

WSR 24-07-020

PROPOSED RULES

CENTRALIA COLLEGE

[Filed March 8, 2024, 11:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-03-162.

Hearing Location(s): On April 23, 2024, at 4:00-5:00 p.m., at the Centralia College Campus, Hanson Building Board Rooms. This public hearing is in person only.

Date of Intended Adoption: April 24, 2024.

Submit Written Comments to: Janet Reaume, 600 Centralia College Boulevard, Centralia, WA 98531, email janet.reaume@centralia.edu, by February 27, 2024.

Assistance for Persons with Disabilities: Contact Michael Hoel, phone 360-623-8437, email Michael.hoel@centralia.edu, by February 27, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repealing skateboarding, WAC 132L-136-026.

Reasons Supporting Proposal: Outdated and unnecessary.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140(13).

Statute Being Implemented: Repealing WAC 132L-136-026.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Repealing skateboarding, WAC 132L-136-026.

Name of Agency Personnel Responsible for Drafting: Janet Reaume, Hanson Administrative Building, Centralia College, 360-623-8589; and Implementation: Robert Cox, TAC Building, Centralia College, 360-623-8385.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: [No information supplied by agency].

Scope of exemption for rule proposal:

Is fully exempt.

March 8, 2024

Janet Reaume

Executive Assistant to the President

OTS-5102.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132L-136-026 Skateboarding.

WSR 24-07-035

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 22-04—Filed March 13, 2024, 9:25 a.m.]

Continuance of WSR 24-05-043.

Preproposal statement of inquiry was filed as WSR 22-14-001.

Title of Rule and Other Identifying Information: The Washington state department of ecology (ecology) is proposing amendments to chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington. We propose the following revisions in this rule making:

- Amending WAC 173-201A-240 Toxic substances, specifically updating aquatic life toxics criteria in Table 240 and footnotes.
- Minor, nonsubstantive edits to rule language in WAC 173-201A-240 to correct typographical, calculation, and formatting errors, and to cite federal regulations for human health criteria where they apply for Clean Water Act (CWA) purposes.

This CR-102 continuance filing:

- Extends the comment period from April 17, 2024, to May 7, 2024.

The proposed rule language was not changed as part of this continuance.

For more information on this rule making, please visit <https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-201a-aquatic-life-toxics-criteria>.

Hearing Location(s): On April 4, 2024, at 1:30 p.m., via webinar. Presentation, question and answer session, followed by the hearing. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions <https://waecy-wa-gov.zoom.us/meeting/register/tZIVdeigqDsvE9K0JMbUp6w5Kt0WFhGN5egU>. For audio, call US Toll number 1-253-205-0468 and enter access code 862 2186 0596. Or to receive a free call back, provide your phone number when you join the event; and

On April 10, 2024, at 5:30 p.m., via webinar. Presentation, question and answer session, followed by the hearing. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions <https://waecy-wa-gov.zoom.us/meeting/register/tZMpfu2gqj8iG9fkV1RVT5tELvDX7eLhmrc->. For audio, call US Toll number 1-253-205-0468 and enter access code 874 9484 4813. Or to receive a free call back, provide your phone number when you join the event.

Date of Intended Adoption: July 10, 2024.

Submit Written Comments to: Marla Koberstein, US mail: Department of Ecology, Water Quality Program, P.O. Box 47696, Olympia, WA 98504-7696; or parcel delivery services: Department of Ecology, Water Quality Program, P.O. Box 47696, Olympia, WA 98504-7696. Submit comments by mail, at the hearing(s), or online <https://wq.ecology.commentinput.com?id=apZ8BGx2sQ>, comment period extended from April 17, 2024, to May 7, 2024.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, speech disability call TTY 877-833-6341, impaired hearing call Washington relay service 711, email ecyADAcordinator@ecy.wa.gov, by April 1, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Aquatic life toxics criteria:** We are

proposing revisions to aquatic life toxics criteria to provide additional water quality protection for organisms that live in water.

We reviewed all of Washington's current aquatic life toxics criteria to ensure they are consistent with nationally recommended water quality criteria issued by the Environmental Protection Agency (EPA). This process included an evaluation of pollutant protection levels for endangered species and their populations in Washington waters since this rule update will require Endangered Species Act (ESA) review.

We evaluated current scientific data, methods, and modeling tools to update protection levels necessary for aquatic life in Washington's surface waters. We have also added new toxic substances into the water quality standards that EPA has recommended or that the state of Washington designates as high priority for the protection of aquatic life.

The lists below show existing criteria that we updated, and new criteria we are proposing that are not currently included in Washington's water quality standards for aquatic life toxics.

Existing criteria revised:

- Aldrin (freshwater and saltwater acute).
- Arsenic (freshwater acute and chronic and saltwater acute and chronic).
- Cadmium (freshwater acute and chronic and saltwater acute and chronic).
- Chromium III (freshwater acute and chronic).
- Chromium VI (freshwater acute and chronic).
- Copper (freshwater acute and chronic).
- Cyanide (freshwater acute and chronic).
- Dieldrin (freshwater acute and chronic).
- Endrin (freshwater acute and chronic).
- Gamma-BHC (freshwater acute).
- Mercury (freshwater acute).
- Nickel (freshwater acute and chronic).
- Pentachlorophenol (freshwater acute and chronic and saltwater chronic).
- Selenium (freshwater acute and chronic).
- Silver (freshwater and saltwater acute).
- Zinc (freshwater acute and chronic).

Proposed new criteria:

- 6PPD-quinone (freshwater acute).
- Aluminum (freshwater acute and chronic).
- Acrolein (freshwater acute and chronic).
- Carbaryl (freshwater acute and chronic and saltwater acute).
- Demeton (freshwater and saltwater chronic).
- Diazinon (freshwater acute and chronic and saltwater acute and chronic).
- Guthion (freshwater and saltwater chronic).
- Malathion (freshwater and saltwater chronic).
- Methoxychlor (freshwater and saltwater chronic).
- Mirex (freshwater and saltwater chronic).
- Nonylphenol (freshwater acute and chronic and saltwater acute and chronic).
- PFOS (freshwater acute and chronic and saltwater acute).
- PFOA (freshwater acute and chronic and saltwater acute).
- Silver (freshwater and saltwater chronic).
- Tributyltin (freshwater acute and chronic and saltwater acute and chronic).

Minor nonsubstantive edits: We are adding a footnote in the surface water quality standards that cite the federal regulations for EPA promulgated human health criteria where they are the applicable criteria for CWA programs in Washington.

Reasons Supporting Proposal: **A. History of Aquatic Life Toxics Criteria:** We submitted freshwater and marine aquatic life criteria for 26 toxic chemicals in 1988, and EPA approved these criteria in 1988. EPA determined that additional aquatic life criteria were needed to comply with CWA Section 303 (c) (2) (B) and promulgated aquatic life criteria for Washington in the 1992 National Toxics Rule for acute and chronic freshwater and marine arsenic and selenium criteria, chronic marine copper criteria, and chronic marine cyanide criteria. Following EPA's promulgation of the 1992 National Toxics Rule, we submitted updates to toxic chemicals in 1993, 1998, and 2007, leading to Washington's withdraw from the National Toxics Rule for aquatic life toxics criteria. Washington's last update to aquatic life criteria for toxic chemicals was in 2007.

The majority of Washington's aquatic life toxics criteria have not been updated since 1992 or prior. Since the National Toxics Rule of 1992, EPA has added additional toxic substances to their list of recommended criteria and provided several updates to previously established criteria. In this rule making, we evaluated the current science for each of Washington's aquatic life toxic criteria and any new aquatic life criteria for toxic substances in this rule making.

B. Litigation: On December 29, 2021, the United States District Court ruled that EPA would be required to determine within 180 days if Washington's current aquatic life toxics criteria are consistent with CWA or if they need to be revised (*NWEA v. EPA*, 2021, Case No. C20-1362 MJP). If they are determined to be inadequate, CWA requires EPA to promulgate new regulations for Washington, unless the state adopts them in the meantime.

The settlement agreement requires EPA to evaluate 17 pollutants for consistency with CWA, including nine pollutants by June of 2023 and the last eight pollutants by June of 2026. EPA has determined that new and revised aquatic life criteria are necessary to protect against adverse aquatic life impacts related to the following nine pollutants: Acrolein, aluminum, arsenic, cadmium, copper, cyanide, mercury, nickel, and selenium. This determination is made in accordance with a court order directing EPA to determine whether new or revised aquatic life criteria for these nine pollutants are necessary to meet the requirements of CWA. *Nw. Env'tl. Advocates v. EPA*, No. 2:20-cv-1362-MJP, Dkt. 84 (W.D. Wash.).

C. Triennial Review: During the last public review of ecology's draft water quality standards workplan in 2021, known as the triennial review, we received overwhelming support from commenters for updating rules for aquatic life toxics criteria based on new information and approaches to aquatic life protection. We considered and received feedback on several approaches to rule making. The different approaches to revising the aquatic life toxics criteria include:

- Updating different classes (such as metals and organics) of toxic substances in staggered rule makings.
- Rule makings for different groups of toxic substances based on highest priority.
- A review and update of all necessary criteria in a single rule making.

We received public support for updates to aquatic life toxics in a single rule making and a strategy that involves two rule makings based on different chemical classes.

D. Approach to this Rule Making: We have decided to proceed with updating all necessary aquatic life toxics criteria in a single rule making. This decision is influenced in part by ongoing litigation for EPA to evaluate and potentially promulgate aquatic life toxics criteria. We anticipate that a single rule making of all aquatic life toxics criteria will be more efficient than multiple rule makings. Stakeholders, tribes, and other interested parties will be able to engage in the full scope of aquatic life toxic criteria considerations within one rule making, without ecology placing one toxic substance or group of substances at a higher priority than others.

In this rule making, we compared EPA's nationally recommended aquatic life toxics criteria against Washington's current criteria to determine if updates are needed. We also considered draft EPA criteria that were finalized before the rule proposal phase of this rule making. Furthermore, we evaluated previous ESA consultations and associated National Marine Fisheries Service (NMFS) and United States Fish and Wildlife Service (USFWS) biological opinions from other Pacific Northwest states (such as Idaho and Oregon) to anticipate whether EPA national recommendations will meet ESA protection requirements.

Previous ESA consultation reports for criteria in other states have indicated that EPA's recommendations for some aquatic life toxics may not adequately protect ESA listed species. If particular toxics are not deemed "approvable" through ESA consultation, we evaluated new scientific data, alternative methods to calculate criteria, and the new modeling tools as remedies to providing full protection to aquatic life species, including endangered species and their populations.

E. Rule-Making Scope: We have identified several aquatic life toxics criteria that we reviewed based on EPA's updates to nationally recommended criteria. For several toxic substances, EPA recommended 304(a) criteria are more stringent than ecology's aquatic life toxics criteria or have yet to be incorporated into Washington's surface water quality standards. We evaluated EPA recommendations using information from ESA consultation. If no endangered species protection concerns were present, then we proposed EPA recommendations. For those toxics with endangered species protection concerns, we proposed state-specific criteria.

In some cases, we updated criteria regardless of EPA recommendations based on new data and/or the need to adopt more protective values for endangered species and their populations.

Other background information and issues related to this rule making: Updating the aquatic life toxics criteria is a high priority for ecology. Updating the aquatic life toxics criteria was included in the five-year work plan developed as part of the 2010 triennial review. More recently, updates to aquatic life toxics criteria were outlined in our performance partnership agreement (PPA) with EPA in 2021 and in our most recent triennial review submitted to EPA in April 2022.

Since the 2010 triennial review, we have focused our toxics expertise on updating human health criteria. The decision to prioritize human health criteria updates ahead of aquatic life toxics criteria was made, in part, because of significant delays in the several ESA consultations for EPA's nationally recommended aquatic life toxics criteria. We decided it was in the state's best interest to wait for the outcomes of ESA consultations and subsequent EPA determinations of

adjacent state aquatic life toxics criteria before investing resources to update our aquatic life toxics criteria.

EPA Region 10 states have submitted updates to their aquatic life toxics criteria over the past few decades, but EPA's required ESA consultations with the National Oceanographic and Atmospheric Administration, National Marine Fisheries Service (NMFS), and the United States Fish and Wildlife Service (USFWS) have been significantly delayed for several states (e.g., Oregon and Idaho). EPA consideration of Oregon's aquatic life toxics criteria adopted in 2004 was significantly delayed as the federal agencies worked through ESA Section 7 consultation. In 2013, EPA disapproved a number of aquatic life criteria that the Oregon Environmental Quality Commission (ODEQ) adopted in 2004. Since 2013, ODEQ adopted, and EPA approved, revisions to several of the disapproved criteria. EPA's approvals of Idaho's aquatic life criteria likewise have been stalled, leaving the state-adopted criteria unusable for CWA actions.

In the 2010 triennial review, ecology decided it would be most beneficial for our state to wait until final ESA consultations and subsequent EPA approvals had been completed for the adjacent states before moving forward with adopting aquatic life toxics criteria in order to increase the likelihood they would meet ESA considerations and be approved by EPA. Given the probability of a delay in federal approval, ecology decided to move forward with developing human health toxics criteria as a higher priority, to be followed by aquatic life toxics criteria when there was more certainty that EPA-recommended criteria would make it through ESA consultation.

Statutory Authority for Adoption: RCW 90.48.035 provides clear and direct authority to ecology to revise the surface water quality standards (SWQS). Additionally, 40 C.F.R. 131.20 requires states and tribes with CWA authority to periodically review and update SWQS.

Statute Being Implemented: Chapter 90.48 RCW, Water pollution control.

Rule is necessary because of federal law, 40 C.F.R. 131.20.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: For more information, see the technical support document, Ecology Publication 24-10-007, the draft rule implementation plan, Ecology Publication 24-10-008, and the preliminary regulatory analyses, Ecology Publication 24-10-009, available on our rule-making web page.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Bryson Finch, Lacey, Headquarters, 360-999-9610; Implementation: Melissa Gilder-sleeve, Lacey, Headquarters, 360-522-6441; and Enforcement: Vincent McGowan, Lacey, Headquarters, 360-407-6405.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Marla Koberstein, Department of Ecology, Water Quality Program, P.O. Box 47696, Olympia, WA 98504-7696, phone 360-628-6376, speech disability call TTY at 877-833-6341, impaired hearing call Washington relay service at 711, email marla.koberstein@ecy.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of

other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (RFA), chapter 19.85 RCW, based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The small business economic impact statement (SBEIS) below includes a summary of the baseline for this rule making, and whether or how the proposed rule differs from the baseline.

The proposed rule does impose more-than-minor costs on businesses.

