 23-09-064 on April 18, 2023.

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 7, 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 7, 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 7, Repealed 0.

Date Adopted: September 15, 2023.

Shannon Phipps, DO, Chair
 Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-4221.4

AMENDATORY SECTION (Amending WSR 91-10-043, filed 4/25/91, effective 5/26/91)

WAC 246-853-290 Intent. It is the intent of the legislature that the board of osteopathic medicine and surgery seek ways to identify and support the rehabilitation of osteopathic physicians and surgeons ((and osteopathic physician assistants)) where practice or competency may be impaired due to the abuse of drugs or alcohol. The legislature intends that these practitioners be treated so that they can return to or continue to practice osteopathic medicine and surgery in a way which safeguards the public. The legislature specifically in-

tends that the board of osteopathic medicine and surgery establish an alternate program to the traditional administrative proceedings against osteopathic physicians and surgeons (~~and osteopathic physician assistants~~).

In lieu of disciplinary action under RCW 18.130.160 and if the board of osteopathic medicine and surgery determines that the unprofessional conduct may be the result of substance abuse, the board may refer the registrant/licensee to a voluntary substance abuse monitoring program approved by the board.

[Statutory Authority: RCW 18.57.005 and 18.130.175. WSR 91-10-043 (Order 159B), § 246-853-290, filed 4/25/91, effective 5/26/91.]

AMENDATORY SECTION (Amending WSR 91-10-043, filed 4/25/91, effective 5/26/91)

WAC 246-853-300 Definitions used relative to substance abuse monitoring. (1) "Approved substance abuse monitoring program" or "approved monitoring program" is a program the board has determined meets the requirements of the law and rules established by the board, according to the Washington Administrative Code, which enters into a contract with osteopathic practitioners who have substance abuse problems. The approved substance abuse monitoring program oversees compliance of the osteopathic practitioner's recovery activities as required by the board. Substance abuse monitoring programs may provide evaluation and/or treatment to participating osteopathic practitioners.

(2) "Impaired osteopathic practitioner" means an osteopathic physician and surgeon (~~or an osteopathic physician assistant~~) who is unable to practice osteopathic medicine and surgery with judgment, skill, competence, or safety due to chemical dependence, mental illness, the aging process, loss of motor skills, or any other mental or physical condition.

(3) "Contract" is a comprehensive, structured agreement between the recovering osteopathic practitioner and the approved monitoring program wherein the osteopathic practitioner consents to comply with the monitoring program and the required components for the osteopathic practitioner's recovery activity.

(4) "Approved treatment facility" is a facility approved by the bureau of alcohol and substance abuse, department of social and health services as specified in RCW 18.130.175.

(5) "Chemical dependence/substance abuse" means a chronic progressive illness which involves the use of alcohol and/or other drugs to a degree that it interferes in the functional life of the registrant/licensee, as manifested by health, family, job (professional services), legal, financial, or emotional problems.

(6) "Drug" means a chemical substance alone or in combination, including alcohol.

(7) "Aftercare" means that period of time after intensive treatment that provides the osteopathic practitioner and the osteopathic practitioner's family with group, or individualized counseling sessions, discussions with other families, ongoing contact and participation in self-help groups, and ongoing continued support of treatment program staff.

(8) "Practitioner support group" is a group of osteopathic practitioners and/or other health care professionals meeting regularly to

support the recovery of its members. The group provides a confidential setting with a trained and experienced facilitator in which participants may safely discuss drug diversion, licensure issues, return to work, and other professional issues related to recovery.

(9) "Twelve-step groups" are groups such as Alcoholics Anonymous, Narcotics Anonymous, and similar organizations.

(10) "Random drug screens" are laboratory tests to detect the presence of drugs of abuse in body fluids which are performed at irregular intervals not known in advance by the person to be tested. The collection of the body fluids must be observed by a treatment or health care professional or other board or monitoring program-approved observer.

(11) "Recovering" means that a chemically dependent osteopathic practitioner is in compliance with a treatment plan of rehabilitation in accordance with criteria established by an approved treatment facility and an approved substance abuse monitoring program.

(12) "Rehabilitation" means the process of restoring a chemically dependent osteopathic practitioner to a level of professional performance consistent with public health and safety.

(13) "Reinstatement" means the process whereby a recovering osteopathic practitioner is permitted to resume the practice of osteopathic medicine and surgery.

[Statutory Authority: RCW 18.57.005 and 18.130.175. WSR 91-10-043 (Order 159B), § 246-853-300, filed 4/25/91, effective 5/26/91.]

AMENDATORY SECTION (Amending WSR 20-09-025, filed 4/6/20, effective 5/7/20)

WAC 246-853-630 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this section, laser, light, radiofrequency, and plasma (LLRP) devices are medical devices that:

(a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue, or use high frequency ultrasound or other technologies to deliver energy to or through the skin; and

(b) Are classified by the federal Food and Drug Administration as prescriptive devices.

(2) Because an LLRP device is used to treat disease, injuries, deformities, and other physical conditions in human beings, the use of an LLRP device is the practice of osteopathic medicine under RCW 18.57.001. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than those in subsection (1) of this section constitutes surgery and is outside the scope of this section.

OSTEOPATHIC PHYSICIAN RESPONSIBILITIES

(4) An osteopathic physician must be appropriately trained in the physics, safety, and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(5) An osteopathic physician must use an LLRP device in accordance with standard medical practice.

(6) Prior to authorizing treatment with an LLRP device, an osteopathic physician must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that a nonphysician may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

(7) Regardless of who performs LLRP device treatment, the osteopathic physician is ultimately responsible for the safety of the patient.

(8) Regardless of who performs LLRP device treatment, the osteopathic physician is responsible for assuring that each treatment is documented in the patient's medical record.

(9) The osteopathic physician must ensure that there is a quality assurance program for the facility at which LLRP device procedures are performed regarding the selection and treatment of patients. An appropriate quality assurance program shall include the following:

(a) A mechanism to identify complications and problematic effects of treatment and to determine their cause;

(b) A mechanism to review the adherence of supervised professionals to written protocols;

(c) A mechanism to monitor the quality of treatments;

(d) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols required by subsection (10)(d) of this section and osteopathic physician supervising practices; and

(e) Ongoing training to maintain and improve the quality of treatment and performance of the treating professionals.

OSTEOPATHIC PHYSICIAN DELEGATION OF LLRP TREATMENT

(10) An osteopathic physician who meets the requirements in subsections (1) through (9) of this section may delegate an LLRP device procedure to a properly trained and licensed professional, whose licensure and scope of practice allows the use of a prescriptive LLRP medical device, provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of osteopathic medicine;

(b) Such delegated use falls within the supervised professional's lawful scope of practice;

(c) The LLRP device is not used on the globe of the eye;

(d) An osteopathic physician has a written office protocol for the supervised professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:

(i) The identity of the individual osteopathic physician authorized to use the LLRP device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised professional must follow when performing procedures delegated pursuant to this rule;

(iii) Selection criteria to screen patients for the appropriateness of treatments;

(iv) Identification of devices and settings to be used for patients who meet selection criteria;

(v) Methods by which the specified device is to be operated and maintained;

(vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(vii) A statement of the activities, decision criteria, and plan the supervised professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing osteopathic physician concerning specific decisions made.

(e) The supervised professional has appropriate training including, but not limited to:

(i) Application techniques of each LLRP device;

(ii) Cutaneous medicine;

(iii) Indications and contraindications for such procedures;

(iv) Preprocedural and postprocedural care;

(v) Potential complications; and

(vi) Infectious disease control involved with each treatment.

(f) The delegating osteopathic physician ensures that the supervised professional uses the LLRP device only in accordance with the written office protocol, and does not exercise independent medical judgment when using the device;

(g) The delegating osteopathic physician shall be on the immediate premises during the patient's initial treatment and be able to treat complications, provide consultation, or resolve problems, if indicated. The supervised professional may complete the initial treatment if the physician is called away to attend to an emergency;

(h) Existing patients with an established treatment plan may continue to receive care during temporary absences of the delegating osteopathic physician provided there is a local back-up physician, licensed under chapter 18.57 or 18.71 RCW, who satisfies the requirements of subsection (4) of this section. The local back-up physician must agree in writing to treat complications, provide consultation or resolve problems if medically indicated. In case of an emergency the delegating osteopathic physician or a back-up physician shall be reachable by phone and able to see the patient within ((sixty)) 60 minutes.

~~((11) The use of, or the delegation of the use of, an LLRP device by an osteopathic physician assistant is covered by WAC 246-854-220.))~~

[Statutory Authority: RCW 18.57.005, 18.130.050, and 18.340.020. WSR 20-09-025, § 246-853-630, filed 4/6/20, effective 5/7/20. Statutory Authority: RCW 18.57.005, 18.57A.020, and 18.130.250. WSR 15-16-085, § 246-853-630, filed 7/31/15, effective 8/31/15. Statutory Authority: RCW 18.57.005, 18.57A.020, 18.130.050. WSR 08-20-125, § 246-853-630, filed 10/1/08, effective 11/1/08.]

AMENDATORY SECTION (Amending WSR 11-08-024, filed 3/31/11, effective 5/1/11)

WAC 246-853-640 Nonsurgical medical cosmetic procedures. (1)

The purpose of this rule is to set forth the duties and responsibilities of an osteopathic physician who delegates the injection of medications or substances for cosmetic purposes or the use of prescription devices for cosmetic purposes. These procedures can result in complications such as visual impairment, blindness, inflammation, burns, scarring, disfiguration, hypopigmentation and hyperpigmentation. The

performance of these procedures is the practice of osteopathic medicine under RCW 18.57.001(4).

(2) This rule does not apply to:

(a) Surgery;

(b) The use of prescription lasers, noncoherent light, intense pulsed light, radiofrequency, or plasma as applied to the skin. This is covered in WAC 246-853-630 ((and ~~246-854-220~~));

(c) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(d) The use of nonprescription devices; and

(e) Intravenous therapy.

(3) Definitions. These definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes.

(b) "Osteopathic physician" means an individual licensed under chapter 18.57 RCW.

(c) "Prescription device" means a device that the federal Food and Drug Administration has designated as a prescription device, and can be sold only to persons with prescriptive authority in the state in which they reside.

OSTEOPATHIC PHYSICIAN RESPONSIBILITIES

(4) An osteopathic physician must be appropriately trained in a nonsurgical medical cosmetic procedure prior to performing the procedure or delegating the procedure. The osteopathic physician must keep a record of his or her training in the office and available for review upon request by a patient or a representative of the board.

(5) Prior to authorizing a nonsurgical medical cosmetic procedure, an osteopathic physician must:

(a) Take a history;

(b) Perform an appropriate physical examination;

(c) Make an appropriate diagnosis;

(d) Recommend appropriate treatment;

(e) Obtain the patient's informed consent;

(f) Provide instructions for emergency and follow-up care; and

(g) Prepare an appropriate medical record.

(6) Regardless of who performs the nonsurgical medical cosmetic procedure, the osteopathic physician is ultimately responsible for the safety of the patient.

(7) Regardless of who performs the nonsurgical medical cosmetic procedure, the osteopathic physician is responsible for ensuring that each treatment is documented in the patient's medical record.

(8) The osteopathic physician must ensure that there is a quality assurance program for the facility at which nonsurgical medical cosmetic procedures are performed regarding the selection and treatment of patients. An appropriate quality assurance program must include the following:

(a) A mechanism to identify complications and untoward effects of treatment and to determine their cause;

(b) A mechanism to review the adherence of supervised health care practitioners to written protocols;

(c) A mechanism to monitor the quality of treatments;

(d) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols required by subsection (10) of this section and osteopathic physician supervising practices; and

(e) Ongoing training to maintain and improve the quality of treatment and performance of supervised health care practitioners.