SBEIS

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by RFA as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment, the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

This information is excerpted from ecology's complete set of regulatory analyses for this rule making. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated regulatory analyses document (**Ecology publication no. 24-10-008, February 2024**).

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES: The baseline for our analyses generally consists of existing laws and rules. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments. Should ecology not adopt the proposed rule making, standards for aquatic life cri-

teria and their administration are determined as described within the remainder of this chapter.

Existing Aquatic Life Toxics Criteria:

State Criteria: As listed in WAC 173-201A-240, Table 240 and relevant footnotes.

National EPA Recommended Water Quality Criteria: EPA periodically updates their recommended water quality criteria based on new information for each toxic chemical. Aquatic life criteria for toxic chemicals are considered by the EPA to be the highest concentration of specific pollutants or parameters in water that are not expected to pose a significant risk to the majority of species in a given environment or a narrative description of the desired conditions of a water body being "free from" certain negative conditions. **Not moving forward with this rule making would subject ecology to EPA's promulgation of their federal criteria.**

Clean Water Act: Section 303 (c) (2) (A).

Water Pollution Control Act: RCW 90.48.010 and 90.48.035.

Permitting Guidelines: Permitting guidelines help permit writers determine how to approach different permit scenarios. They assist permit writers in how to think through meeting water quality criteria for protection of aquatic life to permittee-specific requirements. While not a legal requirement, guidance informs how aquatic life criteria might impact permittees who discharge effluent to water bodies. Therefore, in describing the baseline for this analysis of the rule amendments, it is necessary to consider the permitting guidelines in the baseline and amended scenarios, as they will contribute to the cost and benefit estimates and discussion of impacts.

Ecology uses the Water Quality Program Permit Writer's Manual (Ecology, 2018) for technical guidance when developing wastewater discharge permits. A general overview of the permitting process for all dischargers includes:

- Ecology receiving the permit application.
- Review of the application for completeness and accuracy.
- Derivation of applicable technology-based effluent limits.
- Determination of whether effluent will cause, or have reasonable potential to cause or contribute to, violation of water quality standards.
- If yes, derivation of water quality-based effluent limits.
- Determination of monitoring requirements and other special conditions.
- Review process for the draft or proposed permit.
- Issuance of the final permit decision.

To evaluate the effect of effluent toxic pollutants on a receiving water, the permit writer uses the water quality criteria and standards, the criteria for mixing zones, and an analysis of the concentrations of specific pollutants or effects of pollutants within or at the edge of the mixing zone or the assigned dilution factor. The requirement for imposing effluent limitations for the protection of water quality does not require a demonstration of impact beyond any doubt but only that there is a determination of reasonable potential determined by a rational and scientific process.

Defining water quality impacts and developing effluent limits is usually more complex for toxic pollutants than for the other pollutants. The aquatic life toxic criteria are given at two levels (acute and chronic), each of which contains three components (magnitude, du-

ration, and frequency). The analysis to predict water quality impacts and thus to define effluent limits must be conducted for both acute and chronic criteria to define the most limiting criteria. Many of the criteria for toxic pollutants depend on variable receiving water conditions. Permit writers calculate effluent limits to protect receiving water quality during critical (worst-case) conditions.

Impaired Waterbody Listing and Cleanup Plan: The CWA's section 303(d) established a process to identify and clean up polluted waters. Every two years, all states are required to perform a water quality assessment of surface waters in the state, including all the rivers, lakes, and marine waters where data are available. Ecology compiles its own water quality data and federal data and invites other groups to submit water quality data they have collected. All data submitted must be collected using appropriate scientific methods. The assessed waters are placed in categories that describe the status of water quality. Once the assessment is complete, the public is given a chance to review it and give comments. The final assessment is formally submitted to the EPA for approval.

Waters with beneficial uses, such as for drinking, recreation, aquatic habitat, and industrial use, that are impaired by pollutants are placed in the polluted water category in the water quality assessment 303(d) list. These water bodies fall short of state surface water quality standards and are not expected to improve within the next two years. The 303(d) list, so called because the processes for developing the list and addressing the polluted waters on the list are described in section 303(d) of the federal CWA, comprises waters in the polluted water category.

Ecology's assessment of which waters to place on the 303(d) list is guided by federal laws, state water quality standards, and the policy on the Washington State Water Quality Assessment (WQP Policy 1-11; March 2023). This policy describes how the standards are applied, requirements for the data used, and how to prioritize total maximum daily loads (TMDL), among other issues. In addition, even before a TMDL is completed, the inclusion of a water body on the 303(d) list can reduce the amount of pollutants allowed to be released under permits issued by ecology.

Waters placed on the 303(d) list require the preparation of a water cleanup plan (TMDL) or other approved water quality improvement project. The improvement plan identifies how much pollution needs to be reduced or eliminated to achieve clean water and allocates that amount of required pollution reduction among the existing sources.

Past or Existing Compliance Behavior: The baseline includes past or existing compliance behavior. This includes behavior undertaken in response to federal and state laws, rules, permits, guidance, and policies. This also includes business decisions in response to regulatory, economic, or environmental changes. Such behavior might include, but is not limited to, existing treatment technologies, production processes, and effluent volumes. Including these behaviors in the baseline is necessary to assess the incremental impacts of the proposed rule over existing requirements.

Discharger and TMDL Growth Trajectories: The amended rule applies to existing and future dischargers, on existing and future impaired water bodies, and water bodies with TMDLs and without TMDLs, so the baseline must also account for attributes and behaviors of future dischargers and future TMDLs.

The baseline forecast of future growth in the number, locations, and types of TMDLs is based on past TMDL behavior and planned struc-

turing of TMDL planning. We forecast expected types of TMDLs based on prospective new locations, and how they fit into the framework for planning and completing TMDLs.

The baseline forecast of future dischargers is based on attributes of existing dischargers. The forecast assumes that future discharger contaminants and concentrations are the same as in existing dischargers. This means unexpected changes in technology over time (e.g., using different inputs or technologies) that reduce pollutants in effluent would reduce the actual impacts of the proposed rule.

Existing Allowance for Compliance Schedules: The baseline includes existing compliance schedules. A compliance schedule is an enforceable tool used as part of a permit, order, or directive to achieve compliance with applicable effluent standards and limitations, water quality standards, or other legally applicable requirements. Compliance schedules include a sequence of interim requirements such as actions, operations, or milestone events to achieve the stated goals. Compliance schedules are a broadly used tool for achieving compliance with state and federal regulations; compliance schedules under CWA are defined federally at CWA 502(17) and 40 C.F.R. Section 122.2.

Proposed rule amendments: The proposed rule amendments would amend WAC 173-201A-240 Toxic substances, specifically aquatic life criteria including, but not limited to, Table 240 and footnotes.

Revisions to Existing Aquatic Life Criteria:

- Arsenic (all).
- Cadmium (all).
- Chromium III (freshwater acute and chronic).
- Chromium VI (freshwater acute and chronic).
- Copper (freshwater acute and chronic).
- Cyanide (freshwater acute and chronic).
- Dieldrin (freshwater acute and chronic).
- Endrin (freshwater acute and chronic).
- Gamma-BHC (freshwater acute).
- Mercury (freshwater acute).
- Nickel (freshwater acute and chronic).
- Pentachlorophenol (freshwater acute and chronic and saltwater chronic).
- Selenium (freshwater acute and chronic).
- Silver (freshwater and saltwater acute).
- Zinc (freshwater acute and chronic).
- Aldrin (freshwater and saltwater acute).

New Criteria:

- 6PPD-quinone (freshwater acute).
- Aluminum (freshwater acute and chronic).
- Acrolein (freshwater acute and chronic).
- Carbaryl (freshwater acute and chronic and saltwater acute).
- Demeton (freshwater and saltwater chronic).
- Diazinon (all).
- Guthion (freshwater and saltwater chronic).
- Malathion (freshwater and saltwater chronic).
- Methoxychlor (freshwater and saltwater chronic).
- Mirex (freshwater and saltwater chronic).
- Nonylphenol (all).
- PFOS (freshwater acute and chronic and saltwater acute).
- PFOA (freshwater acute and chronic and saltwater acute).
- Silver (freshwater and saltwater chronic).

- Tributyltin (all).
- Make minor, nonsubstantive edits to rule language in WAC 173-201A-240 to correct typographical, calculation, and formatting errors.

Note that since the EPA criteria recommendations are in this rule making's baseline, the analytical scope of this regulatory analysis is reduced to new or existing aquatic life criteria that: (1) Differ from WAC 173-201A-240 (Table 240); and (2) differ from EPA guidance or EPA derivation methods (due to ESA concerns, new science, and/or having no EPA recommendation). Applying this filter (see Table 16 in Appendix B for illustration and additional information), this analysis includes the following:

Analytical Scope:

- Arsenic (all).
- Cadmium (freshwater acute and chronic).
- Copper.
- Chromium VI (freshwater acute and chronic).
- Nickel (freshwater acute and chronic).
- Silver (freshwater acute and chronic).
- Zinc (freshwater acute and chronic).
- 6PPD-quinone (freshwater acute).
- Cyanide (freshwater acute and chronic).
- Pentachlorophenol (all).
- PFOS (freshwater acute and chronic and saltwater acute).
- PFOA (freshwater acute and chronic and saltwater acute).
- Minor, nonsubstantive edits to rule language in WAC 173-201A-240 to correct typographical, calculation, and formatting errors associated with the list above.

COSTS OF COMPLIANCE: EQUIPMENT, SUPPLIES, LABOR, AND PROFESSIONAL SERVICES: Costs would originate from permit holders (in most cases, facilities) that change behavior to comply with new or revised permit conditions based on the proposed rule. However, many permit holders do not process the materials or operate equipment that would lead to any change in permit limits based on the new criteria, or already report effluent numbers low enough to comply with the proposed rule. Therefore, costs are not created by all permits and all criteria.

Estimated costs are generated by potential increases in level 1, 2, and 3 exceedances and the corrective actions required by them for existing criteria (with copper and zinc accounting for all of the level 2 and 3 exceedances), and increased monitoring and lab costs for new criteria. For additional context, level 1 violation would lead to the equivalent of minor adjustments like sweeping and moving materials away from drains to come into compliance (labor costs). Level 2 violation might lead to installing berms, removing materials suspected of contributing to pollutants, and coating various pipes and surfaces (equipment, supply, and labor costs). At a minimum, a level 2 violation would necessitate development and implementation of a source control plan. Level 3 violation requires facility improvements likely to include water treatment filters, catch basins, and other engineering solutions (equipment, supply, labor, and professional services costs). Due to project complexity and data availability, compliance costs below reflect combined labor, professional services, and supplies where applicable.

Estimated Present Value of Total Cost

Action Level	Low-Cost Estimate	High-Cost Estimate
1	\$12,304	\$24,608
2	\$173,531	\$173,531
3	\$14,250,000	\$42,750,000
Lab Costs	\$3,128,218	\$9,428,912
Total	\$17,564,053	\$52,377,051

COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES: We calculated the estimated per-business costs to comply with the proposed rule amendments, based on the costs estimated in Chapter 3 of this document. In this section, we estimate compliance costs per employee.

The average affected small business likely to be covered by the proposed rule amendments employs about 20 people. The largest 10 percent of affected businesses employ an average of 4,638 people. These estimates were generating by cross referencing permit addresses with Dun and Bradstreet data on global employment.¹ Based on cost estimates in Chapter 3, we estimated the following compliance costs per employee.

¹ <https://www.dnb.com/>.

Compliance Costs per Employee

Type of cost (or total cost)	Small Businesses	Largest 10% of Businesses
Average employment	20	4,638
Compliance costs per entity (low)	\$8,005	\$89,947
Compliance costs per entity (high)	\$23,897	\$268,593
Cost per employee (low)	\$410	\$19
Cost per employee (high)	\$1,223	\$58

We conclude that the proposed rule amendments are likely to have disproportionate impacts on small businesses and, therefore, ecology must include elements in the proposed rule amendments to mitigate this disproportion as far as is legal and feasible.

MITIGATION OF DISPROPORTIONATE IMPACT: RFA (RCW 19.85.030(2)) states that: "Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or
- (f) Any other mitigation techniques including those suggested by small businesses or small business advocates."

We considered all of the above options, the goals and objectives of the authorizing statutes (see Chapter 6), and the scope of this rule making. We limited compliance cost-reduction methods to those that:

- Are legal and feasible.
- Meet the goals and objectives of the authorizing statute.

- Are within the scope of this rule making.

Modifying regulatory requirements, changing reporting requirements, reducing the frequency of inspections, delaying compliance timetables, or modifying fine schedules would not meet statutory objectives or are not feasible and within the scope of this rule making. This rule making was initiated specifically to amend WAC 173-201A-240 aquatic life toxics criteria (and make necessary supporting changes), while not amending other aspects of requirements and implementation of broader surface water quality standards.

It was not feasible in the proposed rule amendments to directly mitigate disproportionate impacts to small businesses, however, multiple elements of the baseline rule already in place serve to mitigate compliance costs for small businesses:

WAC 173-224-090 may reduce fees for all small businesses holding or applying for a state waste discharge or NPDES permit issued by ecology.

WAC 173-224-090 allows small businesses to receive a fee reduction of 50 percent, but not less than the minimum permit fee of \$150, if they are determined to be eligible under the following criteria:

- (1) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;
- (2) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);
- (3) Have annual sales of \$1,000,000 or less of the goods or services produced using the processes regulated by the waste discharge or individual stormwater discharge permit (we identified 605 small business permittees in Washington that meet this definition); and
- (4) Have an original annual permit fee assessment totaling \$500 or greater.

In addition to the small business fee reduction, any small business with annual gross revenue totaling \$100,000 or less from goods and services produced using the processes regulated by the discharge permit may apply for an extreme hardship fee reduction. If the permit holder is determined eligible, the annual permit fee is reduced to the minimum annual permit fee of \$150.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION: We involved small businesses, local governments, and tribes in its development of the proposed rule amendments, using: Public webinars in October 2022, April 2023, and October 2023; and tribal webinars in April 2023 and October 2023.

NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE: Businesses that hold permits potentially affected by the proposed rule fall within the following industry categories. Note that associated NAICS codes and definitions are discussed further at <https://www.census.gov/naics/>.