(9) An osteopathic physician may not sell or give a prescription device or medication to an individual who does not possess prescriptive authority in the state in which the individual resides or practices.

(10) The osteopathic physician must ensure that all equipment used for procedures covered by this section is inspected, calibrated, and certified as safe according to the manufacturer's specifications.

PHYSICIAN DELEGATION

(11) An osteopathic physician who meets the above requirements may delegate a nonsurgical medical cosmetic procedure to a properly trained physician assistant, registered nurse or licensed practical nurse, provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) The osteopathic physician delegates procedures that are within the delegate's lawful scope of practice;

(c) The delegate has appropriate training in, at a minimum:

(i) Techniques for each procedure;

(ii) Cutaneous medicine;

(iii) Indications and contraindications for each procedure;

(iv) Preprocedural and postprocedural care;

(v) Recognition and acute management of potential complications that may result from the procedure; and

(vi) Infectious disease control involved with each treatment.

(d) The osteopathic physician has a written office protocol for the delegate to follow in performing the nonsurgical medical cosmetic procedure. A written office protocol must include, at a minimum, the following:

(i) The identity of the osteopathic physician responsible for the delegation of the procedure;

(ii) Selection criteria to screen patients for the appropriateness of treatment;

(iii) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(iv) A statement of the activities, decision criteria, and plan the delegate shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing osteopathic physician concerning specific decisions made.

(e) The osteopathic physician ensures that the delegate performs each procedure in accordance with the written office protocol;

(f) Each patient signs a consent form prior to treatment that lists foreseeable side effects and complications, and the identity and license of the delegate or delegates who will perform the procedure; and

(g) Each delegate performing a procedure covered by this section must be readily identified by a name tag or similar means so that the patient understands the identity and license of the treating delegate.

(12) If an osteopathic physician delegates the performance of a procedure that uses a medication or substance, whether or not approved

by the federal Food and Drug Administration for the particular purpose for which it is used, the osteopathic physician must be on-site during the procedure.

(13) If the physician is unavailable to supervise a delegate as required by this section, the osteopathic physician must make arrangements for an alternate physician to provide the necessary supervision. The alternate supervisor must be familiar with the protocols in use at the site, will be accountable for adequately supervising the treatment pursuant to the protocols, and must have comparable training as the primary supervising osteopathic physician.

(14) An osteopathic physician may not permit a delegate to further delegate the performance of a nonsurgical medical cosmetic procedure to another individual.

[Statutory Authority: RCW 18.57.005, 18.57A.020, and 18.130.050 (4). WSR 11-08-024, § 246-853-640, filed 3/31/11, effective 5/1/11.]

AMENDATORY SECTION (Amending WSR 18-20-087, filed 10/1/18, effective 11/1/18)

WAC 246-853-662 Definitions. The definitions in this section apply in WAC 246-853-660 through 246-853-790 unless the context clearly requires otherwise.

(1) "Aberrant behavior" means behavior that indicates misuse, diversion, or substance use disorder. This includes, but is not limited to, multiple early refills or obtaining prescriptions of the same or similar drugs from more than one osteopathic physician or other health care practitioner.

(2) "Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal, or mechanical stimulus and typically is associated with invasive procedures, trauma, and disease. Acute pain is considered to be six weeks or less in duration.

(3) "Biological specimen test" or "biological specimen testing" means tests of urine, hair, or other biological samples for various drugs and metabolites.

(4) "Cancer-related pain" means pain resulting from cancer in a patient who is less than two years postcompletion of curative anti-cancer treatment with current evidence of disease.

(5) "Chronic pain" means a state in which pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years. Chronic pain may include pain resulting from cancer or treatment of cancer in a patient who is two years postcompletion of curative anti-cancer treatment with no current evidence of disease.

(6) "High-dose" means (~~ninety~~) 90 milligrams MED, or more, per day.

(7) "High-risk" is a category of patient at increased risk of morbidity or mortality, such as from comorbidities, polypharmacy, history of substance use disorder or abuse, aberrant behavior, high-dose opioid prescription, or the use of any central nervous system depressant.

(8) "Hospice" means a model of care that focuses on relieving symptoms and supporting patients with a life expectancy of six months or less.

(9) "Hospital" means any institution, place, building, or agency licensed by the department under chapter 70.41 or 71.12 RCW, or designated under chapter 72.23 RCW to provide accommodations, facilities, and services over a continuous period of (~~twenty-four~~) 24 hours or more, for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis.

(10) "Low-risk" means a category of patient at low risk of opioid-induced morbidity or mortality, based on factors and combinations of factors such as medical and behavioral comorbidities, polypharmacy, and dose of opioids of less than a (~~fifty~~) 50 milligram morphine equivalent dose.

(11) "Medication assisted treatment" or "MAT" means the use of pharmacologic therapy, often in combination with counseling and behavioral therapies, for the treatment of substance use disorders.

(12) "Moderate-risk" means a category of patient at a moderate risk of opioid-induced morbidity or mortality, based on factors and combinations of factors such as medical and behavioral comorbidities, polypharmacy, past history of substance use disorder or abuse, aberrant behavior, and dose of opioids between (~~fifty and ninety~~) 50 and 90 milligram morphine equivalent doses.

(13) "Morphine equivalent dose" or "MED" means a conversion of various opioids to a morphine equivalent dose by the use of accepted conversion tables.

(14) "Multidisciplinary pain clinic" means a facility that provides comprehensive pain management and includes care provided by multiple available disciplines, practitioners, or treatment modalities.

(15) "Nonoperative pain" means acute pain which does not occur as a result of surgery.

(16) "Opioid analgesic" or "opioid" means a drug that is either an opiate derived from the opium poppy or opiate-like that is a semi-synthetic or synthetic drug. Examples include morphine, codeine, hydrocodone, oxycodone, fentanyl, meperidine, and methadone.

(17) "Palliative" means care that improves the quality of life of patients and their families facing serious, advanced, or life-threatening illness. With palliative care particular attention is given to the prevention, assessment, and treatment of pain and other symptoms, and to the provision of psychological, spiritual, and emotional support.

(18) "Pain" means an unpleasant sensory or emotional experience associated with actual or potential tissue damage, or described in terms of such damage.

(19) "Perioperative pain" means acute pain that occurs as the result of surgery.

(20) "Prescription monitoring program" or "PMP" means the Washington state prescription monitoring program authorized under chapter 70.225 RCW.

(21) "Practitioner" means an advanced registered nurse practitioner licensed under chapter 18.79 RCW, a dentist licensed under chapter 18.32 RCW, a physician licensed under chapter 18.71 or 18.57 RCW, a physician assistant licensed under chapter 18.71A (~~or 18.57A~~) RCW, or a podiatric physician licensed under chapter 18.22 RCW.

(22) "Subacute pain" is considered to be a continuation of pain, of six to (~~twelve~~) 12 weeks in duration.

(23) "Substance use disorder" means a primary, chronic, neurobiological disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. Substance use disorder is not the same as physical dependence or tolerance characterized by behaviors that include, but are not limited to, impaired control over drug use, craving, compulsive use, or continued use despite harm.

[Statutory Authority: RCW 18.57.800, 18.57A.800 and 2017 c 297. WSR 18-20-087, § 246-853-662, filed 10/1/18, effective 11/1/18. Statutory Authority: RCW 18.57.285, 18.57A.090, 18.57.005, 18.57A.020. WSR 11-10-062, § 246-853-662, filed 5/2/11, effective 7/1/11.]

AMENDATORY SECTION (Amending WSR 18-20-087, filed 10/1/18, effective 11/1/18)

WAC 246-853-750 Pain management specialist. (1) A pain management specialist shall meet one or more of the following qualifications:

(a) An osteopathic physician shall be board certified or board eligible by an American Board of Medical Specialties-approved board (ABMS) or by the American Osteopathic Association (AOA) in physical medicine and rehabilitation, rehabilitation medicine, neurology, rheumatology, or anesthesiology;

(b) Have a subspecialty certificate in pain medicine by an ABMS-approved board;

(c) Have a certification of added qualification in pain management by the AOA;

(d) Be credentialed in pain management by an entity approved by the board; or

(e) Have a minimum of three years of clinical experience in a chronic pain management care setting including:

(i) Successful completion of a minimum of at least ~~((eighteen))~~ 18 continuing education hours in pain management during the past three years for an osteopathic physician; and

(ii) At least ~~((thirty))~~ 30 percent of the osteopathic physician's current practice is the direct provision of pain management care or in a multidisciplinary pain clinic.

~~(2) ((An osteopathic physician assistant shall meet requirements in WAC 246-854-330.~~

~~(3))~~ An allopathic physician shall meet requirements in WAC 246-919-945.

~~((4) An allopathic))~~ (3) A physician assistant shall meet requirements in WAC 246-918-895.

~~((5))~~ (4) A dentist shall meet requirements in WAC 246-817-965.

~~((6))~~ (5) An advanced registered nurse practitioner (ARNP) shall meet requirements in WAC 246-840-493.

~~((7))~~ (6) A podiatric physician shall meet requirements in WAC 246-922-750.

[Statutory Authority: RCW 18.57.800, 18.57A.800 and 2017 c 297. WSR 18-20-087, § 246-853-750, filed 10/1/18, effective 11/1/18.]

AMENDATORY SECTION (Amending WSR 16-21-062, filed 10/14/16, effective 2/1/17)

WAC 246-853-990 Osteopathic fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, (~~(Part 2,)~~) except postgraduate training limited licenses.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program dates.

(3) The following nonrefundable fees will be charged for osteopathic physicians:

Title of Fee	Fee
Original application	
Endorsement application	\$375.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	375.00
Late renewal penalty	190.00
Expired license reissuance	250.00
UW online access fee (HEAL-WA)	16.00
Substance abuse monitoring surcharge	50.00
Inactive license renewal	
Renewal	310.00
Expired license reissuance	225.00
Late renewal penalty	155.00
UW online access fee (HEAL-WA)	16.00
Substance abuse monitoring surcharge	50.00
Retired active license renewal	
Renewal	195.00
Late renewal penalty	100.00
UW online access fee (HEAL-WA)	16.00
Substance abuse monitoring surcharge	50.00
Endorsement/state exam application	500.00
Reexam	100.00
Verification of license	50.00
Limited license	
Application	285.00
Renewal	265.00
UW online access fee (HEAL-WA)	16.00
Substance abuse monitoring surcharge	50.00
Temporary permit application	70.00
Duplicate certificate	20.00

~~((4) The following nonrefundable fees will be charged for osteopathic physician assistants:~~

Title of Fee	Fee
Original application	
Application	\$220.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	

Title of Fee	Fee
Renewal	220.00
Late renewal penalty	110.00
Expired license reissuance	100.00
UW online access fee (HEAL-WA)	16.00
Substance abuse monitoring surcharge	50.00
Retired active license renewal	
Renewal	120.00
Late renewal penalty	60.00
UW online access fee (HEAL-WA)	16.00
Substance abuse monitoring surcharge	50.00
Verification of license	30.00
Interim permit	200.00
License after exam	100.00
Duplicate certificate	20.00))

[Statutory Authority: 2016 c 42 and RCW 18.130.175, and 43.10.250. WSR 16-21-062, § 246-853-990, filed 10/14/16, effective 2/1/17. Statutory Authority: RCW 18.130.250, 43.70.250, and 18.130.186. WSR 15-07-004, § 246-853-990, filed 3/6/15, effective 4/6/15. Statutory Authority: RCW 43.70.250, 43.70.280, and 2013 c 129. WSR 13-21-069, § 246-853-990, filed 10/16/13, effective 1/1/14. Statutory Authority: RCW 43.70.110 (3)(c) and 43.70.250. WSR 12-19-088, § 246-853-990, filed 9/18/12, effective 11/1/12. Statutory Authority: RCW 43.70.250, 43.70.110. WSR 11-14-038, § 246-853-990, filed 6/28/11, effective 8/15/11. Statutory Authority: RCW 43.70.110, 43.70.250, 2008 c 329. WSR 08-15-014, § 246-853-990, filed 7/7/08, effective 7/7/08. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-853-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 43.70.250. WSR 99-24-063, § 246-853-990, filed 11/29/99, effective 12/30/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-853-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 43.70.250 and chapters 18.57, 18.57A, 18.22 and 18.59 RCW. WSR 94-22-055, § 246-853-990, filed 11/1/94, effective 1/1/95. Statutory Authority: RCW 43.70.250. WSR 92-14-054 (Order 281), § 246-853-990, filed 6/25/92, effective 7/26/92; WSR 91-21-034 (Order 200), § 246-853-990, filed 10/10/91, effective 11/10/91; WSR 91-13-002 (Order 173), § 246-853-990, filed 6/6/91, effective 7/7/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-853-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.70.250. WSR 90-04-094 (Order 029), § 308-138-080, filed 2/7/90, effective 3/10/90. Statutory Authority: RCW 43.24.086. WSR 87-10-028 (Order PM 650), § 308-138-080, filed 5/1/87. Statutory Authority: 1983 c 168 § 12. WSR 83-17-031 (Order PL 442), § 308-138-080, filed 8/10/83. Formerly WAC 308-138-060.]

WSR 23-19-061
PERMANENT RULES

WASHINGTON STATE UNIVERSITY

[Filed September 18, 2023, 8:55 a.m., effective October 19, 2023]

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

Purpose: The university is updating the rules regarding public records, including availability, processing, exemptions, costs of providing public records, review of denials, and description of the university agency.

The proposed amendments modify, clarify, and update the university's public records rules.

Citation of Rules Affected by this Order: Amending WAC 504-45-020, 504-45-030, 504-45-040, 504-45-050, 504-45-060, 504-45-070, and 504-45-080.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 23-14-112 on July 5, 2023.

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 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, 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 7, Repealed 0.

Date Adopted: September 15, 2023.

Deborah L. Bartlett, Director
 Procedures, Records, and Forms
 and University Rules Coordinator

OTS-4704.1

AMENDATORY SECTION (Amending WSR 17-23-138, filed 11/20/17, effective 12/21/17)

WAC 504-45-020 Agency description—Contact information—Public records officer. (1) Washington State University is an institution of higher education, authority for which is located in chapter 28B.30 RCW. The system administrative offices and the main campus of the university are located at (~~the university's main campus at~~) Pullman, Washington. Other campuses are located at Spokane, Tri-Cities, Vancouver, and Everett, Washington. There is also a global (online) campus. Agricultural research centers are located at Mt. Vernon, Prosser, Puyallup, Vancouver, and Wenatchee, Washington. Cooperative extension offices are maintained at the county seats of all counties in the state. The university also has operations offices at Seattle and Olympia, Washington.

(2) Any person wishing to request access to public records of the university, or seeking assistance in making such a request, should contact the university's public records office located at the Pullman administrative offices. Current contact information and additional information regarding release of public records, including costs, are available on the university's website at <https://wsu.edu>.

(3) The public records officer oversees compliance with the act, but another university staff member may process the request. Therefore, these rules refer to the public records officer or "designee." The public records officer or designee and the university provide the "fullest assistance" to requestors; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the university.

[Statutory Authority: RCW 28B.30.150. WSR 17-23-138, § 504-45-020, filed 11/20/17, effective 12/21/17; WSR 13-24-028, § 504-45-020, filed 11/25/13, effective 12/26/13; WSR 07-04-027, § 504-45-020, filed 1/29/07, effective 3/1/07.]

AMENDATORY SECTION (Amending WSR 17-23-138, filed 11/20/17, effective 12/21/17)

WAC 504-45-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying by appointment during normal business hours of the university. For the purposes of this chapter, the normal business hours for the public records office are from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding the university's holidays and scheduled and emergency closure periods. Records must be inspected at the offices of the university.

(2) Index of records. An index of final orders, declaratory orders, interpretive statements, and policy statements entered after June 30, 1990, is available at the office of the university's rules coordinator at the Pullman campus. The university posts links to many of these records on its website at <https://wsu.edu>.

(3) Organization of records. The university maintains its records in a reasonably organized manner. The university takes reasonable actions to protect records from damage and disorganization. A requestor must not take university records from university offices without the permission of the public records officer or designee. Certain records are available on the university's website at <https://wsu.edu>. Requestors are encouraged to view the documents available on the website prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the university should make the request in writing on the university's public records portal, using the request form on the university's website, or by letter (~~(, fax,)~~) or email addressed to the public records officer or designee. The university also honors in-person requests received by the public records office during normal business hours. The public records office records in-person verbal requests in writing and confirms the substance of the request with the requestor. The following information must be included in the request:

- (i) Name of the person requesting records, unless the requestor wishes to remain anonymous;
- (ii) Mailing address of requestor;
- (iii) Other contact information, including telephone number and any email address;
- (iv) Identification of the public records adequate for the public records officer or designee to locate the records; and
- (v) The date of the request.
- (b) If the requestor wishes to have copies of the records made instead of simply inspecting them, ~~((he or she))~~ they should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to RCW 42.56.120, standard photocopies or electronically produced copies are provided at the rates established in WAC 504-45-070. A requestor may also refer to the university's website at <https://wsu.edu> for current rates.
- (c) A form is available for use by requestors at the public records office and on the university's website at <https://wsu.edu>.
- ~~((d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she confirms receipt of the information and the substance of the request in writing.))~~

[Statutory Authority: RCW 28B.30.150. WSR 17-23-138, § 504-45-030, filed 11/20/17, effective 12/21/17; WSR 13-24-028, § 504-45-030, filed 11/25/13, effective 12/26/13; WSR 07-04-027, § 504-45-030, filed 1/29/07, effective 3/1/07.]

AMENDATORY SECTION (Amending WSR 17-23-138, filed 11/20/17, effective 12/21/17)

WAC 504-45-040 Processing of public records requests—General.

(1) Providing "fullest assistance." The university is charged by statute with adopting rules which provide for how it is to "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with the essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee processes requests in the order allowing the most requests to be processed in the most efficient manner. This may include grouping requests to help ensure university resources are being used efficiently, for example, when an individual requestor, or one or more requestors from the same organization, makes multiple records requests.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer or designee does one or more of the following:

- (a) Makes the records available for inspection or copying;
- (b) If copies are requested and payment for the copies, if any, is made or terms of payment are agreed upon, sends the copies to the requestor;
- (c) Provides a reasonable estimate of when records will be available;

(d) If the request is unclear or does not sufficiently identify the requested records, requests clarification from the requestor. Such clarification may be requested and provided by telephone, email, or mail. Based upon that clarification, the public records officer or designee may revise the estimate of when records will be available; or

(e) Denies the request.

(3) Consequences of failure to respond. If the university does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer or designee to determine the reason for the failure to respond.

(4) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask (~~him or her~~) them to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons includes a copy of the request.

(5) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the university believes that a record is exempt from disclosure and should be withheld, the public records officer or designee states the specific exemption and provides a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee redacts the exempt portions, provides the nonexempt portions, and indicates to the requestor why portions of the record are being redacted.

(6) Inspection of records.

(a) Consistent with other demands, the university must promptly provide space to inspect public records. 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~~) they wish the university to copy.

(b) The requestor must claim or review the assembled records within (~~thirty~~) 30 days of the university's notification to (~~him or her~~) them that the records are available for inspection or copying. The university notifies the requestor in writing of this requirement and informs the requestor that (~~he or she~~) they should contact the university to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the (~~thirty~~) 30-day period or make other arrangements, the university may close the request. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) Providing copies of records. After inspection is complete, the public records officer or designee makes any copies of records requested by the requestor or arranges for copying.

(8) Providing records in installments. When the request is for a large number of records, the public records officer or designee provides access for inspection and copying in installments, if (~~he or she~~) they reasonably determine(~~s~~) that it would be practical to provide the records in that way. If, within (~~thirty~~) 30 days, the requestor fails to inspect the entire set of records or one or more of

the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee indicates that the university has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(10) Closing withdrawn or abandoned request. The public records officer or designee may close the request and indicate to the requestor that the university has closed the request when the requestor ~~((either))~~ :

(a) Withdraws the request ~~((or))~~ ;

(b) Fails to provide clarification within 30 days of a request for clarification;

(c) Fails to fulfill ~~((his or her))~~ their obligations to inspect the records, which includes opening and downloading the records within 30 days; or

(d) Fails to pay the deposit or final payment for the requested copies ~~((, the public records officer or designee closes the request and indicates to the requestor that the university has closed the request))~~ within 30 days.

(11) Later discovered documents. If, after the university has informed the requestor that it has provided all available records, the university becomes aware of additional ~~((responsible))~~ responsive documents existing at the time of the request, it must promptly inform the requestor of the additional documents and make them available for inspection or provide copies upon payment on an expedited basis.

[Statutory Authority: RCW 28B.30.150. WSR 17-23-138, § 504-45-040, filed 11/20/17, effective 12/21/17; WSR 13-24-028, § 504-45-040, filed 11/25/13, effective 12/26/13; WSR 07-04-027, § 504-45-040, filed 1/29/07, effective 3/1/07.]

AMENDATORY SECTION (Amending WSR 17-23-138, filed 11/20/17, effective 12/21/17)

WAC 504-45-050 Processing of public records requests—Electronic records. (1) Requesting electronic records. The process for requesting electronic public records is the same as for requesting paper public records.

(2) Providing electronic records. When a requestor requests records in an electronic format, the public records officer or designee provides the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(3) Customized access to databases. With the consent of the requestor, the university may provide customized access under RCW ~~((43.41A.130))~~ 43.105.355 if the record is not reasonably locatable or not reasonably translatable into the format requested. The university may charge a fee consistent with RCW ~~((43.41A.130))~~ 43.105.355 for such customized access. (See WAC 504-45-070.)

[Statutory Authority: RCW 28B.30.150. WSR 17-23-138, § 504-45-050, filed 11/20/17, effective 12/21/17; WSR 13-24-028, § 504-45-050, filed 11/25/13, effective 12/26/13; WSR 07-04-027, § 504-45-050, filed 1/29/07, effective 3/1/07.]

AMENDATORY SECTION (Amending WSR 17-23-138, filed 11/20/17, effective 12/21/17)

WAC 504-45-060 Exemptions. (1) The Public Records Act provides that a number of types of (~~documents~~) records are exempt from public inspection and copying. In addition, (~~documents~~) records are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some (~~documents~~) records held by the university for inspection and copying. This is not an exhaustive list as numerous exemptions exist outside the act. The university's failure to list an exemption here does not affect the efficacy of any exemption.

- (a) RCW 5.60.060 - Privileged communications;
 - (b) 20 U.S.C. 1232g - Family Education Rights and Privacy Act (FERPA);
 - (c) 42 U.S.C. 405 (c) (2) (vii) (1) - Social Security numbers;
 - (d) 45 C.F.R. parts 106 and 164 - Health Insurance Portability and Accountability Act of 1996 (HIPAA);
 - (e) Chapter 19.108 RCW and RCW 4.24.601 - Uniform Trade Secrets Act; and
 - (f) Chapter 10.97 RCW - Regarding criminal history information.
- (2) The university is prohibited by statute from providing lists of individuals for commercial purposes.