Industries and Their Associated NAICS Codes that are Impacted by the Rule

NAICS Code	Description
111x	Crop Production
112x	Animal Production and Aquaculture
113x	Forestry and Logging
114x	Fishing, Hunting and Trapping
221x	Utilities
236x	Construction of Buildings

NAICS Code	Description
237x	Heavy and Civil Engineering Construction
238x	Specialty Trade Contractors
311x	Food Manufacturing
312x	Beverage and Tobacco Product Manufacturing
314x	Textile Product Mills
321x	Wood Product Manufacturing
322x	Paper Manufacturing
324x	Petroleum and Coal Products Manufacturing
325x	Chemical Manufacturing
326x	Plastics and Rubber Products Manufacturing
327x	Nonmetallic Mineral Product Manufacturing
331x	Primary Metal Manufacturing
332x	Fabricated Metal Product Manufacturing
333x	Machinery Manufacturing
334x	Computer and Electronic Product Manufacturing
335x	Electrical Equipment, Appliance, and Component Manufacturing
336x	Transportation Equipment Manufacturing
337x	Furniture and Related Product Manufacturing
339x	Miscellaneous Manufacturing
423x	Merchant Wholesalers, Durable Goods
424x	Merchant Wholesalers, Nondurable Goods
441x	Motor Vehicle and Parts Dealers
444x	Building Material and Garden Equipment and Supplies Dealers
445x	Food and Beverage Retailers
455x	General Merchandise Retailers
457x	Gasoline Stations and Fuel Dealers
458x	Clothing, Clothing Accessories, Shoe, and Jewelry Retailers
459x	Sporting Goods, Hobby, Musical Instrument, Book, and Miscellaneous Retailers
481x	Air Transportation
482x	Rail Transportation
484x	Truck Transportation
485x	Transit and Ground Passenger Transportation
488x	Support Activities for Transportation
492x	Couriers and Messengers
493x	Warehousing and Storage
522x	Credit Intermediation and Related Activities
524x	Insurance Carriers and Related Activities
531x	Real Estate
532x	Rental and Leasing Services
533x	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)
541x	Professional, Scientific, and Technical Services
561x	Administrative and Support Services
562x	Waste Management and Remediation Services
621x	Ambulatory Health Care Services
624x	Social Assistance
713x	Amusement, Gambling, and Recreation Industries

NAICS Code	Description
722x	Food Services and Drinking Places
811x	Repair and Maintenance
928x	National Security and International Affairs

CONSIDERATION OF LOST SALES OR REVENUE, IMPACT ON JOBS: Businesses that would incur costs could experience reduced sales or revenues if the proposed rule amendments significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to each business's production and pricing model (whether additional lump-sum costs would significantly affect marginal costs), as well as the specific attributes of the markets in which they sell goods, including the degree of influence each firm has on market prices, as well as the relative responsiveness of market demand to price changes. Finally, overall shifts in economic activity in the state, including competition within markets and attributes of the labor market simultaneously adjust in response to changes in compliance costs. Similarly, employment within directly impacted industries, other industries in Washington, the labor market within and outside of the state, and in the state as a whole would also adjust in response to a change in costs.

We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule amendments on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for variables including but not limited to: Interindustry impacts; price, wage, interstate and international trade, and population or labor market changes; and dynamic adjustment of all economic variables over time.

The results of the REMI E3+ model shows that the rule would impact a variety of industries, costing the Washington economy an estimated range between \$23 million to \$69 million in annual output at its peak (total amount of goods and services produced by Washington businesses) across all sectors. For reference, in the first quarter of 2023, Washington state's annual gross domestic product (GDP) was estimated at \$761 billion. In percentage terms, this impact amounts to .003 percent and .009 percent of GDP for low and high estimates, respectively.

Output losses are projected to begin in 2025 following the proposed rule implementation and increase as permits become renewed. These amount to a loss of roughly \$1 million in the low- and high-cost scenario in the first year of the rule and increase to \$23 million and \$69 million for the low- and high-cost scenarios, respectively by 2030. Output losses slowly decrease after 2030, and by 2045 the output loss is projected to have declined under the low- and high-cost scenarios to \$1 million and \$2 million, respectively.

Retail trade, and construction is impacted the most among all industries, accounting for 13 percent each of the total output loss in high and low scenarios, followed by wholesale trade, real estate, and state and local government. Note that it is not unusual for the construction and retail industries to have high projected impacts from a rule as they are often quite sensitive to any changes to the market in REMI models. The rule also impacts a breadth of affected industries, many of which indirectly support retail and construction activities.

Modeled Economic Impacts to Output

Industry	2030 (low)	2030 (high)	2045 (low)	2045 (high)
Whole state	-23	-69	-1	-2

Industry	2030 (low)	2030 (high)	2045 (low)	2045 (high)
Retail trade	-3	-9	0	0
Construction	-3	-9	0	0
Wholesale trade	-2	-7	0	0
Real estate	-2	-7	0	0
State and local government	-1	-3	0	0

The proposed rule would result in transfers of money within and between industries, as compared to the baseline. The modeled impacts on employment are the result of these transfers and the way in which REMI projects these transfers to be utilized within the broader economy, as well as changes to prices and other economic variables across all industries in the state. REMI results project an immediate statewide loss of one full-time equivalent positions (FTEs) under the low-cost scenario and four in the high-cost scenario in the year 2025. This loss increases over the next two years, peaking in 2030 with a projected loss of 113 and 337 FTEs, under the low- and high-cost scenarios, respectively. The statewide loss in FTEs is lessened after 2030 such that in 2045 the statewide projected loss is reduced to two FTEs in the low-cost scenario, and six FTEs in the high-cost scenario in 2045.

Industries that are most impacted are listed below. The construction sector is projected to be the most heavily impacted industry, accounting for about 17 percent of the FTE loss from this rule statewide in 2030. Closely related to sensitivities in economic output discussed above, it is not unusual for the construction industry to have high projected job impacts from a rule as the construction industry is often quite sensitive to any changes in the market in REMI models. The next four sectors most heavily impacted in terms of projected job loss are retail trade, state and local government, wholesale trade, and real estate. While some of these sectors may not be as directly impacted from the rule making as others, note that the REMI model is sensitive to reductions in population growth compared to baseline, potentially leading to lower demand for retail goods, public services, and housing.

Impacts on Jobs

Industry	2030 Jobs Impact (low)	2030 Jobs Impact (high)	2045 Jobs Impact (low)	2045 Jobs Impact (high)
Whole state	-113	-337	-2	-6
Construction	-20	-60	0	1
Retail trade	-13	-39	0	0
State and local government	-6	-19	0	-1
Wholesale trade	-6	-17	0	0
Real estate	-6	-17	0	0

A copy of the statement may be obtained by contacting Marla Koberstein, Department of Ecology, Water Quality Program, P.O. Box 47696, Olympia, WA 98504-7696, phone 360-628-6376, speech disability call TTY at 877-833-6341, impaired hearing call Washington relay service at 711. To request ADA accommodation for disabilities, or printed materials in a format for the visually impaired, call ecology at

360-407-7668 or visit <https://ecology.wa.gov/accessibility>, email
marla.koberstein@ecy.wa.gov.

March 13, 2024
Heather R. Bartlett
Deputy Director

WSR 24-07-063

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Nursing)

[Filed March 15, 2024, 1:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-074.

Title of Rule and Other Identifying Information: Substance use disorder monitoring program for nursing professions, amending WAC 246-840-750 through 246-840-780 and adding WAC 246-840-790. The Washington state board of nursing (board) proposes amendments and an addition to rules relating to the board's substance use disorder (SUD) monitoring program in response to SHB 1255 (chapter 141, Laws of 2023), Nursing—Substance use disorder monitoring program participation, including application requirements for a stipend.

Hearing Location(s): On May 10, 2024, at 1:15 p.m., at the Department of Health, Town Center 2, Room 166/167, 111 Israel Road S.E., Tumwater, WA 98501; or virtually. Please follow this link to register for the virtual hearing which will give you instructions to either join the meeting on a device, or to call in to the meeting on the phone. Zoom registration <https://us02web.zoom.us/join/98147683063>.

Date of Intended Adoption: May 10, 2024.

Submit Written Comments to: Bonnie King, P.O. Box 47864, Olympia, WA 98504-7864, email <https://fortress.wa.gov/doh/policyreview/>, by April 29, 2024.

Assistance for Persons with Disabilities: Contact Bonnie King, phone 564-669-9721, TTY 711, email WABONRules@doh.wa.gov, by April 29, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing amendments to current rule sections to establish new definitions, to change "commission" to "board" and "abuse" to "use," and other changes relating to the board's SUD monitoring and treatment program in response to SHB 1255.

The board is also proposing to create a new rule section establishing application requirements for a stipend to offset treatment costs, as directed by SHB 1255. The intent of the stipend program is to encourage initial participation and continuation in the board's approved SUD monitoring program authorized by RCW 18.130.175. The proposed new rule mirrors the statutes eligibility requirements, and further defines the process the board will use to pay the out-of-pocket expenses through the stipend program, clarifies what the board's approved SUD program is as established in existing rules, and establishes eligibility requirements including defining what a "financial need" is.

Reasons Supporting Proposal: Cost can be a deterrent to participation in the board's SUD program for treatment and recovery. SHB 1255, passed in the 2023 legislative session, provided general state funding for a stipend program that could defray up to 80 percent of the out-of-pocket expenses for nurses who establish a financial need. Rule making is necessary to carry out the legislature's directions as reflected in SHB 1255.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110, 18.130.175; and SHB 1255 (chapter 141, Laws of 2023), codified in RCW 18.79.440.

Statute Being Implemented: SHB 1255 (chapter 141, Laws of 2023).

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

Name of Proponent: Washington state board of nursing, governmental.

Name of Agency Personnel Responsible for Drafting: Bonnie King, 111 Israel Road S.E., Tumwater, WA 98504, 564-669-9721; Implementation: Grant Hulteen, 111 Israel Road S.E., Tumwater, WA 98504, 360-280-6610; and Enforcement: Catherine Woodard, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4757.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Bonnie King, P.O. Box 47864, Olympia, WA 98504-7864, phone 564-669-9721, fax 360-236-4738, TTY 711, email WABONRules@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: All of the proposed rule changes apply to individual providers and do not affect small businesses. The following rule proposal, or portions of the proposal are exempt under RCW 34.05.310 (4) (d): WAC 246-840-750, 246-840-760, 246-840-770, and 246-840-780. WAC 246-840-790 is exempt under RCW 34.05.310 (4) (c).

Scope of exemption for rule proposal:

Is fully exempt.

March 15, 2024

Alison Bradywood, DNP, MH/MPH, RN, NEA-BC
Executive Director

Washington State Board of Nursing

OTS-5149.4

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

WAC 246-840-750 Philosophy governing voluntary substance ((abuse)) use monitoring programs. The ~~((nursing care quality assurance commission (commission)))~~ Washington state board of nursing (board) recognizes the need to establish a means of providing early

recognition and treatment options for licensed practical nurses or registered nurses whose competency may be impaired due to the ~~((abuse))~~ use of drugs or alcohol. The ~~((commission))~~ board intends that such nurses be treated, and their treatment monitored so that they can return to or continue to practice their profession in a manner, that safeguards the public. The Washington health professional services (WHPS) program is the ~~((commission's))~~ board's approved substance ~~((abuse))~~ use monitoring program under RCW 18.130.175. The ~~((commission))~~ board may refer licensed practical nurses or registered nurses to WHPS as either an alternative to or in connection with disciplinary actions under RCW 18.130.160.

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

WAC 246-840-760 Definitions of terms used in WAC 246-840-750 through ~~((246-840-780))~~ 246-840-790. The definitions in this section apply throughout WAC 246-840-750 through ~~((246-840-780))~~ 246-840-790 unless the text clearly requires otherwise.

~~((1))~~ ~~((("Approved treatment facility" is a facility certified by the division of behavioral health and recovery (DBHR) department of social and health services, according to chapters 388-877 through 388-877B WAC that meets the defined standards. Drug and alcohol treatment facilities located out-of-state must have substantially equivalent standards.~~

~~((2))~~ "Continuing care" means the phase of treatment following acute treatment. Common elements of continuing care include relapse prevention and self-help group participation.

~~((3))~~ (2) "Defray" means the board may pay up to 80 percent of out-of-pocket expenses related to WHPS program participation that includes substance use disorder (SUD) evaluations, SUD treatment and other ancillary services including drug testing, participation, professional peer support groups, and any other expenses deemed appropriate by the board.

(3) "Financial assistance" means board approval to use funds to pay for a participant's out-of-pocket costs associated with participation in the WHPS program.

(4) "Financial need" means a demonstrated need by a WHPS participant when they need help to pay for costs related to participation in the WHPS program.

(5) "Monitoring contract" is a comprehensive, structured agreement between the recovering nurse and WHPS defining the requirements of the nurse's program participation.

~~((4))~~ (6) "Peer support group" is a professionally facilitated support group designed to support recovery and re-entry into practice.

~~((5))~~ (7) "Random drug screens" means laboratory tests to detect the presence of drugs ~~((of abuse))~~ in body fluids and other biologic specimens that are performed at irregular intervals not known in advance by the person to be tested.

~~((6))~~ (8) "Referral contract" is a formal agreement between the ~~((commission))~~ board and the nurse to comply with the requirements of the WHPS program in lieu of discipline.

~~((7))~~ (9) "Self-help groups" means groups or fellowships providing support for people with substance use disorder to support their sobriety and recovery.

~~((8) "Substance abuse" or)~~ (10) "Stipend program" means the board program to defray the out-of-pocket expenses for participants who have applied for and been approved to receive financial assistance in connection with participation in WHPS. The purpose is to assist nurses who would otherwise be unable to participate in the program because of personal financial limitations.

(11) "Stipend program application" means a board form that the participant uses to request stipend assistance that provides information to determine eligibility for stipend funds.

(12) "Substance use disorder" (SUD) means a chronic progressive illness that involves the use of alcohol or other drugs to a degree that it interferes with the functional life of the registrant/licensee, as manifested by health, family, job (professional services), legal, financial, or emotional problems.

~~((9))~~ (13) "Washington health professional services (WHPS)" is the approved substance ~~((abuse))~~ use monitoring program as described in RCW 18.130.175 that meets criteria established by the ~~((commission))~~ board. WHPS does not provide evaluation or treatment services.

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

WAC 246-840-770 Approval of substance ~~((abuse))~~ use monitoring programs. The ~~((commission))~~ board uses WHPS as the approved monitoring program.

(1) WHPS will:

(a) Employ staff with the qualifications and knowledge of both substance ~~((abuse))~~ use and the practice of nursing as defined in this chapter to be able to evaluate:

(i) Clinical laboratories;

(ii) Laboratory results;

(iii) Providers of substance ~~((abuse))~~ use treatment, both individuals and facilities;

(iv) Peer support groups;

(v) The nursing work environment; and

(vi) The ability of the nurse to practice with reasonable skill and safety.

(b) Enter into a monitoring contract with the nurse to oversee the nurse's required recovery activities. Exceptions may be made to individual components of the contract as needed.