[Statutory Authority: RCW 28B.30.150. WSR 17-23-138, § 504-45-060, filed 11/20/17, effective 12/21/17; WSR 07-04-027, § 504-45-060, filed 1/29/07, effective 3/1/07.]

AMENDATORY SECTION (Amending WSR 17-23-138, filed 11/20/17, effective 12/21/17)

WAC 504-45-070 Costs of providing (~~copies of~~) public records.

(1) Costs for (~~copies of~~) public records. There is no fee for inspecting public records. The following fees apply to copies of public records:

- (a) Ten cents per page for records scanned into electronic format;
- (b) Five cents for every four electronic files or attachments uploaded to an email, cloud storage service, or other electronic delivery system;
- (c) Ten cents per gigabyte for transmitting records electronically;
- (d) Fifteen cents per page for photocopies of public records and/or printed copies of electronic public records when requested;
- (e) The actual cost of any digital storage media or device provided by the agency, the actual cost of any container or envelope used

to mail the copies to the requestor, and the actual postage or delivery charge;

(f) For body worn camera footage, staff redaction time as provided in RCW 42.56.240 (14) (f); and

(g) Under RCW ((42.56.120)) 42.56.130, the university may charge other copy fees authorized by statutes outside chapter 42.56 RCW.

(2) In addition to the charge imposed for providing ~~((copies of))~~ public records and for the use by any person of university equipment, the university may include a customized service charge. The university charges for customized services pursuant to RCW 42.56.120(3). The customized service charge may reimburse the university up to the actual cost of providing the services in this section. The university provides the requestor the opportunity to amend ~~((his or her))~~ their request in order to avoid or reduce the cost of a customized service charge. The university may require a deposit in an amount not to exceed ~~((ten))~~ 10 percent of the estimated cost of providing ~~((copies))~~ records for a request, or 10 percent of the estimated cost of staff redaction time for body worn camera footage, including a customized service charge. If the university makes a request available on a partial or installment basis, the university may charge for each part of the request as it is provided.

(3) Payment. Payment may be made by credit or debit card, cash, check, or money order to the university. For payments made by credit or debit card, a service fee equivalent to the cost of processing the payment is charged.

(a) 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 university notifies the requestor of when payment is due.

(b) The university closes 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.

(4) Pursuant to RCW 42.56.120(2), ~~((as amended by section 3, chapter 304, Laws of 2017, Washington State))~~ the university declares that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records for the following reasons:

(a) Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations;

(b) Staff resources are insufficient to perform a study and to calculate such actual costs; and

(c) A study would interfere with and disrupt other essential agency functions.

(5) The university's public records office publishes a schedule of fees on the university's website consistent with this rule. The university reserves the right to change its fees as allowed by RCW 42.56.120.

[Statutory Authority: RCW 28B.30.150. WSR 17-23-138, § 504-45-070, filed 11/20/17, effective 12/21/17; WSR 13-24-028, § 504-45-070, filed 11/25/13, effective 12/26/13; WSR 07-04-027, § 504-45-070, filed 1/29/07, effective 3/1/07.]

AMENDATORY SECTION (Amending WSR 17-23-138, filed 11/20/17, effective 12/21/17)

WAC 504-45-080 Review of denials of public records. (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including email) to the public records officer for a review of that decision. The petition must include a copy of, or reasonably identify, the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer (~~must~~) immediately refers the petition to their supervisor, or a designee in the supervisor's absence, who considers the petition and either affirms or reverses such denial within two business days following the university's receipt of the petition, or within such other time as the university and the requestor mutually agree.

(3) Review by the attorney general's office. Pursuant to RCW 42.56.530, if the university denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may request 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 28B.30.150. WSR 17-23-138, § 504-45-080, filed 11/20/17, effective 12/21/17; WSR 08-08-055, § 504-45-080, filed 3/27/08, effective 4/27/08; WSR 07-04-027, § 504-45-080, filed 1/29/07, effective 3/1/07.]

WSR 23-19-073
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 19, 2023, 8:16 a.m., effective November 1, 2023]

Effective Date of Rule: November 1, 2023.

Purpose: RCW 70.114A.065 directs the department of health (DOH) and the department of labor and industries (L&I) to adopt joint rules for the licensing, operation, and inspection of temporary worker housing (TWH).

In April 2020, DOH and L&I received a petition for rule making requesting immediate rule amendments to further protect occupants in TWH and cherry harvest camps. In response to the petition and the Governor's Proclamation 20-25, Stay Home, Stay Health [Healthy] order, DOH, in conjunction with L&I, adopted emergency rules to protect occupants from the coronavirus disease 2019 (COVID-19) hazards in licensed TWH. The last emergency rule expired January 14, 2023.

Throughout the duration of the emergency, DOH and L&I continued to review new information, data, and science as they became available to determine necessary requirements to protect TWH occupants from COVID-19 and similar airborne infectious disease hazards. Each emergency rule provided specific requirements responding to the needs at the time the emergency rule was adopted.

DOH and L&I have assessed the emergency rule requirements, along with input from interested parties, and are adopting the following key provisions to address prevention of future outbreaks and the spread of any airborne infectious disease.

WAC 296-307-16103 Definitions.

- Added and revised definitions to aid in rule clarity.

WAC 296-307-16127 TWH management plan.

- Clarified that the TWH complaint line was multilingual and not bilingual.
- Added requirement that updates to the TWH management plan must be submitted to DOH within 10 calendar days.
- Clarified current rule language to provide the updated plan to occupants in a language or languages understood by the occupants.

WAC 296-307-16146 Ventilation (new).

- Added specific ventilation requirements for all TWH buildings and cherry harvest tents to maximize outdoor air intake, including maintaining maintenance logs and other documentation.

WAC 296-307-16147 Tents.

- Made nonsubstantive clarifying edits such as grammar and punctuation, reflecting updates made to definitions.
- Added requirement to close outside openings when external conditions pose a health or safety risk.

WAC 296-307-16190 Disease prevention and control.

- Revised the disease prevention and control requirements to:
 - Require cooperation with the local health jurisdiction and DOH in the investigation and control of confirmed cases, suspected cases, outbreaks, and suspected outbreaks of communicable diseases or notifiable conditions;

- o Update reporting requirements for communicable diseases;
- o Require an implementation of an infection control program;
- o Require the posting of education about health and safety practices in a language commonly understood by TWH occupants;
- o Allow community-based outreach workers and community health workers to reach out to TWH occupants;
- o Establish a communicable disease and prevention response plan which includes identifying and isolating occupants with suspected and confirmed cases and providing medical assistance; and
- o Provide specific training for those responsible for executing the communicable disease and prevention response plan.

Citation of Rules Affected by this Order: New WAC 296-307-16146; and amending WAC 296-307-16103, 296-307-16127, 296-307-16147, and 396-307-16190.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 23-10-092 on May 3, 2023.

Changes Other than Editing from Proposed to Adopted Version:

WAC 246-358-010 and 296-307-16103, Definitions.

- Added the definition of "Local Health Jurisdiction or LHJ" for rule clarity.
- The defined term "Mechanical ventilation system" was amended to clearly exclude kitchen and bathroom exhaust fans.
- Added the definition of "Suspected case" for rule clarity.

WAC 246-358-050 and 296-307-16127, TWH management plan.

- The DOH TWH complaint phone line is available in multiple languages and therefore the reference to the "bilingual TWH complaint line" was changed to "multilingual TWH complaint line."

WAC 246-358-076 and 296-307-16146, Ventilation.

- The proposed rule was amended to clarify that a filter with an equivalent rating of MERV 13 could be used to comply with the rule.

WAC 246-358-175 and 296-307-16190, Disease prevention and control.

- Removed "unexpected weight loss" as a symptom that needed to be reported to the LHJ.
- Clarified the word "required" to say "directed" when used to describe actions that are given by the LHJ.
- Entry of community health workers and community-based outreach workers. The proposed rule was amended to clarify the reasons these workers should be entrusted to enter the property of the TWH to educate occupants about public health, safety, and workers' rights provided that they notify the operator to set up a designated time and place for the visit.
- Food preparation, specifically if an occupant is sick, was clarified that a sick occupant cannot prepare food for occupants that are not sick but may prepare food for others that are sick and/or in isolation/quarantine with the sick occupant.
- "Oral thermometers" was removed from the requirements, as "no touch" or "no contact" thermometers can effectively meet the re-

quirements for fulfilling the communicable disease prevention and response plan requirements.

- Medical transportation, specifically around transportation provided by a service provider, was clarified to remove "aid service" and instead state "ambulance service or other transportation service."
- Communication requirement, specifically access to phone services, was clarified to require operators to provide phone services only if the occupant does not have access to a personal phone.

A final cost-benefit analysis is available by contacting Carmyn Shute, Administrative Regulations Analyst, L&I, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-870-4525, fax 360-902-5619, email Carmyn.Shute@lni.wa.gov, website <https://www.lni.wa.gov/safety-health/safety-rules/rulemaking-stakeholder-information/temporary-worker-housing-in-agriculture-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 1, 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 1, 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: September 19, 2023.

Joel Sacks
Director

OTS-4438.4

AMENDATORY SECTION (Amending WSR 20-21-091, filed 10/20/20, effective 11/20/20)

WAC 296-307-16103 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates otherwise:

(1) **Agricultural employee.** Any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity.

(2) **Agricultural employer.** Any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes, but is not limited to, the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash, the harvest of Christmas trees, and other related activities.

(3) **Bathing facility.** An enclosed area provided by the operator for workers to bathe or shower, and may be located within a family shelter or a common facility.

(4) **Building.** Any structure used or intended by the operator to be used by workers for cooking, eating, sleeping, sanitation, or other facilities.

(5) **Cherry harvest camp.** A place where housing and related facilities are provided to agricultural employees by agricultural employers or TWH operators for their use while employed for the harvest of cherries in the state of Washington. Cherry harvest camps are the only TWH site allowing tents.

(6) **Common.** A shared facility provided by the operator for all workers of the TWH.

(7) **Common areas.** Housing areas shared or used by one or more families or unrelated individuals.

(8) **Communicable disease.** An illness caused by an infectious agent that can be transmitted from a person, animal, or object to a person by direct or indirect means including, but not limited to, transmission via an intermediate host or vector, food, water, or air.

(9) **Community-based outreach worker.** A legal aid representative, a union representative, or a representative from other community-based advocacy organizations.

(10) **Community health worker.** A frontline public health worker who is a trusted member of or has a close understanding of the community served.

(11) **Current certificate (first aid).** A first-aid training certificate that has not expired.

(12) **Dining hall.** A cafeteria-type eating place with food furnished by and prepared under the direction of the operator for consumption, with or without charge, by workers.

(13) **Drinking fountain.** A fixture equal to a nationally recognized standard or a designed-to-drain faucet, which provides potable drinking water under pressure. A "drinking fountain" does not mean a bubble-type water dispenser.

(14) **Dwelling unit.** A shelter, tent, building, or portion of a building, which may include cooking and eating facilities, that are:

(a) Provided and designated by the operator as either a sleeping area, living area, or both, for occupants; and

(b) Physically separated from other sleeping and common areas. As used in this subsection, "physically separated" means a physical wall separating rooms.

(15) **Family shelter.** A dwelling unit with sleeping facilities for up to (~~fifteen~~) 15 workers that may include toilet or cooking facilities. If services such as bathing, food-handling, or toilet facilities are provided in the family shelter, they are for the sole use of the occupants of the family shelter.

(16) **First-aid trained.** The person holds a current certificate of first-aid training.

(17) **Floor space.** The area within a dwelling unit with a minimum ceiling height of seven feet.

(18) **Food-handling facility.** An enclosed area provided by the operator for workers to prepare their own food, and may be within a family shelter or common facility.

(19) **Group A public water system.** A public water system as defined and referenced under WAC 246-290-020.

(20) **Group B public water system.** A public water system that is not a Group A public water system, and is defined and referenced under WAC (~~(246-291-050)~~) 246-291-005.

(21) **Habitable room.** A room or space in a structure used for living, sleeping, eating, or cooking. Bathing facilities, toilet facilities, closets, halls, storage or utility space, and similar areas are not considered habitable rooms.

(22) **Health officer.** The individual appointed as such for a local health department under chapter 70.05 RCW or appointed as the director of public health of a combined city-county health department under chapter 70.08 RCW.

(23) **Livestock.** Horses, cows, pigs, sheep, goats, poultry, etc.

(24) **Livestock operation.** Any place, establishment, or facility consisting of pens or other enclosures in which livestock is kept for purposes including, but not limited to, feeding, milking, slaughter, watering, weighing, sorting, receiving, and shipping. Livestock operations include, among other things, dairy farms, corrals, slaughterhouses, feedlots, and stockyards. Operations where livestock can roam on a pasture over a distance may be treated as outside the definition.

(25) **Local health jurisdiction or LHJ.** A county health department under chapter 70.05 RCW, city-county health department under chapter 70.08 RCW, or health district under chapter 70.46 RCW.

(26) **Mechanical ventilation system.** A mechanism that actively processes supplying air to or removing air from an indoor space by powered equipment such as motor-driven fans and blowers but not by devices such as kitchen or bathroom exhaust fans, wind-driven turbine ventilators, and mechanically operated windows.

(27) **MSPA.** The Migrant and Seasonal Agricultural Worker Protection Act (96 Stat. 2583; 29 U.S.C. Sec. 1801 et seq.).

(28) **Occupant.** A temporary employee or a person who resides with a temporary worker at the TWH or camp.

(29) **Operating license or license.** A document issued annually by the department of health.

(30) **Operator.** A person holding legal title to the land on which the TWH or camp is located. However, if the legal title and the right to possession are in different persons, "operator" means a person having the lawful control or supervision over the TWH.

(31) **Outbreak.** The occurrence of a condition in an area over a given period of time in excess of the expected number of occurrences including, but not limited to, foodborne disease, waterborne disease, and health care-associated infection.

(32) **Recreational park trailers.** A trailer-type unit that is primarily designed to provide temporary living quarters for recreational, camping, or seasonal use, that meets the following criteria:

(a) Built on a single chassis, mounted on wheels;

(b) Having a gross trailer area not exceeding 400 square feet (37.15 square meters) in the set-up mode;

(c) Certified by the manufacturer as complying with ANSI A119.5; and

(d) Chapter 296-150P WAC.

(33) **Recreational vehicle.** A vehicular-type unit that is compliant with chapter 296-150R WAC and primarily designed as temporary living quarters for recreational camping, travel, or seasonal use that either has its own motive of power or is mounted on, or towed by, another vehicle. Recreational vehicles include: Camping trailers, fifth-wheel trailers, motor homes, travel trailers, and truck campers, but

does not include pickup trucks with camper shells, canopies, or other similar coverings.

(34) **Refuse.** Solid wastes, rubbish, or garbage.

(35) **Suspected case.** A person that is suspected by a medical provider or public health provider of having a notifiable condition, but the diagnosis has not yet been confirmed by the medical provider.

(36) **Temporary worker or worker.** An agricultural employee employed intermittently and not residing year-round at the same TWH site.

(37) ~~((TWH,))~~ **Temporary worker housing (TWH) or housing.** A place, area, or piece of land where sleeping places or housing sites are provided by an agricultural employer for agricultural employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees for temporary, seasonal occupancy. TWH includes cherry harvest camps.

(38) **Tent.** An enclosure or shelter constructed of fabric or pliable material composed of rigid framework to support tensioned membrane that provides ~~((the))~~ a weather barrier.

(39) **WISHA.** The Washington Industrial Safety and Health Act, chapter 49.17 RCW, administered by the Washington state department of labor and industries.

(40) **Worker-supplied housing.** Housing owned by the worker and made available to the same worker on the operator's TWH site. Worker-supplied housing includes recreational park trailers, recreational vehicles, tents, or other structures that meet the requirements of this chapter.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 20-21-091, § 296-307-16103, filed 10/20/20, effective 11/20/20; WSR 15-13-092, § 296-307-16103, filed 6/15/15, effective 7/16/15. Statutory Authority: RCW 49.17.010, [49.17].040, and [49.17].050 and 1999 c 374. WSR 00-06-081, § 296-307-16103, filed 3/1/00, effective 3/1/00.]

AMENDATORY SECTION (Amending WSR 15-13-092, filed 6/15/15, effective 1/1/16)

WAC 296-307-16127 TWH management plan. (1) ~~((The))~~ An operator ~~((licensed under this chapter must))~~ shall develop and implement a written TWH management plan that must include:

(a) A safety plan that includes ~~((the following))~~:

(i) Emergency information, including site name and address, emergency contact phone numbers, location of local emergency services, and the department of health ~~((bilingual))~~ multilingual TWH complaint line;

(ii) A plan for contacting a first-aid trained person or emergency services within a reasonable amount of time; and

(iii) Those designated actions operators and occupants ~~((must))~~ shall take to ensure occupant safety from fire and other emergencies, including the following:

(A) Emergency escape procedures and emergency escape route assignments;

(B) Procedures to account for all occupants after emergency evacuation has been completed;

(C) The preferred means of reporting fires and other emergencies; and

(D) Names or regular job titles of those who can be contacted for further information or explanation of duties under the plan.

(iv) ~~((Training.))~~ A requirement to designate and train a sufficient number of ~~((occupants))~~ people to assist in the safe and orderly emergency evacuation of occupants; and

(v) ~~((Maintenance.))~~ A requirement to regularly and properly maintain, according to established procedures, equipment and systems installed on heat producing equipment to prevent accidental ignition of combustible materials.

(b) ~~((Camp))~~ Residency rules that describe to the occupants expectations for maintaining a safe and orderly TWH.

(2) The operator shall make available:

(a) A written copy of the TWH management plan, in English and the ~~((native))~~ language ~~((of))~~ commonly understood by the occupants, to the department of health or the department of labor and industries upon request; and

(b) A written copy of the residency rules ~~((for review))~~ to occupants, ~~((in the occupant's native language,))~~ in English and the language commonly understood by the occupants by:

(i) Posting it in a central location ~~((accessible))~~ visible to the occupants; ~~((or))~~ and

(ii) Providing individual copies to each occupant if requested.

(3) When changes are made to the TWH management plan, the operator shall submit the revised TWH management plan to the department of health within 10 calendar days of the effective date and comply with the requirements in subsection (2)(b) of this section.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 15-13-092, § 296-307-16127, filed 6/15/15, effective 1/1/16.]

NEW SECTION

WAC 296-307-16146 Ventilation. (1) If the TWH facility or building has a mechanical ventilation system, the operator shall maintain it according to the manufacturer's specifications and operate the system to provide fresh and filtered air. The operator shall have building maintenance staff or mechanical ventilation system contractors set the system to increase ventilation or the percentage of outside air that circulates in the facility or building and verify the following:

(a) The mechanical ventilation system is fully functional;

(b) The mechanical ventilation system filters have a minimum efficiency reporting value (MERV) rating of at least 13 or equivalent. If the mechanical ventilation system does not support MERV 13 filters, use the highest MERV rating filter supported by the mechanical ventilation system;

(c) The mechanical ventilation system's outdoor air intake is maximized. Reductions in outside air intake may be made when external conditions pose health and safety risks to the occupants;

(d) Maintenance checks occur at the beginning of each growing season when preparing buildings to be reopened. Additional maintenance

checks must occur based on manufacturer recommendations, usually quarterly or annually;

(e) Ensure written maintenance records are maintained. The written record must include documentation of filter selection, including a selection reason if less than MERV 13 filtration is used, and filter conditions. Written records must be available for review upon request by the state agency representatives;

(f) Filters in any mechanical ventilation system used in a TWH facility or building must be in good repair and replaced in accordance with manufacturer's instructions.

(2) The operator shall instruct occupants in housing with mechanical ventilation systems to:

(a) Turn on mechanical ventilation systems whenever the TWH facility or building is occupied; and

(b) Temporarily shut down the mechanical ventilation system when external conditions pose health and safety risks to occupants.

(3) In buildings without mechanical ventilation systems, the operator shall instruct occupants to close windows and other outside openings when external conditions pose health and safety risks to occupants.

[]

AMENDATORY SECTION (Amending WSR 20-21-091, filed 10/20/20, effective 11/20/20)

WAC 296-307-16147 Tents. (1) Each tent must be constructed to sleep no more than ((fifteen)) 15 workers.

(2) Tents must provide protection from the elements, insects, and animals.

(3) Structural stability and floors.

(a) Tents and their supporting framework must be adequately braced and anchored to prevent weather related collapse. The operator shall provide documentation of the structural stability ((must be furnished)) to the department of health, if requested.

(b) Floors must be smooth, sloped from a raised center towards the lower outer edges. Floors must be without breaks or holes to provide a hard, stable walking surface. Nonridged flooring supported by grass, dirt, soil, gravel, or other uneven surfaces is not acceptable. Floors that are constructed of wood or concrete must comply with the building code, chapter 19.27 RCW and this chapter.

(c) Floor systems must be designed to prevent the entrance of snakes, rodents, and other nuisances.

(4) Flame-retardant treatments.

(a) The sidewalls, drops, and tops of tents must be composed of flame-resistant material or treated with a flame-retardant in an approved manner.

(b) Floor coverings, which are integral to the tent, and the bunting, must be composed of flame-resistant material or treated with a flame retardant in an approved manner and in accordance with Uniform Building Code, Standard 31.1.

(c) All tents must have a permanently affixed label bearing the following information:

(i) Identification of tent size and fabric or material type;

(ii) For flame-resistant materials, the necessary information to determine compliance with this section and National Fire Protection Association Standard 701, Standard Methods of Fire Tests for Flame-resistant Textiles and Films;

(iii) For flame-retardant materials, the date that the tent was last treated with an approved flame-retardant;

(iv) The trade name and type of flame-retardant used in the flame-retardant treatment; and

(v) The name of the person and firm that applied the flame-retardant.

(5) Means of egress.

(a) Tents must have a primary entrance door. At least one door must lead to the outside of the tent. The door must not be obstructed in any manner and must remain free of any material or matter where its presence would obstruct or render the exit hazardous.

(b) The area designated for refuge must be accessible and remain clear of storage materials or hazards.

(c) If food-handling facilities are provided in tents, or the tent occupancy capacity is for ~~((ten))~~ 10 or more workers, a window allowing access must be located opposite the door and must have a means to open the window or provide an easily opened space, for example, a zipper which opens downward to the floor, must be provided.

(6) Floor area. The operator must:

(a) If food-handling facilities are provided in the tent, ~~((the operator must))~~ provide an additional ~~((twenty))~~ 20 square feet of floor space;

(b) ~~((The operator must))~~ Provide at least ~~((fifty))~~ 50 square feet of floor space for each worker in rooms used for sleeping purposes.

(7) Ceiling height.

(a) A ceiling height of at least seven feet is required in ~~((fifty))~~ 50 percent of the total floor area.

(b) No portion of the tent measuring less than six feet from the flooring to the ceiling will be included in any computation of the floor area.

(8) Windows and ventilation.