(c) Determine, on an individual basis, whether a nurse will be prohibited from engaging in the practice of nursing for a period of time and restrictions, if any, on the nurse's access to controlled substances in the workplace.

(d) Maintain case records on participating nurses.

(e) Report to the ~~((commission))~~ board any nurse who fails to comply with the requirements of the monitoring program as defined by the ~~((commission))~~ board.

(f) Provide the ~~((commission))~~ board with an annual statistical report.

(2) The ~~((commission))~~ board approves WHPS's procedures on treatment, monitoring, and limitations on the practice of nursing for those participating in the program.

AMENDATORY SECTION (Amending WSR 17-11-132, filed 5/24/17, effective 6/24/17)

WAC 246-840-780 Conditions for participants entering the approved substance ((abuse)) use monitoring program. (1) Any nurse participating in the substance ((abuse)) use monitoring program must:

(a) Undergo a complete substance use disorder evaluation. This evaluation will be performed by health care professional(s) with expertise in chemical dependency.

(b) Enter into a monitoring contract with WHPS which includes, but is not limited to, the following terms, which require the nurse to:

(i) Undergo any recommended level of treatment ((in an approved treatment facility)) by a board-designated licensed treatment provider, including continuing care;

(ii) Abstain from all mind-altering substances including alcohol and cannabis except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101;

(iii) Cause the treatment counselor(s) to provide reports to the approved monitoring program at specified intervals;

(iv) Attend peer support group, or self-help group meetings, or both as specified by WHPS;

(v) Complete random or for-cause drug screening as specified by WHPS;

(vi) Comply with specified employment conditions and restrictions as defined by the monitoring contract;

(vii) Agree in writing to allow WHPS to release information to the ((commission)) board if the nurse does not comply with any contract requirements or is unable to practice with reasonable skill and safety;

(viii) Pay the costs of any required evaluations, substance ((abuse)) use treatment, peer support group, random drug screens, and other personal expenses incurred in relation to the monitoring program;

(ix) Sign any requested release of information authorizations.

(2) When referred to WHPS in lieu of discipline, the nurse must enter into a referral contract with the ((commission)) board. The ((commission)) board may take disciplinary action against the nurse's license under RCW 18.130.160 based on any violation by the nurse of the referral contract.

(3) A nurse may voluntarily participate in WHPS in accordance with RCW 18.130.175(2) without first being referred to WHPS by the ((commission)) board.

NEW SECTION

WAC 246-840-790 Substance use disorder monitoring stipend program. (1) Applicants must meet the requirements in RCW 18.79.440 to be eligible for the substance use disorder monitoring stipend program (stipend program). All disbursements of stipend program funds are subject to availability of budgeted funds.

(2) To be eligible for the stipend program, a person must:

(a) Hold an active, inactive, or suspended license issued pursuant to this chapter;

(b) Submit an application on forms provided by the board;

(c) Be actively participating in the board's approved substance use disorder monitoring program (WHPS program) or have completed the WHPS program within six months of submission of an application for the stipend program; and

(d) Have a demonstrated need for financial assistance with the expenses incurred in connection with participation in the WHPS program.

(3) A person is not eligible for the stipend program if they have previously applied for and participated in the stipend program and had benefits paid on their behalf from the stipend program.

(4) The board may defray up to 80 percent of each out-of-pocket expense deemed eligible for defrayment under this section. The board will not pay stipend program funds directly to any person participating in the stipend program. The board will pay out-of-pocket expenses directly to entities providing services to the person participating in the stipend program.

(5) Out-of-pocket expenses eligible for defrayment under this section include the costs of substance use evaluation, treatment, other ancillary services, including drug testing, participation in professional peer support groups, and any other expenses deemed appropriate by the board.

(6) A person participating in the stipend program established in this section shall document and submit their out-of-pocket expenses in a manner specified by the board.

(7) Eligibility:

(a) A person may participate in the stipend program by having the stipend program defray authorized out-of-pocket expenses for one monitoring contract period only, including extensions of the contract monitoring period directed by WHPS.

(b) An applicant who was approved for the stipend program for a monitoring contract period without having benefits paid from the stipend program on their behalf, and later reenters the WHPS program, may be approved to participate in the stipend program.

(c) Stipend program applications are approved for a 12-month period. Persons participating in the stipend program shall submit an application every 12 months to renew their participation in the stipend program.

(d) A person may participate in the stipend program for a maximum of five years from the approval date of the initial stipend program application. Eligibility for the stipend program terminates upon successful completion of or discharge from the WHPS program.

(e) An applicant who previously applied for the stipend program but whose application was denied is eligible to reapply if the applicant's financial circumstances have changed.

(8) To establish financial need for the stipend program, a person shall provide documentary proof that total household income is less than 400 percent of the federal poverty level as determined under 42 U.S.C. 9902(2) and published annually by the U.S. Department of Health and Human Services.

(9) Application forms and documentary proof provided to the board under this section by applicants will be submitted under penalty of perjury and, if shown to be false, could subject the applicant to criminal penalties or other adverse action including, but not limited to, adverse action for moral turpitude, misrepresentation, or fraud.

(10) The stipend program may defray the cost of eligible out-of-pocket expenses incurred by a stipend program participant up to six months prior to application submission.

(11) The board may adopt, publish, and use procedures, forms, guidelines, and other documents necessary for implementation of this rule. Such procedures, forms, guidelines, and documents may be revised, amended, or discontinued as necessary in the sole discretion of the board.

WSR 24-07-064

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed March 15, 2024, 1:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-072.

Title of Rule and Other Identifying Information: Audiologist and Speech-Language Pathology Interstate Compact (ASLP-IC) fees and renewal cycle. The department of health (department), in consultation with the board of hearing and speech, is proposing new WAC 246-828-991 to implement HB 1001 (chapter 53, Laws of 2023). HB 1001 entered Washington into the ASLP-IC interstate licensure compact for audiologists and speech-language pathologists and gives member states the discretion to charge a fee for granting compact privileges. The proposed rule specifies the fees and renewal cycle for compact practice privileges in Washington state.

Hearing Location(s): On May 2, 2024, at 2:30 p.m., at the Washington State Department of Health, 111 Israel Road S.E., Town Center 2, Room 166, Tumwater, WA 98501; or virtually. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_BgJzo2V7TMOAyF8YGUg2LA. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: May 9, 2024.

Submit Written Comments to: Kim-Boi Shadduck, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by May 2, 2024.

Assistance for Persons with Disabilities: Contact Kim-Boi Shadduck, program manager, phone 360-236-2912, fax 360-236-2901, TTY 711, email kimboi.shadduck@doh.wa.gov, by April 18, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 1001, codified in chapter 18.35A RCW, entered Washington state into the ASLP-IC interstate compact for audiologists and speech-language pathologists. The ASLP-IC is a formal agreement enacted into law among participating states. The ASLP-IC allows member states to grant practice privileges to licensed audiologists and speech-language pathologists from other states with the purpose of improving public access to audiology and speech-language pathology services. Under the ASLP-IC, audiologists and speech-language pathologists who live outside of Washington state but wish to practice in Washington may obtain privilege to practice in Washington or any other participating member state.

RCW 18.35A.030(10) allows the state of Washington to collect fees for granting the compact privilege of practicing in the state. The purpose of the proposed rule is to set a fee and renewal cycle for granting the practice privilege in Washington through the compact.

Reasons Supporting Proposal: The proposed rule supports the ASLP-IC by setting fees and a renewal cycle for compact privileges in Washington state. RCW 43.70.250 requires that the costs of each professional licensing program be fully borne by members of that profession. The office of financial management also requires professions to maintain a reasonable cash reserve to cover fluctuations in cash flow and operating expenses. The proposed rule is needed to ensure the department is in line with RCW 43.70.250, and to ensure that there is sufficient funding to recover the costs of issuing a license for compact privileges in Washington state.

Statutory Authority for Adoption: HB 1001 (chapter 53, Laws of 2023); RCW 43.70.110, 43.70.250, and 43.70.280.

Statute Being Implemented: Chapter 18.35A RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kim-Boi Shadduck, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2912.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. As defined in RCW 34.05.328 (5)(b)(vi), the department has determined that no significant analysis is required because the rule sets fees.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: The proposed rule establishes the fees and schedule.

Scope of exemption for rule proposal:

Is fully exempt.

March 15, 2024
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-5215.1

NEW SECTION

WAC 246-828-991 Audiologist and speech-language pathologist licensure compact privilege fees and renewal cycle. (1) The compact privilege must be renewed no later than the expiration date of the home state license. The compact privilege holder must comply with all audiology and speech-language pathology interstate compact eligibility requirements in chapter 18.35A RCW to maintain the compact privilege.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application - Original license	\$80.00
Compact renewal	\$80.00

WSR 24-07-065

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed March 15, 2024, 1:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-091.

Title of Rule and Other Identifying Information: Athletic trainer scope of practice for medication purchase, storage, and administration in chapter 246-916 WAC. The department of health (department), in consultation with the athletic training advisory committee (committee), is proposing to create new WAC 246-916-070 Medications, to define terms used and establish education and training requirements for athletic trainers in response to SHB 1275, (chapter 143, Laws of 2023).

Hearing Location(s): On May 2, 2024, at 1:00 p.m., at the Washington State Department of Health, 111 Israel Road S.E., Town Center 2, Room 166/167, Tumwater, WA 98501; or via Zoom. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_BLdmPYljRkmAFpXHQKS55w. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: May 9, 2024.

Submit Written Comments to: Allyson McIver, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2901, allyson.mciver@doh.wa.gov, by May 2, 2024.

Assistance for Persons with Disabilities: Contact Allyson McIver, program manager, phone 360-236-2878, fax 360-236-2901, TTY 711, email allyson.mciver@doh.wa.gov, by April 25, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed new rule is to: (1) Define terms to provide direction to athletic trainers regarding what types of medications an athletic trainer is permitted to purchase, store, and administer; and (2) create training requirements for an athletic trainer to purchase, store, and administer medications.

The proposed rule provides clear instructions and requirements for athletic trainers to use both over-the-counter and prescription medications as a part of athletic training care, while supporting patient safety.

Reasons Supporting Proposal: SHB 1275 authorizes athletic trainers to purchase, store, and administer over-the-counter medications as prescribed by an authorized health care practitioner for the practice of athletic training. SHB 1275 also permits athletic trainers who have completed accredited training programs on pharmacology and medication administration to purchase, store, and administer medications in accordance with the accredited training programs, as prescribed by an authorized health care practitioner. SHB 1275 requires athletic trainers complete an accredited training program prior to purchasing, storing, or administering prescription medications. However, SHB 1275 does not specify what is considered an appropriate accredited training program. The proposed rule is needed to create specific training guidelines and requirements to ensure athletic trainers receive appropriate education on how to store, purchase, and administer these medications safely. SHB 1275 does not define "medications" which could cause confusion among athletic trainers regarding what types of medications they can purchase, store, and administer. Chapter 69.50 RCW, Uniform Controlled Substances Act, excludes athletic trainers from handling medications that are controlled substances. The proposed rule is nec-

essary to ensure athletic trainers know that they are not permitted to purchase, store, and administer controlled substances and to create an enforceable standard.

Statutory Authority for Adoption: RCW 18.250.020 and 18.250.030.

Statute Being Implemented: SHB 1275 (chapter 143, Laws of 2023), codified as RCW 18.250.110.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Allison McIver, 111 Israel Road N.W., Tumwater, WA 98501, 360-236-2878.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Allyson McIver, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2878, fax 360-236-2901, TTY 711, email allyson.mciver@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules only impact Washington state credentialed athletic trainers.

Scope of exemption for rule proposal:

Is fully exempt.

March 15, 2024
 Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-5125.2

NEW SECTION

WAC 246-916-070 Medications. (1) An athletic trainer licensed under chapter 18.250 RCW may, for the practice of athletic training:

(a) Purchase, store, and administer over-the-counter medications as prescribed by an authorized healthcare practitioner;

(b) Purchase, store, and administer medications as prescribed by an authorized healthcare practitioner, if the athletic trainer has completed an accredited training program on the topic of pharmacology and medication administration. The athletic trainer shall only purchase, store, and administer medications in accordance with the accredited training program completed.

(2) For the purposes of this section:

(a) "Accredited training program on the topic of pharmacology and medication administration" includes:

(i) Coursework on pharmacology and medication administration within an accredited athletic training program approved under WAC 246-916-020;

(ii) Board of certification for the athletic trainer (BOC) approved Category A continuing education on the topic of pharmacology and medication administration;

(iii) BOC approved Category C postcertification college and university coursework on the topic of pharmacology and medication administration;

(iv) Other accredited training programs on the topic of pharmacology and medication administration.

(b) "Over-the-counter medications" has the same meaning as RCW 69.60.020, and also includes vitamins.

(c) "Medications" means legend drugs as defined under RCW 69.41.010, and does not include controlled substances as defined under RCW 69.50.101.

(3) Athletic trainers shall follow other medication limitations and requirements in RCW 18.250.110.

WSR 24-07-066

PROPOSED RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed March 15, 2024, 1:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-21-011.

Title of Rule and Other Identifying Information: Classifying wildlife capture drugs as approved legend drugs for the Washington state department of fish and wildlife (WDFW). The pharmacy quality assurance commission (commission) is proposing to amend WAC 246-945-507 to add four intramammary antibiotics to the list of approved legend drugs in chapter 246-945 WAC in response to a petition request from a veterinarian at WDFW to do so.

Hearing Location(s): On May 2, 2024, at 9:30 a.m., at Capital Region ESD Building, 6005 Tye Drive S.W., Tumwater, WA 98512; or via Zoom # 871 4349 5001. Please download and import the following iCalendar (.ics) fields to your calendar system <https://us02web.zoom.us/join> or <https://us02web.zoom.us/j/88256001236> and use the Webinar ID 861 1495 8466. The access options include one-tap mobile US +12532158782,,86114958466# or +16699009128,,86114958466#; or telephone. Dial (for higher quality, dial a number based on your current location) US: +1 253 215 8782 or +1 669 900 9128 or +1 346 248 7799 or +1 669 444 9171 or +1 386 347 5053 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592 or +1 312 626 6799, Webinar ID 861 1495 8466. International numbers available <https://us02web.zoom.us/join>

icsToken=98tyKuGgrD4sGtSUsHqBRpw-

AI_4M_TziH5BjadxzArmJnNkVQjcGvFwPaBTCTPf, Topic PQAC Business Meeting 2024. To access the meeting on May 2, 2024, at 9 a.m., go to <https://zoom.us/join> or <https://us02web.zoom.us/j/88256001236> and use the Webinar ID 861 1495 8466. The access options include one-tap mobile US +12532158782,,86114958466# or +16699009128,,86114958466#; or telephone. Dial (for higher quality, dial a number based on your current location) US: +1 253 215 8782 or +1 669 900 9128 or +1 346 248 7799 or +1 669 444 9171 or +1 386 347 5053 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592 or +1 312 626 6799, Webinar ID 861 1495 8466. International numbers available <https://us02web.zoom.us/join>

Date of Intended Adoption: May 2, 2024.