(a) The operator shall provide a window area equal to one-tenth of the total floor area in each habitable room which opens at least halfway or more directly to the outside for cross-ventilation and has a minimum of ~~((sixteen-mesh))~~ 16-mesh screens on all exterior openings.

(b) The windows must have weather-resistant flaps, which will cover the window area and a means of fastening the flaps to provide protection from the elements and allow privacy for the ~~((workers))~~ occupants.

(c) The operator shall instruct occupants to close windows and other outside openings when external conditions pose a health and safety risk to occupants.

(9) Electrical and lighting. The operator shall ensure that:

(a) ~~((The operator must ensure that))~~ Electricity is supplied to all tents used as habitable room.

(b) ~~((The operator must ensure that))~~ All electrical wiring, fixtures and electrical equipment must comply with the electrical standards of the department of labor and industries regulations, chapter 19.28 RCW, and local ordinances, and be maintained in a safe condition.

(c) ~~((The operator must ensure that))~~ Each tent used as a habitable room has at least one ceiling-type light fixture and at least one separate floor-type or wall-type convenience outlet.

(d) If cooking is provided in the tent, ~~((the operator must ensure that))~~ appropriate wiring and electrical equipment is provided.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 20-21-091, § 296-307-16147, filed 10/20/20, effective 11/20/20; WSR 15-13-092, § 296-307-16147, filed 6/15/15, effective 1/1/16.]

AMENDATORY SECTION (Amending WSR 20-21-091, filed 10/20/20, effective 11/20/20)

WAC 296-307-16190 Disease prevention and control. ~~((1) The operator must report immediately to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease;~~

~~(2) The operator must report immediately to the local health officer:~~

~~(a) Suspected food poisoning;~~

~~(b) An unusual prevalence of fever, diarrhea, sore throat, vomiting, or jaundice;~~

~~(c) Productive cough; or~~

~~(d) When weight loss is a prominent symptom among workers.~~

~~(3)) The operator ((must)) shall:~~

(1) Cooperate with the local health jurisdiction and department of health in the investigation and control of cases, suspected cases, outbreaks, and suspected outbreaks of communicable diseases or notifiable conditions;

(2) Report immediately to the local health jurisdiction the name and address of any occupant or occupants known to have or suspected of having:

(a) Any communicable diseases made notifiable by emergency rule or emergency declaration;

(b) An outbreak of foodborne or waterborne illness; or

(c) Any occurrence of the following symptoms in two or more occupants:

(i) Fever, diarrhea, sore throat, vomiting, or jaundice; or

(ii) Coughing up blood or a cough lasting three weeks or longer;

(3) Implement infection control measures as directed by the local health jurisdiction for care of occupants who have been exposed to other occupants with a suspected or positive case of a communicable disease;

(4) Conspicuously post information regarding the operator's health and safety policies, how to identify symptoms of communicable diseases, to whom to report to if not feeling well, and where and how to secure medical treatment. All information shall be posted in a language commonly understood by the occupants;

(5) Allow entry of community health workers and community-based outreach workers to provide additional education to occupants about public health, safety, and worker's rights provided that the community health worker or community outreach worker:

(a) Contacts the operator before visiting the TWH site to arrange a designated time and place;

(b) Checks in with designated TWH staff at the agreed upon time and location; and

(c) Wears appropriate personal protective equipment and completes a health screening as directed by the local health jurisdiction;

(6) Prohibit any individual with a communicable disease from preparing, cooking, serving, or handling food, foodstuffs, or materials in dining halls or cooking facilities for individuals who do not have a communicable disease;

(7) Develop and follow a communicable disease prevention and response plan that includes:

(a) A process to screen occupants for symptoms of communicable diseases when needed, using symptom lists specified by the local health jurisdiction or department of health;

(b) Providing "no touch" or "no contact" thermometers for occupants to use as specified by the local health jurisdiction or department of health. Any worker with a temperature of 100.4°F or higher is considered to have a fever;

(c) Contacting the local health jurisdiction immediately as required under subsection (2) of this section and facilitating transportation for any medical evaluation or treatment at no cost to the occupant. If the transportation is not provided by an ambulance service or other transportation service, the operator shall provide personal protective equipment to individuals providing transportation;

(d) When directed by the local health jurisdiction or department of health to quarantine or isolate an occupant to prevent the spread of a communicable disease, the plan must include attestation of the following:

(i) Provide access for occupants to telephone service to summon emergency care if the occupant does not already possess a personal phone service;

(ii) Provide occupants with information about paid leave and workers compensation;

(iii) Permit access to medical professionals who offer health care services as directed by the local health jurisdiction; and

(iv) Provide, at no cost to the occupant, food and water for occupants in isolation or quarantine; and

(8) Provide:

(a) Training for persons responsible to execute the communicable disease prevention and response plan when the plan is updated, or at least annually, if the plan is not updated every year. Information and training must be provided in a manner and language readily understood by the person responsible to execute the plan; and

(b) Documentation of training records must include the name of the person trained and the date that the training occurred. Documentation must be available for review upon request by the state agency representatives.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 20-21-091, § 296-307-16190, filed 10/20/20, effective 11/20/20; WSR 15-13-092, § 296-307-16190, filed 6/15/15, effective 7/16/15. Statutory Authority: RCW 49.17.010, [49.17].040, and [49.17].050 and 1999 c 374. WSR 00-06-081, § 296-307-16190, filed 3/1/00, effective 3/1/00.]

WSR 23-19-080

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed September 19, 2023, 10:57 a.m., effective November 1, 2023]

Effective Date of Rule: November 1, 2023.

Purpose: RCW 70.114A.065 directs the department of health (DOH) and the department of labor and industries (L&I) to adopt joint rules for the licensing, operation, and inspection of temporary worker housing (TWH).

In April 2020, DOH and L&I received a petition for rule making requesting immediate rule amendments to further protect occupants in TWH and cherry harvest camps. In response to the petition and the Governor's Proclamation 20-25, Stay Home, Stay Health [Healthy] order, DOH in conjunction with the L&I adopted emergency rules to protect occupants from COVID-19 hazards in licensed TWH. The last emergency rule expired January 14, 2023.

Throughout the duration of the emergency, DOH and L&I continued to review new information, data, and science as they became available to determine necessary requirements to protect TWH occupants from COVID-19 and similar airborne infectious disease hazards. Each emergency rule provided specific requirements responding to the needs at the time the emergency rule was adopted.

DOH and L&I have assessed the emergency rule requirements, along with input from interested parties, and are proposing amendments for permanent adoption of the following key provisions to address prevention of future outbreaks and the spread of any airborne infectious disease.

WAC 296-358-010 Definitions.

- (1) Added and revised definitions to aid in rule clarity.

WAC 296-358-050 TWH management plan.

- (1) Clarified that the TWH complaint phone line was multilingual and not bilingual.

- (2) Added requirement that updates to the TWH management plan must be submitted to DOH within 10 calendar days.

- (3) Clarified current rule language to provide the updated plan to occupants in a language or languages understood by the occupants.

WAC 296-358-076 Ventilation.

- (1) Specific ventilation requirements for all TWH buildings and cherry harvest tents to maximize outdoor air intake and maintaining maintenance logs and other documentation.

WAC 296-358-077 Tent requirements and maintenance.

- (1) Made nonsubstantive clarifying edits such as grammar and punctuation, reflecting updates made to definitions.

- (2) Added requirement to close outside openings when external conditions pose a health or safety risk.

WAC 296-358-175 Disease prevention and control.

- (1) Revised the disease prevention and control requirements to:

- (a) Require cooperation with the local health jurisdiction and DOH in the investigation and control of confirmed cases, suspected cases, outbreaks, and suspected outbreaks of communicable diseases or notifiable conditions;

- (b) Update reporting requirements for communicable diseases;
- (c) Require an implementation of an infection control program;
- (d) Require the posting of education about health and safety practices in a language commonly understood by TWH occupants;
- (e) Allow community-based outreach workers and community health workers to reach out to TWH occupants;
- (f) Establish a communicable disease and prevention response plan which includes identifying and isolating occupants with suspected and confirmed cases, and providing medical assistance; and
- (g) Provide specific training for those responsible for executing the communicable disease and prevention response plan.

Citation of Rules Affected by this Order: New WAC 246-358-076; and amending WAC 246-358-010, 246-358-050, 246-358-077, and 246-358-175.

Statutory Authority for Adoption: RCW 70.114A.065.

Other Authority: RCW 43.70.335.

Adopted under notice filed as WSR 23-10-093 on May 3, 2023.

Changes Other than Editing from Proposed to Adopted Version:

WAC 246-358-010 and 296-307-16103, Definitions.

- (1) Added the definition of "Local Health Jurisdiction or LHJ" for rule clarity.
- (2) The defined term "Mechanical ventilation system" was amended to clearly exclude kitchen and bathroom exhaust fans.
- (3) Added the definition of "Suspected case" for rule clarity.

WAC 246-358-050 and 296-307-16127, TWH management plan.

- (1) DOH TWH complaint phone line is available in multiple languages and therefore the reference to the "bilingual TWH complaint line" was changed to "multilingual TWH complaint line."

WAC 246-358-076 and 296-307-16146, Ventilation.

- (1) The proposed rule was amended to clarify that a filter with an equivalent rating of MERV 13 could be used to comply with the rule.

WAC 246-358-175 and 296-307-16190, Disease prevention and control.

- (1) Removed "unexpected weight loss" as a symptom that needed to be reported to the LHJ.
- (2) Clarified the word "required" to say "directed" when used to describe actions that are given by the LHJ.
- (3) Entry of community health workers and community-based outreach workers. The proposed rule was amended to clarify the reasons these workers should be entrusted to enter the property of the TWH to educate occupants about public health, safety, and worker's rights provided that they notify the operator to set up a designated time and place for the visit.
- (4) Food preparation, specifically if an occupant is sick, was clarified that a sick occupant cannot prepare food for occupants that are not sick but may prepare food for others that are sick and/or in isolation/quarantine with the sick occupant.
- (5) "Oral thermometers" was removed from the requirements, as "no touch" or "no contact" thermometers can effectively meet the requirements for fulfilling the communicable disease prevention and response plan requirements.

(6) Medical transportation, specifically around transportation provided by a service provider, was clarified to remove "aid service" and instead state "ambulance service or other transportation service."

(7) Communication requirement, specifically access to phone services, was clarified to require operators to provide phone services only if the occupant does not have access to a personal phone.

A final cost-benefit analysis is available by contacting Nina Helpling, DOH, P.O. Box 47820, Olympia, WA 98504-7820, phone 360-236-3065, TTY 711, email nina.helpling@doh.wa.gov, website <https://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 1, Amended 4, Repealed 0.

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

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

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

Date Adopted: September 19, 2023.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-4434.3

AMENDATORY SECTION (Amending WSR 15-13-091, filed 6/15/15, effective 7/16/15)

WAC 246-358-010 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Agricultural employee" means any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity.

(2) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes, but is not limited to, the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash, the harvest of Christmas trees, and other related activities.

(3) "Bathing facility" means an enclosed area provided by the operator for occupants to bathe or shower, and may be located within a family shelter or a common facility.

(4) "Building" means any structure used or intended by the operator to be used by occupants for cooking, eating, sleeping, sanitation, or other facilities.

(5) "Cherry harvest camp" means a place where housing and related facilities are provided to agricultural employees by agricultural employers or TWH operators for their use while employed for the harvest of cherries in the state of Washington.

(6) "Common" means a shared facility provided by the operator for all occupants of the TWH.

(7) "Communicable disease" means an illness caused by an infectious agent that can be transmitted from a person, animal, or object to a person by direct or indirect means including, but not limited to, transmission via an intermediate host or vector, food, water, or air.

(8) "Community-based outreach worker" means a legal aid representative, a union representative, or a representative from other community-based advocacy organizations.

(9) "Community health worker" means a frontline public health worker who is a trusted member of or has a close understanding of the community served.

(10) "Dining hall" means a cafeteria-type eating place with food furnished by and prepared under the direction of the operator for consumption, with or without charge, by occupants.

~~((8))~~ (11) "Drinking fountain" means a fixture equal to a nationally recognized standard or a designed-to-drain faucet which provides potable drinking water under pressure. "Drinking fountain" does not mean a bubble-type water dispenser.

~~((9))~~ (12) "Dwelling unit" means a shelter, tent, building, or portion of a building, which may include cooking and eating facilities, that is:

(a) Provided and designated by the operator as either a sleeping area, living area, or both, for occupants; and

(b) Physically separated from other sleeping and common areas. As used in this subsection, "physically separated" means a physical wall separating rooms.

~~((10))~~ (13) "Family shelter" means a dwelling unit with sleeping facilities for up to ~~((fifteen))~~ 15 occupants that may include toilet or cooking facilities. If services such as bathing, food-handling, or toilet facilities are provided in the family shelter, they are for the sole use of the occupants of the family shelter.

~~((11))~~ (14) "First-aid trained" means the person holds a current certificate of first-aid training.

~~((12))~~ (15) "Floor space" means the area within a dwelling unit with a minimum ceiling height of seven feet.

~~((13))~~ (16) "Food-handling facility" means an enclosed area provided by the operator for occupants to prepare their own food, and may be within a family shelter or common facility.

~~((14))~~ (17) "Group A public water system" means a public water system as defined under WAC 246-290-020.

~~((15))~~ (18) "Group B public water system" means a public water system that is not a Group A public water system, and is defined under WAC 246-291-005.

~~((16))~~ (19) "Habitable room" means a room or space in a structure used for living, sleeping, eating, or cooking. Bathing facilities, toilet facilities, closets, halls, storage or utility space, and similar areas are not considered habitable rooms.

~~((17))~~ (20) "Livestock" means horses, cows, pigs, sheep, goats, poultry, etc.

~~((18))~~ (21) "Local health jurisdiction" or "LHJ" means a county health department under chapter 70.05 RCW, city-county health department under chapter 70.08 RCW, or health district under chapter 70.46 RCW.

(22) "Mechanical ventilation system" means a mechanism that actively processes supplying air to or removing air from an indoor space by powered equipment such as motor-driven fans and blowers but not by devices such as kitchen or bathroom exhaust fans, wind-driven turbine ventilators, and mechanically operated windows.

(23) "Occupant" means a temporary worker or a person who resides with a temporary worker at the TWH.

~~((19))~~ (24) "Operating license" or "license" means a document issued annually by the department of health.

~~((20))~~ (25) "Operator" means a person holding legal title to the land on which the TWH is located. However, if the legal title and the right to possession are in different persons, "operator" means a person having the lawful control or supervision over the TWH.

~~((21))~~ (26) "Outbreak" means the occurrence of a condition in an area over a given period of time in excess of the expected number of occurrences including, but not limited to, foodborne disease, waterborne disease, and health care-associated infection.

(27) "Recreational park trailers" means a trailer-type unit that is primarily designed to provide temporary living quarters for recreational, camping, or seasonal use, that meets the following criteria:

(a) Built on a single chassis, mounted on wheels;

(b) Having a gross trailer area not exceeding 400 square feet (37.15 square meters) in the set-up mode;

(c) Certified by the manufacturer as complying with American National Standards Institute standards A119.5; and

(d) Compliant with chapter 296-150P WAC.

~~((22))~~ (28) "Recreational vehicle" means a vehicular type unit that is compliant with chapter 296-150R WAC and primarily designed as temporary living quarters for recreational camping, travel, or seasonal use that either has its own motive of power or is mounted on, or towed by, another vehicle. Recreational vehicles include: Camping trailers, fifth-wheel trailers, motor homes, travel trailers, and truck campers, but does not include pickup trucks with camper shells, canopies, or other similar coverings.

~~((23))~~ (29) "Refuse" means solid wastes, rubbish, or garbage.

~~((24))~~ (30) "Suspected case" means a person that is suspected by a medical provider or public health provider of having a notifiable condition, but the diagnosis has not yet been confirmed by the medical provider.

(31) "Temporary worker" or "worker" means an agricultural employee employed intermittently and not residing year-round at the same TWH site.

~~((25))~~ (32) "Temporary worker housing (TWH)" or "housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an agricultural employer for his or her agricultural employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees for temporary, seasonal occupancy. TWH includes cherry harvest camps.

(33) "Tent" means an enclosure or shelter used at a cherry harvest camp that is constructed of fabric or pliable material composed of rigid framework to support a tensioned membrane that provides a weather barrier.

~~((26) "Temporary worker housing (TWH)" or "housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an agricultural employer for his or her agricultural employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees for temporary, seasonal occupancy. TWH includes cherry harvest camps.~~

~~(27))~~ (34) "Worker-supplied housing" means housing provided by the worker and made available to the same worker on the operator's TWH site. Worker-supplied housing includes recreational park trailers, recreational vehicles, tents, or other structures that meet the requirements of this chapter.

[Statutory Authority: Chapter 70.114A RCW and RCW 43.70.334 through 43.70.340. WSR 15-13-091, § 246-358-010, filed 6/15/15, effective 7/16/15. Statutory Authority: RCW 70.114A.065 and 70.114A.110. WSR 00-06-082, § 246-358-010, filed 3/1/00, effective 3/1/00. Statutory Authority: RCW 70.54.110. WSR 96-02-014, § 246-358-010, filed 12/21/95, effective 1/1/96; WSR 93-03-032 (Order 326B), § 246-358-010, filed 1/12/93, effective 2/12/93; WSR 92-04-082 (Order 242B), § 246-358-010, filed 2/5/92, effective 3/7/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-358-010, filed 12/27/90, effective 1/31/91; WSR 88-10-027 (Order 309), § 248-63-010, filed 5/2/88; WSR 84-18-034 (Order 273), § 248-63-010, filed 8/30/84. Formerly WAC 248-60A-010 and 248-61-010.]

AMENDATORY SECTION (Amending WSR 15-13-091, filed 6/15/15, effective 1/1/16)

WAC 246-358-050 TWH management plan. (1) An operator shall develop and implement a written TWH management plan that must include:

(a) A safety plan that includes ~~((the following))~~:

(i) Emergency information, including site name and address, emergency contact phone numbers, location of local emergency services, and the department of health ~~((bilingual))~~ multilingual TWH complaint line;

(ii) A plan for contacting a first-aid trained person or emergency services within a reasonable amount of time; and

(iii) Those designated actions operators and occupants ~~((must))~~ shall take to ensure occupant safety from fire and other emergencies, including the following:

(A) Emergency escape procedures and emergency escape route assignments;

(B) Procedures to account for all occupants after emergency evacuation has been completed;

(C) The preferred means of reporting fires and other emergencies; and

(D) Names or regular job titles of those who can be contacted for further information or explanation of duties under the plan.

(iv) A requirement to designate and train a sufficient number of people to assist in the safe and orderly emergency evacuation of occupants; and

(v) A requirement to regularly and properly maintain, according to established procedures, equipment and systems installed on heat producing equipment to prevent accidental ignition of combustible materials.

(b) Residency rules that describe to the occupants expectations for maintaining a safe and orderly TWH.

(2) The operator shall make available:

(a) A written copy of the TWH management plan, in English and the ~~((native language(s) of))~~ language commonly understood by the occupants, to the department of health or the department of labor and industries upon request; and

(b) A written copy of the residency rules to occupants, in ~~((the occupant's native language(s)))~~ English and the language commonly understood by the occupants by:

(i) Posting it in a central location visible to the occupants; and

(ii) Providing individual copies to each occupant, if requested.

(3) When changes are made to the TWH management plan, the operator shall submit the revised TWH management plan to the department of health within 10 calendar days of the effective date and comply with the requirements in subsection (2)(b) of this section.

[Statutory Authority: Chapter 70.114A RCW and RCW 43.70.334 through 43.70.340. WSR 15-13-091, § 246-358-050, filed 6/15/15, effective 1/1/16.]

NEW SECTION

WAC 246-358-076 Ventilation. (1) If the TWH facility or building has a mechanical ventilation system, the operator shall maintain it according to the manufacturer's specifications and operate the system to provide fresh and filtered air. The operator shall have building maintenance staff or mechanical ventilation system contractors set the system to increase ventilation or the percentage of outside air that circulates in the facility or building and verify the following:

(a) The mechanical ventilation system is fully functional.

(b) The mechanical ventilation system filters have a minimum efficiency reporting value (MERV) rating of at least 13 or equivalent. If the mechanical ventilation system does not support MERV 13 filters, use the highest MERV rating filter supported by the mechanical ventilation system.

(c) The mechanical ventilation system's outdoor air intake is maximized. Reductions in outside air intake may be made when external conditions pose health and safety risks to the occupants.

(d) Maintenance checks occur at the beginning of each growing season when preparing buildings to be reopened. Additional maintenance checks must occur based on manufacturer recommendations, usually quarterly or annually.

(e) Ensure written maintenance records are maintained. The written record must include documentation of filter selection, including a selection reason if less than MERV 13 filtration is used, and filter conditions. Written records must be available for review upon request by the state agency representatives.

(f) Filters in any mechanical ventilation system used in a TWH facility or building must be in good repair and replaced in accordance with manufacturer's instructions.

(2) The operator shall instruct occupants in housing with mechanical ventilation systems to:

- (a) Turn on mechanical ventilation systems whenever the TWH facility or building is occupied; and
- (b) Temporarily shut down the mechanical ventilation system when external conditions pose health and safety risks to occupants.
- (3) In buildings without mechanical ventilation systems, the operator shall instruct occupants to close windows and other outside openings when external conditions pose health and safety risks to occupants.

[]

AMENDATORY SECTION (Amending WSR 15-13-091, filed 6/15/15, effective 1/1/16)

- WAC 246-358-077 Tent requirements and maintenances.** (1) Only cherry harvest camps may use tents as TWH.
- (2) Each tent must be constructed to sleep no more than (~~fifteen~~) 15 occupants.
 - (3) Tents must provide protection from the elements, insects, and animals.
 - (4) Structural stability and floors.
 - (a) Tents and their supporting framework must be adequately braced and anchored to prevent weather related collapse. The operator shall provide documentation of the structural stability to the department of health, if requested.
 - (b) (i) Floors must be smooth, sloped from a raised center towards the lower outer edges.
 - (ii) Floors must be without breaks or holes to provide a hard, stable walking surface.
 - (iii) Nonridged flooring supported by grass, dirt, soil, gravel or other uneven surface is not acceptable.
 - (iv) Floors that are constructed of wood or concrete must comply with the building code, chapter 19.27 RCW, and this chapter.
 - (c) Floor systems must be designed to prevent the entrance of snakes, rodents, and other nuisances.
 - (5) Flame-retardant treatments.
 - (a) The sidewalls, drops, and tops of tents (~~shall~~) must be composed of flame-resistant material or treated with a flame retardant in an approved manner.
 - (b) Floor coverings, which are integral to the tent, and the bunting (~~shall~~) must be composed of flame-resistant material or treated with a flame retardant in an approved manner and in accordance with Uniform Building Code, Standard 31.1.
 - (c) All tents must have a permanently affixed label bearing the following information:
 - (i) Identification of tent size and fabric or material type;
 - (ii) For flame-resistant materials, the necessary information to determine compliance with this section and National Fire Protection Association Standard 701, Standard Methods of Fire Tests for Flame Propagation of Textiles and Films;
 - (iii) For flame retardant materials, the date that the tent was last treated with an approved flame retardant;
 - (iv) The trade name and type of flame retardant used in the flame-retardant treatment; and

(v) The name of the person and firm that applied the flame retardant.