Submit Written Comments to: Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2901, by April 18, 2024.

Assistance for Persons with Disabilities: Contact Julia Katz, phone 360-502-5058, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov, by April 25, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 69.41.080 authorizes the commission to adopt rules to regulate the purchase, possession, and administration of legend drugs by agencies required to register with the commission under chapter 69.50 RCW for the purpose of chemical capture programs. The commission has designated certain drugs as approved legend drugs for use by WDFW chemical capture programs to uphold the safety and welfare of wildlife. The commission filed a CR-101 for this rule project, on October 5, 2023, under WSR 23-21-011, following a rule petition that was brought forward by a WDFW veterinarian, which cited a United States Food and Drug Administration (FDA) Guidance for Industry (GFI) - GFI #263 - as a forthcoming challenge for WDFW chemical capture programs. GFI #263 changed the approved marketing status for post-capture antibiotics from over-the-counter to prescription.

The commission is proposing to add four drugs to WAC 246-945-507(1) and alphabetize the lists of drugs and substances in WAC 246-945-507(1) and 246-945-507(2). The four added drugs are cephalixin benzathine, penicillin G procaine, ceftiofur hydrochloride, and

hetacillin potassium. Two of the four drugs, ceftiofur hydrochloride and hetacillin potassium, were excluded in the final list of drugs affected by GFI #263. The commission approved draft language including all four drugs on December 14, 2023. The proposed rules will allow authorized WDFW employees to use the four legend drugs without each authorized person needing to obtain a prescription.

Reasons Supporting Proposal: The goal of adding the four drugs to the approved legend drug list for WDFW capture programs is to increase access to the drugs in the treatment of captured wildlife. The WDFW capture program staff have found timely use of the drugs to be valuable for preventing morbidity and mortality from puncture wounds. Placing the drugs in a legend drug list for WDFW capture program staff will allow them to be distributed in a timely fashion by not requiring each authorized person to obtain a prescription.

Statutory Authority for Adoption: RCW 18.64.005, 69.41.075, 69.41.080, and 69.50.320.

Statute Being Implemented: RCW 69.41.080.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Julia Katz, 111 Israel Road S.E., Tumwater, WA 98501, 360-502-5058; and Enforcement: Marlee O'Neill, 111 Israel Road S.E., Tumwater, WA 98501, 360-502-5058.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The commission did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(ii) exempts rules relating only to internal governmental operations that are not subject to violation by a nongovernment party. WAC 246-945-507 regulates legend drugs solely for the WDFW.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: RCW 34.05.310 (4)(b) exempts rules relating only to internal governmental operations that are not subject to violation by a nongovernment party. WAC 246-945-507 regulates legend drugs solely for the WDFW

Scope of exemption for rule proposal:

Is fully exempt.

March 5, 2024

Kenneth Kenyon, PharmD, BCPS, Chair
Pharmacy Quality Assurance Commission

OTS-5140.1

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-507 Department of fish and wildlife chemical capture programs—Approved legend drugs and approved controlled substances.

(1) The following legend drugs are designated as "approved legend drugs" for use by registered department of fish and wildlife chemical capture programs:

- (a) Acetylpromazine;
- (b) Atipamezole;
- (c) Azaperone;
- (d) Ceftiofur hydrochloride;
- (e) Cephapirin benzathine;
- (f) Detomidine;
- ~~((e))~~ (g) Dexmedetomidine;
- ~~((f))~~ (h) Hetacillin potassium;
- (i) Isoflurane;
- ~~((g))~~ (j) Medetomidine;
- ~~((h))~~ (k) Naltrexone;
- ~~((i))~~ (l) Penicillin G procaine;
- (m) Tolazoline;
- ~~((j))~~ (n) Xylazine; and
- ~~((k))~~ (o) Yohimbine.

(2) The following controlled substances are controlled substances approved for use by registered department of fish and wildlife chemical capture programs:

- (a) Butorphanol;
- (b) Carfentanil;
- (c) Diazepam;
- ~~((e))~~ (d) Diprenorphine;
- ~~((d) Carfentanil;))~~
- (e) Fentanyl;
- (f) Ketamine;
- (g) Midazolam;
- (h) Tiletamine; and
- (i) Zolazepam.

(3) Staff of registered department of fish and wildlife chemical capture programs may administer legend drugs and controlled substances which have been prescribed by a licensed veterinarian for a specific animal or management group of animals, which have been dispensed by a pharmacy or a veterinarian and are properly labeled in accordance with either RCW 18.64.246 or 69.41.050 and WAC 246-945-015 through 246-945-017 or 246-933-340 (5) (a) and (b).

WSR 24-07-067

PROPOSED RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed March 15, 2024, 2:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-20-119.

Title of Rule and Other Identifying Information: Removing fenfluramine from the list of Schedule IV substances. The pharmacy quality assurance commission (commission) is proposing to add a new subsection to WAC 246-945-055 to utilize the commission's authority, under RCW 60.50.201, to delete substances designated as a Schedule IV controlled substance. The commission is also proposing to create a new section, WAC 246-945-05001, to establish a list of exempted substances from RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212, including fenfluramine.

Hearing Location(s): On May 2, 2024, at 9:30 a.m., at Capital Region ESD Building, 6005 Tye Drive S.W., Tumwater, WA 98512; or via Zoom # 871 4349 5001. Please download and import the following iCalendar (.ics) fields to your calendar system [https://us02web.zoom.us/webinar/tZwvcu-orjooGdL0ucE3WWkJLsRorLzko_bx/ics?icsToken=98tyKuGgrD4sGtSUshqBRpw-](https://us02web.zoom.us/webinar/tZwvcu-orjooGdL0ucE3WWkJLsRorLzko_bx/ics?icsToken=98tyKuGgrD4sGtSUshqBRpw-AI_4M_TziH5BjadxzArmJnNkVQjcGvFwPaBTCTPf)

AI_4M_TziH5BjadxzArmJnNkVQjcGvFwPaBTCTPf, Topic PQAC Business Meeting 2024. To access the meeting on May 2, 2024, at 9 a.m., go to <https://zoom.us/join> or <https://us02web.zoom.us/j/88256001236> and use the Webinar ID 861 1495 8466. The access options include one-tap mobile US +12532158782,,86114958466# or +16699009128,,86114958466#; or telephone. Dial (for higher quality, dial a number based on your current location) US: +1 253 215 8782 or +1 669 900 9128 or +1 346 248 7799 or +1 669 444 9171 or +1 386 347 5053 or +1 564 217 2000 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592 or +1 312 626 6799, Webinar ID 861 1495 8466. International numbers available <https://us02web.zoom.us/u/kdLNo6unOZ>.

Date of Intended Adoption: May 2, 2024.

Submit Written Comments to: Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2901, by April 18, 2024.

Assistance for Persons with Disabilities: Contact Julia Katz, phone 360-502-5058, fax 360-236-2901, TTY 711, email PharmacyRules@doh.wa.gov, by April 25, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 69.50.201 (a)(1) authorizes the commission to add, delete, or reschedule substances listed in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212. The commission must consider several factors in doing so, including the scientific evidence of the pharmacological effect of a substance, if known. The statute also allows the commission to consider findings of the United States Food and Drug Administration (FDA) or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors. The commission filed a CR-101 for this rule project on October 3, 2023, under WSR 23-20-119, following a rule petition that was brought forward by an interested individual. The commission is proposing to add a new subsection to WAC 246-945-055 to utilize the commission's authority, under RCW 60.50.201, to delete substances designated as a Schedule IV controlled substance. The commission is also proposing to create a new section, WAC 246-945-05001,

to establish a list of exempted substances from RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212, including fenfluramine. This new WAC section will clarify and organize substances listed in statute that the commission deletes from a drug schedule via rule making.

Reasons Supporting Proposal: The proposed rules are needed to align the state regulation with a federal law, F.R. 2022-27400. The FDA removed fenfluramine from the schedules of the Controlled Substances Act in July 2022. The FDA determined the substance is valuable for individuals ages two and older with Dravet syndrome.

Schedule IV substances are described in WAC 246-945-055 but this section does not reference exemptions for substances listed in RCW 69.50.201 that are no longer scheduled. Removing fenfluramine from the list of Schedule IV substances will make it a legend drug which do not have the same administrative and tracking requirements of controlled substances.

The United States Drug Enforcement Agency, an agency within the FDA, considered medical and scientific evaluation to determine that fenfluramine has no potential for abuse. For more information, please refer to the Drug Enforcement Administration 21 C.F.R. Part 1308.

Statutory Authority for Adoption: RCW 18.64.005 and 69.50.201.

Statute Being Implemented: RCW 69.50.201.

Rule is necessary because of federal law, 87 F.R. 78857.

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Julia Katz, 111 Israel Road S.E., Tumwater, WA 98501, 360-502-5058; and Enforcement: Marlee O'Neill, 111 Israel Road S.E., Tumwater, WA 98501, 360-502-5058.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The commission did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rules. There is no need for fenfluramine to be scheduled differently in the state of Washington than the federal requirement.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

March 5, 2024

Kenneth Kenyon, PharmD, BCPS, Chair
Pharmacy Quality Assurance Commission

OTS-5139.1

NEW SECTION

WAC 246-945-05001 Identification of substances deleted from RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212. The commission, under RCW 69.50.201, deletes the following substance listed in RCW 69.50.210 from Schedule IV in the state of Washington.

Fenfluramine. Any material, compound, mixture, or preparation containing any quantity of the following substance, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-055 Schedule IV. The commission finds that the following substances have a low potential for abuse relative to substances in Schedule III under RCW 69.50.208 and WAC 246-945-054, and have currently accepted medical use in treatment in the United States and that the abuse of the substances may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III. In addition to substances listed in RCW 69.50.210, the commission places each of the following drugs and substances by whatever official name, common or usual name, chemical name, or brand name in Schedule IV.

(1) Narcotic drugs. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set in this subsection: 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers, and salts of these isomers (including tramadol).

(2) Depressants. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) Alfaxalone;
- (b) Fospropofol;
- (c) Suvorexant.

(3) Any material, compound, mixture, or preparation which contains any quantity of Lorcaserin, including its salts, isomers, and salts of such isomers, wherever the existence of such salts, isomers, and salts of isomers is possible.

(4) Stimulants. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) Cathine ((+) - norpseudoephedrine);
- (b) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(5) Other substances. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or prepara-

tion which contains any quantity of the following substances, including its salts: Eluxadoline

(5-[[[
(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers.

(6) The commission, under RCW 69.50.201, may delete substances designated as a Schedule IV controlled substance and list them in WAC 246-945-05001.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 24-07-068
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed March 15, 2024, 2:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-03-132.

Title of Rule and Other Identifying Information: SECURE Act 2.0, deferred compensation deferral dates.

Hearing Location(s): On April 23, 2024, at 1:00 p.m. The hearing will be conducted through [Microsoft] Teams. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details. On-line via [Microsoft] Teams, link is available on <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 264 606 636 241, Passcode saDPLp; or phone 833-322-1218, Code 772 491 67#.

Date of Intended Adoption: April 29, 2024.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by April 19, 2024.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by April 19, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Making necessary changes to implement deferred compensation deferral dates under the federal SECURE Act 2.0.

Statutory Authority for Adoption: RCW 41.50.050 and the SECURE Act 2.0, part of the Consolidated Appropriations Act of 2023 (P.L. 117-328).

Statute Being Implemented: The SECURE Act 2.0, part of the Consolidated Appropriations Act of 2023 (P.L. 117-328).

Rule is necessary because of federal law, SECURE Act 2.0, part of the Consolidated Appropriations Act of 2023 (P.L. 117-328).

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Amy McMahan, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-870-0551.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and DRS is not voluntarily making it applicable to the agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Rules from DRS only affect members and beneficiaries of the state retirement systems and participating public employers. As a result, the rules do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

March 15, 2024
Bianca Stoner
Rules Coordinator

OTS-5158.1

AMENDATORY SECTION (Amending WSR 23-18-025, filed 8/25/23, effective 9/25/23)

WAC 415-501-410 How do I enroll in the plan? (1) As an eligible employee, you may enroll in the plan by executing a participation agreement according to methods established by the department.

(2) By executing the participation agreement, you authorize your employer to reduce your gross compensation each month by a specific amount. This amount will be contributed to your deferred compensation account. Your employer will reduce your compensation by the specified amount until you change the amount (WAC 415-501-450).

(3) Deferrals from your compensation will start (~~during the calendar month~~) as soon as administratively possible after (~~the month~~) your participation agreement is approved by the department.

(4) Reenrollment. If you transfer from a state agency to another state agency without a separation of employment, your deferred compensation program (DCP) enrollment will be automatically transferred to the new state agency. Your contributions will automatically continue. For nonstate participants, if you separate from employment with a DCP employer (break in service) and return to employment with a DCP employer, you must reenroll in the program if you want to resume contributions to DCP. Depending on the employer you return to, you may be subject to the automatic enrollment under WAC 415-501-400.

AMENDATORY SECTION (Amending WSR 16-24-013, filed 11/28/16, effective 1/1/17)

WAC 415-501-450 May I change my deferral amount? You may change the amount of your deferred compensation through the methods established by the department. Changes must be made in a whole dollar increment or whole percentage.

A change in the amount will be effective (~~for any calendar month only~~) as soon as administratively possible if you notify the department of the change, through the methods available, (~~prior to the month for which the change is requested~~) and prior to your employer's established "cutoff date" for the payroll in which the change will occur.

WSR 24-07-069
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed March 15, 2024, 3:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-03-117.

Title of Rule and Other Identifying Information: Purchasing service credit; substitute teachers and school employees.

Hearing Location(s): On April 30, 2024, at 1:00 p.m. The hearing will be conducted through [Microsoft] Teams. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details. On-line via [Microsoft] Teams, link is available on <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 291 133 395 897, Passcode qu8w7A; or phone 833-322-1218, Code 226 621 347#.

Date of Intended Adoption: May 6, 2024.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by April 26, 2024.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by April 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Making necessary changes so that Plan 3 members of the teachers' retirement system and school employees' retirement system who are substitute teachers or school employees can submit requests to purchase service credit by phone or email.

Statutory Authority for Adoption: RCW 41.50.050.

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

Name of Proponent: DRS, governmental.