(6) Means of egress.

(a) Tents must have a primary entrance door. At least one door must lead to the outside of the tent. The door must not be obstructed in any manner and must remain free of any material or matter where its presence would obstruct or render the exit hazardous.

(b) If food-handling facilities are provided in tents, or the tent occupancy capacity is for (~~ten~~) 10 or more occupants, a window allowing egress must be located opposite the door and must have a means to open the window or provide an easily openable space, for example, a zipper which opens downward to the floor, must be provided.

(7) Floor area. The operator must:

(a) If food-handling facilities are provided in the tent, provide an additional (~~twenty~~) 20 square feet of floor space;

(b) Provide at least (~~fifty~~) 50 square feet of floor space for each occupant in rooms used for sleeping purposes.

(8) Ceiling height.

(a) A ceiling height of at least seven feet is required in (~~fifty~~) 50 percent of the total floor area.

(b) No portion of the tent measuring less than six feet from the flooring to the ceiling will be included in any computation of the floor area.

(9) Windows and ventilation.

(a) The operator shall provide a window area equal to one-tenth of the total floor area in each habitable room which opens at least halfway or more directly to the outside for cross-ventilation and has a minimum of (~~sixteen-mesh~~) 16-mesh screens on all exterior openings.

(b) The windows must have weather-resistant flaps, which will cover the window area and a means of fastening the flaps to provide protection from the elements and allow privacy for the occupants.

(c) The operator shall instruct occupants to close windows and other outside openings when external conditions pose a health and safety risk to occupants.

(10) Electrical and lighting. The operator shall ensure that:

(a) Electricity is supplied to all tents used as habitable room.

(b) All electrical wiring, fixtures and electrical equipment must comply with the electrical standards of the department of labor and industries regulations, chapter 19.28 RCW, and local ordinances, and be maintained in a safe condition.

(c) Each tent used as habitable room has at least one ceiling-type light fixture and at least one separate floor-type or wall-type convenience outlet.

(d) If cooking is provided in the tent, appropriate wiring and electrical equipment is provided.

[Statutory Authority: Chapter 70.114A RCW and RCW 43.70.334 through 43.70.340. WSR 15-13-091, § 246-358-077, filed 6/15/15, effective 1/1/16.]

AMENDATORY SECTION (Amending WSR 15-13-091, filed 6/15/15, effective 7/16/15)

WAC 246-358-175 Disease prevention and control. The operator shall:

~~((1) Report immediately to the local health officer the name and address of any occupant known to have or suspected of having a communicable disease.~~

~~(2) Report immediately to the local health officer:~~

~~(a) Suspected food poisoning;~~

~~(b) Unusual prevalence of fever, diarrhea, sore throat, vomiting, or jaundice;~~

~~(c) Productive cough; or~~

~~(d) When weight loss is a prominent symptom among occupants.~~

~~(3) Prohibit any individual with a communicable disease from preparing, cooking, serving, or handling food, foodstuffs, or materials in dining halls.)~~ (1) Cooperate with the local health jurisdiction and department of health in the investigation and control of cases, suspected cases, outbreaks, and suspected outbreaks of communicable diseases or notifiable conditions.

(2) Report immediately to the local health jurisdiction the name and address of any occupant or occupants known to have or suspected of having:

(a) Any communicable diseases made notifiable by emergency rule or emergency declaration;

(b) An outbreak of foodborne or waterborne illness; or

(c) Any occurrence of the following symptoms in two or more occupants:

(i) Fever, diarrhea, sore throat, vomiting, or jaundice; or

(ii) Coughing up blood or a cough lasting three weeks or longer.

(3) Implement infection control measures as directed by the local health jurisdiction for care of occupants who have been exposed to other occupants with a suspected or positive case of a communicable disease.

(4) Conspicuously post information regarding the operator's health and safety policies, how to identify symptoms of communicable diseases, to whom to report to if not feeling well, and where and how to secure medical treatment. All information shall be posted in a language commonly understood by the occupants.

(5) Allow entry of community health workers and community-based outreach workers to provide additional education to occupants about public health, safety, and worker's rights provided that the community health worker or community outreach worker:

(a) Contacts the operator before visiting the TWH site to arrange a designated time and place;

(b) Checks in with designated TWH staff at the agreed upon time and location; and

(c) Wears appropriate personal protective equipment and completes a health screening as directed by the local health jurisdiction.

(6) Prohibit any individual with a communicable disease from preparing, cooking, serving, or handling food, foodstuffs, or materials in dining halls or cooking facilities for individuals who do not have a communicable disease.

(7) Develop and follow a communicable disease prevention and response plan that includes:

(a) A process to screen occupants for symptoms of communicable diseases when needed, using symptom lists specified by the local health jurisdiction or department of health;

(b) Providing "no touch" or "no contact" thermometers for occupants to use as specified by the local health jurisdiction or department of health. Any worker with a temperature of 100.4°F or higher is considered to have a fever;

(c) Contacting the local health jurisdiction immediately as required under subsection (2) of this section and facilitating transportation for any medical evaluation or treatment at no cost to the occupant. If the transportation is not provided by an ambulance service or other transportation service, the operator shall provide personal protective equipment to individuals providing transportation;

(d) When directed by the local health jurisdiction or department of health to quarantine or isolate an occupant to prevent the spread of a communicable disease, the plan must include attestation of the following:

(i) Provide access for occupants to telephone service to summon emergency care if the occupant does not already possess a personal phone service;

(ii) Provide occupants with information about paid leave and workers compensation;

(iii) Permit access to medical professionals who offer health care services as directed by the local health jurisdiction; and

(iv) Provide, at no cost to the occupant, food and water for occupants in isolation or quarantine; and

(8) Provide:

(a) Training for persons responsible to execute the communicable disease prevention and response plan when the plan is updated, or at least annually, if the plan is not updated every year. Information and training must be provided in a manner and language readily understood by the person responsible to execute the plan; and

(b) Documentation of training records must include the name of the person trained and the date that the training occurred. Documentation must be available for review upon request by the state agency representatives.

[Statutory Authority: Chapter 70.114A RCW and RCW 43.70.334 through 43.70.340. WSR 15-13-091, § 246-358-175, filed 6/15/15, effective 7/16/15. Statutory Authority: RCW 70.114A.065 and 70.114A.110. WSR 00-06-082, § 246-358-175, filed 3/1/00, effective 3/1/00. Statutory Authority: RCW 70.54.110. WSR 96-02-014, § 246-358-175, filed 12/21/95, effective 1/1/96; WSR 93-03-032 (Order 326B), § 246-358-175, filed 1/12/93, effective 2/12/93; WSR 92-04-082 (Order 242B), § 246-358-175, filed 2/5/92, effective 3/7/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-358-175, filed 12/27/90, effective 1/31/91; WSR 88-10-027 (Order 309), § 248-63-175, filed 5/2/88.]

WSR 23-19-098

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed September 20, 2023, 10:45 a.m., effective October 21, 2023]

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

Purpose: The department of licensing is updating WAC to align with current statute per SSB 5261 passed during the 2023 legislative session, which changes renewal dates for cemetery certificates, prearrangement sales licenses, funeral directors, embalmers, and reduction facility operators.

Citation of Rules Affected by this Order: Amending WAC 308-47-090 Operator licensure for those who conduct cremations, alkaline hydrolysis, or natural organic reduction, 308-47A-030 Final disposition permit application procedure, and 308-48-180 Renewal of licenses—Funeral directors, embalmers, funeral director interns and embalmer interns.

Statutory Authority for Adoption: RCW 18.39.175 Board—Duties and responsibilities, 46.01.110 Rule-making authority, 68.05.100 Rules, and 68.05.105 Authority of the board.

Adopted under notice filed as WSR 23-15-120 on July 19, 2023.

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 3, 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 3, Repealed 0.

Date Adopted: September 20, 2023.

Ellis Starrett
Rules and Policy Manager

OTS-4760.1

AMENDATORY SECTION (Amending WSR 20-09-031, filed 4/6/20, effective 5/7/20)

WAC 308-47-090 Operator licensure for those who conduct cremations, alkaline hydrolysis, or natural organic reduction. (1) Licenses are required for operators of each method of reduction. In order to operate a crematory, a hydrolysis facility, or a natural organic reduction facility, applicants must submit:

(a) An application on a form prescribed by the board;

(b) A nonrefundable application fee as defined in WAC 308-48-800;
and

(c) A certificate of completion of operator training provided by the equipment manufacturer, or other provider generally accepted by the death care profession, or as approved by the board.

(2) Each operator license will expire annually on the (~~operator's birth date~~) 31st day of January and may be renewed by paying the renewal fee.

(3) Operators of equipment used to perform cremation, alkaline hydrolysis, or natural organic reduction must provide proof of current operator training every five years at the time of the license renewal.

(4) All licenses must be posted at the reduction facility.

[Statutory Authority: RCW 68.05.105 and 18.39.175. WSR 20-09-031, § 308-47-090, filed 4/6/20, effective 5/7/20.]

OTS-4761.1

AMENDATORY SECTION (Amending WSR 20-09-031, filed 4/6/20, effective 5/7/20)

WAC 308-47A-030 Final disposition permit application procedure.

(1) Designees who regularly or occasionally dispose of reduced human remains must submit an application for a final disposition permit on a form prescribed by the board and pay the application fee.

(2) All final disposition permits issued under this rule shall be issued for the calendar year and shall expire at midnight, the (~~thirty-first day of January~~) 31st day of March of each year, or at whatever time during any year that ownership or control of any permit holder is transferred or sold.

(3) The final disposition permit fees shall be as set forth in chapter 308-48 WAC and the department shall collect in advance the fees required for licensing.

[Statutory Authority: RCW 68.05.105 and 18.39.175. WSR 20-09-031, § 308-47A-030, filed 4/6/20, effective 5/7/20.]

OTS-4762.1

AMENDATORY SECTION (Amending WSR 20-09-031, filed 4/6/20, effective 5/7/20)

WAC 308-48-180 Renewal of licenses—Funeral directors, embalmers, funeral director interns and embalmer interns. (1) The annual license renewal date for embalmers (~~(r)~~) and funeral directors (~~(and)~~) is the 31st day of January of each year. The annual renewal license date for embalmer interns and funeral director interns is the licensee's birth date. ((Individuals)) Interns making application and fulfilling requirements for ((initial)) their first license ((and exami-

nation)) will be issued a license, which will expire on their next birth date.

(2) All licensees, with the exception of academic intern, must renew annually.

(3) Before the expiration date of the license, the director will mail a notice of renewal. The licensee must return such notice along with current renewal fees prior to the expiration of the license. Failure to renew the license prior to the expiration date will require payment of a late fee.

[Statutory Authority: RCW 68.05.105 and 18.39.175. WSR 20-09-031, § 308-48-180, filed 4/6/20, effective 5/7/20. Statutory Authority: RCW 18.39.175 and chapter 34.05 RCW. WSR 07-03-027, § 308-48-180, filed 1/5/07, effective 2/5/07. Statutory Authority: RCW 18.39.175(4). WSR 02-19-019, § 308-48-180, filed 9/9/02, effective 10/10/02; Order PL 207, § 308-48-180, filed 11/5/75; Order PL 171, § 308-48-180, filed 5/20/74.]