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

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and DRS is not voluntarily making it applicable to the agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Rules from DRS only affect members and beneficiaries of the state retirement systems and participating public employers. As a result, the rules do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

March 15, 2024
Bianca Stoner
Rules Coordinator

OTS-5160.1

AMENDATORY SECTION (Amending WSR 22-13-091, filed 6/13/22, effective 7/14/22)

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

(1) If you have never been a member of the school employees' retirement system (SERS), you may establish membership in Plan 2 or Plan 3 if you worked as a classified employee for 70 or more hours per month during at least five months within a single school year period of September 1st through August 31st. Your membership will begin when your first optional bill to purchase substitute teaching service credit is paid in full.

(2) If you have already established membership in SERS Plan 3, or if you have established membership in SERS Plan 2 and have not withdrawn your contributions, you may apply to the department for service credit as described in subsection (4) of this section, for any compensated employment as a classified substitute employee that occurs after your first month of established service credit. You may apply for service credit for compensated employment as a classified substitute employee that occurred prior to your first month of established service credit if it meets the requirements for membership as described in subsection (1) of this section.

(3) If you previously established membership in SERS Plan 2 and withdrew your contributions, you may reestablish your membership by purchasing service credit if you worked as a classified substitute employee for 70 or more hours per month during at least five months within a single school year period of September 1st through August 31st.

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

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

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

(c) If you are an established Plan 3 member, you (~~must~~) may also submit a member information form to indicate your contribution rate and investment options. If you request a bill for your time as a substitute without completing a form, your contribution rate and investment option will be made at the default rate and investment option.

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

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

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

(b) You have six months following the end of the school year in which you worked to pay the member contributions interest-free. Interest will begin to accrue on the first day of the seventh month follow-

ing the end of the school year. The school year ends on August 31st for Plans 2 and 3.

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

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

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

(a) "Classified employee" - RCW 41.35.010.

(b) "Member" - RCW 41.35.010.

(c) "Service" - RCW 41.35.010.

(d) "Substitute employee" - RCW 41.35.010.

OTS-5161.1

AMENDATORY SECTION (Amending WSR 17-02-032, filed 12/28/16, effective 1/28/17)

WAC 415-112-140 Am I eligible for membership and service credit as a substitute teacher?

(1) If you have never been a member of the teachers' retirement system (TRS), you may establish membership in Plan 2 or Plan 3 if you worked as a teacher for seventy or more hours per month during at least five months within a single school year period of September 1st through August 31st, during the 1991-92 school year or later. You may apply for membership for work prior to the 1991-92 school year if it meets the membership requirements in effect when the work was performed. Your membership will begin when your first optional bill to purchase substitute teaching service credit is paid in full.

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

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

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

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

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

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

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

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

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

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

(c) If you are an established Plan 3 member, you (~~must~~) may also submit a member information form to indicate your contribution rate and investment options. If you request a bill for your time as a substitute without completing a form, your contribution rate and investment option will be made at the default rate and investment option.

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

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

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

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

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

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

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

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

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

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

WSR 24-07-072

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 18, 2024, 10:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-074.

Title of Rule and Other Identifying Information: New chapter 182-561 WAC, Community behavioral support services benefit; and WAC 182-501-0065 Health care coverage—Description of service categories.

Hearing Location(s): On April 23, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_JTdON_X4TTW-icgTnUcj8Q. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: April 24, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 23, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by April 12, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 182-561 WAC is a new chapter to establish the community behavioral support services (CBHS) benefit. The CBHS benefit assists eligible clients with obtaining the skills necessary to reside successfully in home and community-based settings. The chapter includes the eligibility criteria for clients; applicable health rules requiring medical necessity do not apply to this benefit. The chapter also includes CBHS provider requirements, eligible diagnoses, covered services, and the appeal process. Additionally, HCA is amending WAC 182-501-0065 to include CBHS as a service category.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Rebecca Carrell, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-5707.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

March 18, 2024

Wendy Barcus

OTS-5275.3

AMENDATORY SECTION (Amending WSR 19-14-020, filed 6/24/19, effective 7/25/19)

WAC 182-501-0065 Health care coverage—Description of service categories. This rule provides a brief description of the medical, dental, mental health, and substance use disorder (SUD) service categories listed in the table in WAC 182-501-0060. The description of services under each category is not intended to be all inclusive.

(1) For alternative benefits plan (ABP), categorically needy (CN), medically needy (MN), and medical care services (MCS), refer to the WAC citations listed in the following descriptions for specific details regarding each service category.

(2) The following service categories are subject to the exclusions, limitations, restrictions, and eligibility requirements contained in agency rules:

(a) **Ambulance** - Emergency medical transportation and ambulance transportation for nonemergency medical needs. (WAC 182-546-0001 through 182-546-4000.)

(b) **Applied behavior analysis (ABA)** - (Chapter 182-531A WAC((+)).)

(c) **Behavioral health services** - (Chapter 182-538D WAC, Behavioral health services, WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services, and chapter 246-341 WAC, Behavioral health services administrative requirements((+)).)

(d) **Blood, blood products, and related services** - Blood and/or blood derivatives, including synthetic factors, plasma expanders, and their administration. (WAC 182-550-1400 and 182-550-1500.)

(e) **Community behavioral health support services (CBHS)** - (Chapter 182-561 WAC.)

(f) **Dental services** - Diagnosis and treatment of dental problems including emergency treatment and preventive care. (Chapters 182-535 and 182-535A WAC.)

((+f)) (g) **Diagnostic services** - Clinical testing and imaging services. (WAC 182-531-0100; WAC 182-550-1400 and 182-550-1500.)

((+g)) (h) **Early and periodic screening, diagnosis, and treatment (EPSDT)** - (Chapter 182-534 WAC and WAC 182-501-0050(10).)

((+h)) (i) **Enteral nutrition program** - Enteral nutrition products, equipment, and related supplies. (Chapter 182-554 WAC.)

((+i)) (j) **Habilitative services** - (Chapter 182-545 WAC((+)).)

((+j)) (k) **Health care professional services** - The following services found in chapter 182-531 WAC:

(i) Office visits and vaccinations;

(ii) Screening/brief intervention/referral to treatment (SBIRT), emergency room, and nursing facility services;

(iii) Home-based and hospital-based services;

(iv) Surgery, anesthesia, pathology, radiology, and laboratory services;

- (v) Obstetric services;
- (vi) Kidney dialysis and renal disease services;
- (vii) Advanced registered nurse practitioner, naturopathy, osteopathy, podiatry, physiatry, and pulmonary/respiratory services; and
- (viii) Allergen immunotherapy services.
- ~~((k))~~ (l) **Health homes** - (Chapter 182-557 WAC(~~(+)~~)).
- ~~((l))~~ (m) **Hearing evaluations** - The following services found in WAC 182-531-0375:
 - (i) Audiology;
 - (ii) Diagnostic evaluations; and
 - (iii) Hearing exams and testing.
- ~~((m))~~ (n) **Hearing aids** - (Chapter 182-547 WAC(~~(+)~~)).
- ~~((n))~~ (o) **Home health services** - Intermittent, short-term skilled nursing care, occupational therapy, physical therapy, speech therapy, home infusion therapy, and health aide services, provided in the home. (WAC 182-551-2000 through 182-551-2220.)
- ~~((o))~~ (p) **Home infusion therapy/parenteral nutrition program** - Supplies and equipment necessary for parenteral infusion of therapeutic agents. (Chapter 182-553 WAC.)
- ~~((p))~~ (q) **Hospice services** - Physician services, skilled nursing care, medical social services, counseling services for client and family, drugs, medications (including biologicals), medical equipment and supplies needed for palliative care, home health aide, homemaker, personal care services, medical transportation, respite care, and brief inpatient care. This benefit also includes services rendered in a hospice care center and pediatric palliative care services. (WAC 182-551-1210 through 182-551-1850.)
- ~~((q))~~ (r) **Hospital services—Inpatient/outpatient** - Emergency room; hospital room and board (includes nursing care); inpatient services, supplies, equipment, and prescription drugs; surgery, anesthesia; diagnostic testing, laboratory work, blood/blood derivatives; radiation and imaging treatment and diagnostic services; and outpatient or day surgery, and obstetrical services. (Chapter 182-550 WAC.)
- ~~((r))~~ (s) **Intermediate care facility/services for persons with intellectual disabilities** - Habilitative training, health-related care, supervision, and residential care. (Chapter 388-835 WAC.)
- ~~((s))~~ (t) **Maternity care and delivery services** - Community health nurse visits, nutrition visits, behavioral health visits, midwife services, maternity and infant case management services, family planning services and community health worker visits. (WAC 182-533-0330.)
- ~~((t))~~ (u) **Medical equipment, supplies, and appliances** - Medical equipment and appliances, including wheelchairs, hospital beds, respiratory equipment; casts, splints, crutches, trusses, and braces. Medical supplies, including antiseptics, germicides, bandages, dressings, tape, blood monitoring/testing supplies, braces, belts, supporting devices, decubitus care products, ostomy supplies, syringes, needles, and urological supplies. (Chapter 182-543 WAC.)
- ~~((u))~~ (v) **Medical nutrition therapy** - Outpatient medical nutrition therapy and associated follow-ups. (Chapter 182-555 WAC.)
- ~~((v))~~ (w) **Nursing facility services** - Nursing, therapies, dietary, and daily care services delivered in a licensed nursing facility. (Chapter 388-97 WAC.)
- ~~((w))~~ (x) **Organ transplants** - Solid organs, e.g., heart, kidney, liver, lung, pancreas, and small bowel; bone marrow and peripher-

al stem cell; skin grafts; and corneal transplants. (WAC 182-550-1900 and 182-556-0400.)

((x)) (y) **Orthodontic services** - (Chapter 182-535A WAC((+)).)

((y)) (z) **Out-of-state services** - (WAC 182-502-0120((+)).)

((z)) (aa) **Outpatient rehabilitation services (OT, PT, ST)** - Evaluations, assessments, and treatment. (WAC 182-545-200.)

((aa)) (bb) **Personal care services** - Assistance with activities of daily living (e.g., bathing, dressing, eating, managing medications) and routine household chores (e.g., meal preparation, housework, essential shopping, transportation to medical services). (Chapters 388-106 and 388-845 WAC.)

((bb)) (cc) **Prescription drugs** - Outpatient drugs (including in nursing facilities), both generic and brand name; drug devices and supplies; some over-the-counter drugs; oral, topical, injectable drugs; vaccines, immunizations, and biologicals; and family planning drugs, devices, and supplies. (WAC 182-530-2000.) Additional coverage for medications and prescriptions is addressed in specific program WAC sections.

((ee)) (dd) **Private duty nursing** - Continuous skilled nursing services provided in a private residence, including client assessment, administration of treatment, and monitoring of medical equipment and client care. For benefits for clients age ((seventeen)) 17 and younger, see WAC 182-551-3000 through 182-551-3400. For benefits for clients age ((eighteen)) 18 and older, see WAC 388-106-1000 through 388-106-1055.

((dd)) (ee) **Prosthetic/orthotic devices** - Artificial limbs and other external body parts; devices that prevent, support, or correct a physical deformity or malfunction. (WAC 182-543-5000.)

((ee)) (ff) **Reproductive health services** - Gynecological exams; contraceptives, drugs, and supplies, including prescriptions; sterilization; screening and treatment of sexually transmitted diseases; and educational services. (WAC 182-532-001 through 182-532-140.)

((ff)) (gg) **Respiratory care (oxygen)** - All services, oxygen, equipment, and supplies related to respiratory care. (Chapter 182-552 WAC.)

((gg)) (hh) **School-based health care services** - Early intervention services or special education health-related services provided in schools to medicaid-eligible children ages birth through ((twenty)) 20 who have an individualized education program (IEP) or individualized family service plan (IFSP). (Chapter 182-537 WAC.)

((hh)) (ii) **Vision care** - Eye exams, refractions, fittings, visual field testing, vision therapy, ocular prosthetics, and surgery. (WAC 182-531-1000.)

((ii)) (jj) **Vision hardware** - Frames and lenses. (Chapter 182-544 WAC.)

OTS-4003.6

**Chapter 182-561 WAC
COMMUNITY BEHAVIORAL HEALTH SUPPORT SERVICES BENEFIT**

NEW SECTION

WAC 182-561-0100 General. (1) **Administration.** The medicaid agency, in conjunction with the department of social and health services, administers the community behavioral health support services (CBHS) benefit.

(2) **Services.** The CBHS benefit tailors services designed to assist eligible clients to acquire, retain, restore, and improve the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.

(3) **Applicability.** The rules in this chapter apply to benefits administered through fee-for-service delivery or a managed care organization.

(4) **CBHS benefits determined under this chapter.**

(a) The agency determines eligibility for CBHS benefits based on the rules in this chapter.

(b) Apple health rules requiring medical necessity do not apply to the CBHS benefit.

NEW SECTION

WAC 182-561-0200 Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter:

"Activities of daily living (ADL)" means the same as in WAC 388-106-0010.

"Home and community services (HCS)" means the division of the department of social and health services (DSHS) that manages the state's comprehensive long-term care system that provides in-home, residential, and nursing home services to clients with functional disabilities.

NEW SECTION

WAC 182-561-0300 Eligibility. To be eligible for the community behavioral health support services (CBHS) benefit, a person must meet all requirements and criteria in this section.

(1) **General requirements.** A person must:

(a) Be eligible for apple health under categorically needy or alternate benefit plan scope of care;

(b) Receive at least one of the following home and community services at home or in a community residential setting:

(i) Medicaid personal care (MPC), as described in WAC 388-106-0015(1);

(ii) Community options program entry system (COPES), as described in WAC 388-106-0015(2);

(iii) Community first choice (CFC), as described in WAC 388-106-0015(3);

(iv) New freedom consumer directed services (NFCDS), as described in WAC 388-106-0015(16); or

(v) Residential support, as described in WAC 388-106-0015(17).

(c) Have countable income at or below 150 percent of the federal poverty level (FPL);

(d) Be age 18 or older; and

(e) Have an eligible diagnosis, as identified in WAC 182-561-0700.

(2) **Needs-based criteria.** A person must be assessed by home and community services (HCS) or an HCS designee and found to have a demonstrated need for:

(a) Assistance with three or more activities of daily living (ADL), or assistance with body care, or both, as defined in WAC 388-106-0010; or

(b) Hands-on assistance with one or more ADLs.

(3) **Risk-based criteria.** A person must have:

(a) A behavioral or clinical complexity that requires the level of supplementary or specialized services and staffing available only under the CBHS benefit. This determination is based on the person exhibiting one or more of the following behaviors within the last 12 months and can be prevented only with a high level of staffing, or skilled staff intervention, or both:

(i) Multiple assaults related to a behavioral health condition during inpatient or long-term care;

(ii) Self-endangering behaviors related to a behavioral health condition that would result in bodily harm;

(iii) Intrusiveness related to a behavioral health condition (e.g., rummaging, unawareness of personal boundaries) that places the person at risk of assault by others;

(iv) Chronic psychiatric symptoms that cause distress to and escalate the person or other residents to crisis if not monitored or re-directed by staff;

(v) Sexual inappropriateness related to a behavioral health condition that may compromise the safety of the person and other vulnerable adults; or

(b) A history of any of the above behaviors, which are currently only prevented by additional skilled staff intervention.

(4) **Other criteria.** A person must have:

(a) A history of being unsuccessful in community living settings, as evidenced by at least one or more of the following:

(i) A history of multiple failed stays in residential settings within the past two years;

(ii) Be in imminent danger of losing a current community living setting due to behaviors related to a behavioral health condition or conditions;

(iii) Frequent caregiver turnover due to behaviors related to a behavioral health condition or conditions within the past two years; or

(iv) Be at imminent risk of losing a long-term care living setting without currently receiving the CBHS benefit.

(b) A past psychiatric history, where significant functional improvement has not been effectively maintained due to the lack of the CBHS benefit, as evidenced by one or more of the following:

(i) Two or more inpatient psychiatric hospitalizations in the last 12 months;

(ii) An inpatient stay in a community hospital (acute or psychiatric) or a free-standing evaluation and treatment facility for 30 days or more in the last 12 months, with barriers to discharge related to a behavioral health condition or conditions;

(iii) Discharge from a state psychiatric hospital or a long-term 90/180-day inpatient psychiatric setting in the last 12 months; or

(iv) Be at imminent risk of requiring inpatient level of care without currently receiving the CBHS benefit.

(5) **Service eligibility.** Covered services may begin on the date the client meets all CBHS benefit criteria described in subsections (1) through (4) of this section. The agency approves one year of continuous eligibility for the CBHS benefit, unless the client:

- (a) Moves out-of-state;
- (b) Is admitted to an institution, as defined in WAC 182-500-0050, and is likely to reside there for 30 days or longer;
- (c) No longer receives any of the home and community services as described in WAC 388-106-0015 (1), (2), (3), (16), or (17), at home or in a community residential setting;
- (d) Dies;
- (e) Has countable income over 150 percent federal poverty level (FPL); or
- (f) Otherwise loses eligibility for medicaid.

(6) **Service eligibility denial or termination.** The agency provides a written explanation for denials as described in chapter 182-518 WAC.

(a) A change that results in termination takes effect the first of the month following the change as described in WAC 182-504-0120.

(b) A change that results in a decreased scope of care takes effect the first of the month following the advance notice period, as described in WAC 182-504-0120.

(c) A person who does not agree with an agency decision regarding CBHS services, including a denial of eligibility, may request an administrative hearing as described in chapter 182-526 WAC.

(7) **Redetermination.** The agency reviews client eligibility for CBHS services at least once every 12 months.

NEW SECTION

WAC 182-561-0400 Covered services. The community behavioral health support services (CBHS) benefit covers supportive supervision and oversight services that:

(1) Include direct monitoring, redirection, diversion, and cueing to prevent at-risk behavior that may result in harm to the client or to others.

(2) Assist with building skills and resiliency to support stabilized living and integration.

(3) Must be coordinated with other behavioral health services or incorporated into any existing crisis plans.

NEW SECTION

WAC 182-561-0500 Service tiers. (1) The agency has established tiers for community behavioral health support services using the needs-based criteria and risk criteria in WAC 182-561-0300.

(2) At a minimum, a person determined eligible for supportive supervision qualifies to receive Tier 1 services for an average of two hours per day.

(3) The agency determines tiers based on medical appropriateness and clinical acuity, using the following tier structure:

Tier Level	Eligibility Criteria	Renewal or Reassessment Criteria
Tier 1 Services	<p>A person is eligible for Tier 1 services if they:</p> <ul style="list-style-type: none"> • Demonstrate a qualifying behavior that requires daily intermittent monitoring, redirection, and cueing to promote community stability and to ensure the safety of the person and other residents; or • Have a significant history of behaviors that are well-managed in a highly structured setting but are at risk of recurring in a community setting if not met with the appropriate level of supportive supervision. 	<p>For renewal or assessment, the person has a history of behaviors meeting the guidelines for Tier 1, which are currently prevented only by additional skilled staff intervention.</p>
Tier 2 Services	<p>A person is eligible for Tier 2 services if they:</p> <ul style="list-style-type: none"> • Demonstrate current qualifying behaviors at a frequency that requires an average of 2.1 to 6 hours per day of dedicated staff to redirect, deescalate, and cue to promote community stability and to ensure the safety of the person and the other residents; or • Have demonstrated multiple qualifying behaviors requiring an average of 2.1 to 6 hours per day of one-on-one staffing within the past month. Behaviors may be well-managed in a highly structured setting but are at risk of recurring in a community setting if not met with the appropriate level of supportive supervision. 	<p>For renewal or reassessment, the person has a history of behavior or behaviors meeting the guidelines for Tier 2, which are currently prevented only by additional skilled staff intervention at this tier level.</p>
Tier 3 Services	<p>A person is eligible for Tier 3 services if they:</p> <ul style="list-style-type: none"> • Demonstrate multiple qualifying behaviors at a frequency and intensity that requires an average of 6.1 to 10 hours per day of one-on-one staffing to redirect, engage, deescalate, and cue to promote community stability and to ensure the safety of the person and other residents; or • Have demonstrated multiple qualifying behaviors requiring an average of 6.1 to 10 hours per day of one-on-one staffing within the past month. Behaviors may be well-managed in a highly structured setting but are at risk of recurring or increasing in frequency or severity in a community setting if not met with the appropriate level of supportive supervision. 	<p>For renewal or reassessment, the person has a history of behaviors meeting the guidelines for Tier 3, which are currently preventable only by additional skilled staff intervention at this tier level.</p>

Tier Level	Eligibility Criteria	Renewal or Reassessment Criteria
Tier 4 Services	<p>A person is eligible for Tier 4 services if they:</p> <ul style="list-style-type: none"> • Demonstrate multiple qualifying behaviors at a frequency and intensity that requires an average of 10.1 to 16 hours per day of one-on-one staffing to redirect, engage, deescalate, and cue to promote community stability and to ensure the safety of the person and other residents; or • Have demonstrated multiple qualifying behaviors requiring an average of 10.1 to 16 hours per day of one-on-one staffing within the past month. Behavior requires at least one-on-one intervention, even in a structured setting, but the behavior may be at risk of increasing in frequency, or severity, or both, in a community setting if not met with the appropriate level of supportive supervision. 	<p>For renewal or reassessment, the person has a history of behavior meeting the guidelines for Tier 4, which are currently prevented only by additional skilled staff interventions at this tier level.</p>
Tier 5 Services	<p>A person is eligible for Tier 5 services when:</p> <ul style="list-style-type: none"> • The person demonstrates multiple behaviors at a frequency and intensity that requires an average of 16.1 to 20 hours per day of one-on-one staffing to redirect, engage, deescalate, and cue to promote community stability and to ensure the safety of the person and other residents; or • The person's behavior requires daily one-on-one intervention even in the context of a structured setting, and there would be an imminent risk of harm if the person does not receive an average of 16.1 to 20 hours per day of at least one-on-one staffing in a community setting. 	<p>For renewal or reassessment, the person has a history of behavior meeting the guidelines for Tier 5, which are currently prevented only by additional skilled staff intervention at this tier level.</p>
Tier 6 Services	<p>A person is eligible for Tier 6 services when:</p> <ul style="list-style-type: none"> • The person demonstrates multiple qualifying behaviors at a frequency and intensity that requires an average of 20.1 to 24 hours per day of one-on-one staffing or has regular episodes that require multiple staff to redirect, engage, deescalate, and cue to promote community stability and to ensure the safety of the person and other residents; or • The person's behavior requires constant one-on-one monitoring and intervention, even in the context of a structured setting, and there would be an imminent risk of harm if the person does not receive an average of 20.1 to 24 hours per day of at least one-on-one staffing in a community setting. 	<p>For renewals or reassessment, the person has a history of behavior meeting the guidelines for Tier 6, which are currently prevented only by additional skilled staff intervention at this tier level.</p>

NEW SECTION

WAC 182-561-0600 Providers. (1) Supportive supervision and oversight services providers. The services described in WAC

182-561-0400(1) must be provided by the following medicaid agency-contracted providers:

- (a) Adult family homes, as defined in RCW 70.128.010, which are licensed under chapter 388-76 WAC;
 - (b) Adult residential care facilities (ARC), which are assisted living facilities with a contract to provide ARC services and are licensed under chapters 18.20 RCW and 388-78A WAC;
 - (c) Enhanced adult residential care (EARC) facilities, which are assisted living facilities with a contract to provide EARC services and are licensed under chapters 18.20 RCW and 388-78A WAC;
 - (d) Assisted living facilities, which are licensed under chapters 70.97 RCW and 388-78A and 388-110 WAC; or
 - (e) Enhanced services facilities, which are licensed under chapters 70.97 RCW and 388-107 WAC.
- (2) **Provider requirements.** For the purposes of community behavioral health support services, WAC 182-502-0020 is not applicable. Providers must follow the record requirements outlined in the billing guides.

NEW SECTION

WAC 182-561-0700 Eligible diagnoses. For purposes of this chapter, eligible diagnoses include only the following:

- Psychotic disorder with hallucinations due to known physiological condition
- Psychotic disorder with delusions due to known physiological condition
- Mood disorder due to known physiological condition, unspecified
- Mood disorder due to known physiological condition with depressive features
- Mood disorder due to known physiological condition with major depressive-like episode
- Mood disorder due to known physiological condition with manic features
- Mood disorder due to known physiological condition with mixed features
- Anxiety disorder due to known physiological condition
- Personality change due to known physiological condition
- Diffuse traumatic brain injury with loss of consciousness sequela
- Paranoid schizophrenia
- Disorganized schizophrenia
- Catatonic schizophrenia
- Undifferentiated schizophrenia
- Residual schizophrenia
- Schizophreniform disorder
- Other schizophrenia
- Schizophrenia, unspecified
- Schizotypal disorder
- Delusional disorders
- Brief psychotic disorder
- Shared psychotic disorder
- Schizoaffective disorder, bipolar type
- Schizoaffective disorder, depressive type
- Other schizoaffective disorders

- Schizoaffective disorder, unspecified
- Other psychotic disorder not due to a substance or known physiological condition
- Unspecified psychosis not due to a substance or known physiological condition
 - Manic episode without psychotic symptoms, unspecified
 - Manic episode without psychotic symptoms, mild
 - Manic episode without psychotic symptoms, moderate
 - Manic episode, severe, without psychotic symptoms
 - Manic episode, severe with psychotic symptoms
 - Manic episode in partial remission
 - Manic episode in full remission
 - Other manic episodes
 - Manic episode, unspecified
- Bipolar disorder, current episode hypomanic
- Bipolar disorder, current episode manic without psychotic features, unspecified
 - Bipolar disorder, current episode manic without psychotic features, mild
 - Bipolar disorder, current episode manic without psychotic features, moderate
 - Bipolar disorder, current episode manic without psychotic features, severe
- Bipolar disorder, current episode manic severe with psychotic features
 - Bipolar disorder, current episode depressed, mild or moderate severity, unspecified
 - Bipolar disorder, current episode depressed, mild
 - Bipolar disorder, current episode depressed, moderate
 - Bipolar disorder, current episode depressed, severe, without psychotic features
 - Bipolar disorder, current episode depressed, severe, with psychotic features
 - Bipolar disorder, current episode mixed, unspecified
 - Bipolar disorder, current episode mixed, mild
 - Bipolar disorder, current episode mixed, moderate
 - Bipolar disorder, current episode mixed, severe, without psychotic features
 - Bipolar disorder, current episode mixed, severe, with psychotic features
- Bipolar disorder, currently in remission, most recent episode unspecified
 - Bipolar disorder, in partial remission, most recent episodic hypomanic
 - Bipolar disorder, in full remission, most recent episode hypomanic
 - Bipolar disorder, in partial remission, most recent episode manic
 - Bipolar disorder, in full remission, most recent episode manic
 - Bipolar disorder, in partial remission, most recent episode depressed
 - Bipolar disorder, in full remission, most recent episode depressed
 - Bipolar disorder, in partial remission, most recent episode mixed
 - Bipolar disorder, in full remission, most recent episode mixed
 - Bipolar II disorder

- Other bipolar disorder
- Bipolar disorder, unspecified
- Major depressive disorder, single episode, mild
- Major depressive disorder, single episode, moderate
- Major depressive disorder, single episode, severe without psychotic features
- Major depressive disorder, single episode, severe with psychotic features
- Major depressive disorder, single episode, in partial remission
- Major depressive disorder, single episode, in full remission
- Other depressive episodes
- Premenstrual dysphoric disorder
- Other specified depressive episodes
- Major depressive disorder, single episode, unspecified
- Depression, unspecified
- Major depressive disorder, recurrent, mild
- Major depressive disorder, recurrent, moderate
- Major depressive disorder, recurrent severe without psychotic features
- Major depressive disorder, recurrent, severe with psychotic symptoms
- Major depressive disorder, recurrent, in remission, unspecified
- Major depressive disorder, recurrent, in partial remission
- Major depressive disorder, recurrent, in full remission
- Other recurrent depressive disorders
- Major depressive disorder, recurrent, unspecified
- Cyclothymic disorder
- Dysthymic disorder
- Other persistent mood (affective) disorders
- Disruptive mood dysregulation disorder
- Other specified persistent mood disorders
- Persistent mood (affective) disorder, unspecified
- Unspecified mood (affective) disorder
- Agoraphobia, unspecified
- Agoraphobia with panic disorder
- Agoraphobia without panic disorder
- Social phobia, unspecified
- Social phobia, generalized
- Claustrophobia
- Other phobic anxiety disorders
- Panic disorder (episodic paroxysmal anxiety)
- Generalized anxiety disorder
- Obsessive-compulsive disorder
- Mixed obsessional thoughts and acts
- Hoarding disorder
- Excoriation (skin-picking) disorder
- Other obsessive-compulsive disorder
- Obsessive-compulsive disorder, unspecified
- Post-traumatic stress disorder, unspecified
- Post-traumatic stress disorder, acute
- Post-traumatic stress disorder, chronic
- Dissociative amnesia
- Dissociative fugue
- Dissociative stupor
- Conversion disorder with motor symptom or deficit
- Conversion disorder with seizures or convulsions
- Conversion disorder with sensory symptom or deficit

- Conversion disorder with mixed symptom presentation
- Dissociative identity disorder
- Other dissociative and conversion disorders
- Dissociative and conversion disorder, unspecified
- Somatization disorder
- Undifferentiated somatoform disorder
- Hypochondriacal disorder, unspecified
- Hypochondriasis
- Body dysmorphic disorder
- Other hypochondriacal disorders
- Pain disorder exclusively related to psychological factors
- Pain disorder with related psychological factors
- Other somatoform disorders
- Somatoform disorder, unspecified
- Depersonalization-derealization syndrome
- Nonpsychotic mental disorder, unspecified
- Borderline personality disorder
- Trichotillomania
- Intermittent explosive disorder
- Other impulse disorders
- Impulse disorder, unspecified
- Factitious disorder imposed on self, unspecified
- Factitious disorder imposed on self, with predominantly physical signs and symptoms
 - Factitious disorder imposed on self, with combined psychological and physical signs and symptoms
- Other specified disorders of adult personality and behavior
- Conduct disorder confined to family context
- Conduct disorder, childhood-onset type
- Conduct disorder, adolescent-onset type
- Other conduct disorders
- Conduct disorder, unspecified
- Separation anxiety disorder of childhood
- Other childhood emotional disorders
- Childhood emotional disorder, unspecified
- Selective mutism
- Reactive attachment disorder of childhood
- Disinhibited attachment disorder of childhood
- Other childhood disorders of social functioning
- Childhood disorder of social functioning, unspecified
- Traumatic brain injury-related diagnoses

NEW SECTION

WAC 182-561-0800 Appeal process. (1) The medicaid agency gives the client written notice of an action under chapter 182-518 WAC.

(2) The client has the right to appeal the agency's adverse action according to chapter 182-526 WAC.

WSR 24-07-073

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 18, 2024, 10:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-107.

Title of Rule and Other Identifying Information: WAC 182-509-0300 Modified adjusted gross income (MAGI), 182-509-0305 MAGI-income—Persons subject to the modified adjusted gross income (MAGI) methodology, and 182-512-0880 SSI-related medical—Special income disregards.

Hearing Location(s): On April 23, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_JTdON_X4TTW-icgTnUcj8Q. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: April 24, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 23, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by April 12, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is adding the 1915i income disregard equal to the difference between 150 percent of the federal poverty level and 300 percent of the federal benefit rate. This disregard is targeted to individuals seeking community behavioral health support (CBHS) services. This filing aligns with new rules being created for CBHS services benefit, filed for public hearing under WSR 24-07-072.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Paige Lewis, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-0757.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

March 18, 2024
Wendy Barcus
Rules Coordinator

OTS-4467.1

AMENDATORY SECTION (Amending WSR 20-17-136, filed 8/18/20, effective 9/18/20)

WAC 182-509-0300 Modified adjusted gross income (MAGI). (1) The agency uses the modified adjusted gross income (MAGI) methodology to determine eligibility for MAGI-based Washington apple health programs described in WAC 182-509-0305.

(2) MAGI methodology is described in WAC 182-509-0300 through 182-509-0375. Generally, MAGI includes adjusted gross income (as determined by the Internal Revenue Code (IRC)) increased by:

(a) Any amount of foreign income excluded from gross income under Section 911 of the IRC;

(b) Any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax; and

(c) Any amount of Title II Social Security income or Tier 1 Railroad Retirement income which is excluded from gross income under Section 86 of the IRC.

(3) When calculating a person's eligibility for the programs listed in WAC 182-509-0305, the agency uses the person's MAGI income with the following exceptions:

(a) Scholarships or fellowship grants described in WAC 182-509-0335 used for education purposes are excluded from income;

(b) Income received by American Indian/Alaskan Native individuals described in WAC 182-509-0340 is excluded from income;

(c) Any income received as a lump sum as described in WAC 182-509-0375 is counted as income only in the month in which it is received; and

(d) Income received by a child age (~~eighteen~~) 18 or younger or a tax dependent as described in WAC 182-509-0360 is excluded from income.

(4) Countable MAGI income is reduced by an amount equal to five percentage points of the federal poverty level (FPL) based on household size to determine net income except that there is no such reduction of countable MAGI income for parents or caretaker relatives with an eligible dependent child (as described in WAC 182-509-0305(1)). Net income is compared to the applicable standard described in WAC 182-505-0100.

(5) When calculating a person's eligibility for MAGI-based programs listed in WAC 182-509-0305, the agency determines the medical assistance unit for each person according to WAC 182-506-0010 and 182-506-0012.

(6) When calculating a person's eligibility for the community behavioral health support services (CBHS) benefit described in chapter 182-561 WAC, the agency disregards or deducts the amount of the person's income over 150 percent of the FPL.

AMENDATORY SECTION (Amending WSR 22-12-033, filed 5/24/22, effective 6/24/22)

WAC 182-509-0305 MAGI income—Persons subject to the modified adjusted gross income (MAGI) methodology. (1) Eligibility for Wash-

ington apple health for the following people is determined using the modified adjusted gross income (MAGI) methodology described in WAC 182-509-0300:

(a) Parents or caretaker relatives with an eligible dependent child (described in WAC 182-503-0565) whose net countable income is below 54 percent of the federal poverty level (FPL) as described in WAC 182-505-0240.

(b) Parents or caretaker relatives with an eligible dependent child whose net countable income exceeds the standard described in (a) of this subsection but is at or below 133 percent FPL as described in WAC 182-505-0250 and 182-507-0110.

(c) Adults with no eligible dependent child with net countable income at or below 133 percent FPL as described in WAC 182-505-0250 and 182-507-0110.

(d) Pregnant people whose net countable income, based on a household size that includes any unborn children, is below 193 percent FPL at the time of application, as described in WAC 182-505-0115.

(e) People within the 12-month postpartum period beginning the month after the pregnancy ends whose net countable income is below 193 percent FPL at the time of application, as described in WAC 182-505-0115.

(f) Children age 18 or younger in households with net countable income which is below 210 percent FPL, as described in WAC 182-505-0210 (3) (a).

(g) Children age 18 or younger in households with net countable income that is between 210 percent and 312 percent FPL, as described in WAC 182-505-0215. Children who are eligible under this section are subject to premiums as described in WAC 182-505-0225.

(h) People age 18 and older who have income over 150 percent FPL who are financially and functionally eligible to receive the community behavioral health support services (CBHS) benefit, as described in chapter 182-561 WAC.

(2) Household size for a person who is subject to MAGI income methodologies is determined according to WAC 182-506-0010.

OTS-4468.1

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0880 SSI-related medical—Special income disregards.

Portions of a person's income the agency otherwise counts are disregarded when determining eligibility for Washington apple health ~~((WAH))~~ SSI-related medical programs.

(1) The agency disregards cost of living adjustments (COLAs) to Social Security benefits and provides categorically needy (CN) SSI-related medicaid benefits under the Pickle Amendment criteria of 42 C.F.R. 435.135 (1) (a) to a person who:

(a) Is currently receiving Title II Social Security benefits;

(b) Was eligible for and received SSI or State Supplement payments (SSP) but became ineligible for those payments after April, 1977; and

(c) Would still be eligible for SSI or SSP payments if the amount of Social Security COLA increases paid under section 215(i) of the Social Security Act were deducted from (~~his or her~~) the person's current Title II Social Security benefits.

(d) To satisfy this provision, a person must have been eligible for and received SSI or SSP payments and in the same month was entitled to, but did not necessarily receive, a Title II Social Security benefit for at least one month since April 1977. This includes a person who receives a Title II Social Security benefit payment the month after the last SSI or SSP payment is made due to the fact that Social Security is paid the month after entitlement begins.

(e) For purposes of this section, the agency also disregards COLAs received by a person, (~~his or her~~) their financially responsible spouse, and other financially responsible family members, such as a parent.

(2) In determining SSI-related CN-WAH coverage, the agency disregards:

(a) Widow(er)'s benefits for a person who:

(i) Was entitled to SSA title II (widow/widower's) benefits in December 1983;

(ii) Was at least (~~fifty~~) 50 years old, but not yet (~~sixty~~) 60 at that time;

(iii) Received title II benefits and SSI in January 1984;

(iv) Would continue to be eligible for SSI/SSP payments if the title II benefits were disregarded; and

(v) Filed an application for medicaid with the state by July 1, 1988.

(b) Widow, Widower or Surviving Divorced Spouse (title II) benefits for a person who:

(i) Received SSI/SSP benefits the month prior to receipt of title II benefits;

(ii) Would continue to be eligible for SSI/SSP benefits if the title II benefits or the COLA(s) to those benefits were disregarded; and

(iii) Is not eligible for medicare Part A. This person is considered an SSI recipient until becoming entitled to medicare Part A.

(3) A disabled adult child (DAC) who is ineligible for SSI/SSP solely due to receipt of either Social Security benefits as a disabled adult child of a person with a Social Security account or due to receipt of a COLA to the DAC benefits, may be income eligible for (~~WAH~~) Apple Health categorically needy (CN) health care coverage if disregarding the SSA DAC benefits and COLA brings countable income below the CN standards, and the person:

(a) Is (~~eighteen~~) 18 years of age or older;

(b) Remains related to the SSI program through disability or blindness;

(c) Lost SSI eligibility on or after July 1, 1988, due solely to the receipt of DAC benefits from SSA or a COLA to those benefits; and

(d) Meets the other (~~WAH~~) SSI-related CN medical requirements.

(4) A person is eligible for (~~WAH~~) CN coverage if:

(a) In August 1972, the person received:

(i) Old age assistance (OAA);

(ii) Aid to blind (AB);

(iii) Aid to families with dependent children (AFDC); or

(iv) Aid to the permanently and totally disabled (APTD).

(b) The person was entitled to or received retirement, survivors, and disability insurance (RSDI) benefits; or

(c) The person was ineligible for OAA, AB, AFDC, SSI, or APTD solely because of the (~~twenty~~) 20 percent increase in Social Security benefits under P.L. 92-336.

(5) (~~Persons~~) People who stop receiving an SSI cash payment due to earnings, but still meet all of the other SSI eligibility rules and have income below the higher limit established by the Social Security Act's Section 1619(b) are eligible for continued WAH CN medicaid.

(6) TANF income methodology is used to determine countable income for children and pregnant (~~women~~) people applying for (~~WAH~~) medically needy (MN) coverage unless the SSI methodology would be more beneficial to the person. When using the TANF income methodologies, deduct:

(a) A (~~fifty~~) 50 percent earned income disregard described in WAC 388-450-0170;

(b) Actual child care and dependent care expenses related to employment; and

(c) Child support actually paid.

(7) The agency disregards a person's income over 150 percent of the FPL when determining eligibility for the community behavioral health support services (CBHS) benefit under chapter 182-561 WAC. This disregard only applies to eligibility for the CHBS benefit and does not apply to:

(a) Long-term services and supports eligibility determinations under chapters 182-513 and 182-515 WAC; or

(b) Post-eligibility treatment of income (PETI).

WSR 24-07-074
PROPOSED RULES
GAMBLING COMMISSION
[Filed March 18, 2024, 11:19 a.m.]

Supplemental Notice to WSR 24-03-065.

Preproposal statement of inquiry was filed as WSR 23-22-081.

Title of Rule and Other Identifying Information: WAC 230-03-182
Additional requirements for nonhouse-banked, Class F, and house-banked card rooms.

Hearing Location(s): On May 9, 2024, at 9:30 a.m., at Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location are tentative. Visit our website at www.wsgc.wa.gov approximately seven days prior to the meeting and select "About Us" and then "Upcoming commission meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: May 9, 2024.

Submit Written Comments to: Adam Amorine, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, www.wsgc.wa.gov, by May 8, 2024.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email julie.anderson@wsgc.wa.gov, www.wsgc.wa.gov, by May 8, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new proposed rule is an amended version of an old rule that created conditions for the situation of card rooms adjacent to one another. The rule further clarifies under which limited conditions nonhouse-banked, Class F, and house-banked card rooms can be adjacent to one another.

Reasons Supporting Proposal: Licensees need additional clarity on the conditions that must exist for two card rooms to be adjacent to one another.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Adam Amorine, Rules Coordinator, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3473; Implementation: Tina Griffin, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Deputy Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5) (b) (v).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

March 18, 2024
Adam Amorine

OTS-5132.3

NEW SECTION

WAC 230-03-182 Additional requirements for nonhouse-banked, Class F, and house-banked card rooms. (1) The licensed business premises of nonhouse-banked, Class F, and house-banked card rooms may not be adjacent to each other unless:

(a) Each is a fully separate and distinct licensed business premises; and

(b) There is a solid wall, with no internal access, between the two premises; and

(c) Each licensed business premises must operate as an independent commercial stimulant as defined in RCW 9.46.0217.

(2) Subsection (1) of this section does not apply to nonhouse-banked, Class F, and house-banked card room physical locations that have any of the features listed in subsection (1) of this section and were licensed as of July 1, 2018.

(3) Adjacent card rooms must post signs at each entrance that is accessible by the public to clearly notify customers of the licensed business premises' identity.

WSR 24-07-076
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed March 18, 2024, 11:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-01-094.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-439-0020 Eligibility for pandemic EBT benefits for children under age six and 388-439-0025 Eligibility for pandemic EBT benefits during the 2023 summer period.

Hearing Location(s): On April 23, 2024, at 10:00 a.m., virtually via [Microsoft] Teams or call in. See the DSHS website <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than April 24, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by April 23, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by April 9, 2024, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments are necessary to more accurately align pandemic EBT (P-EBT) program rules with federal regulations. Related emergency rules are currently in place under WSR 24-01-090.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

Rule is necessary because of federal law, [no information provided by agency].

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Troy Burgess, P.O. Box 45470, Olympia, WA 98504-5470, 360-584-5162.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: [No information provided by agency].

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS customers.

Scope of exemption for rule proposal:

Is fully exempt.

March 14, 2024
 Katherine I. Vasquez
 Rules Coordinator

SHS-5008.1

AMENDATORY SECTION (Amending WSR 23-20-014, filed 9/22/23, effective 10/23/23)

WAC 388-439-0020 Eligibility for pandemic EBT benefits for children under age six. (1) To be eligible for federally funded pandemic electronic benefits transfer (P-EBT) benefits for children under age six, a child must be:

(a) A member of a household that received supplemental nutrition assistance program (SNAP) between September 1, 2022, and May 11, 2023;

(b) Under age of six during the specified time period.

(2) Children who do not qualify for federally funded P-EBT benefits because they receive state-funded food assistance program (FAP) may be eligible for state-funded P-EBT.

(a) State-funded P-EBT follows the same eligibility rules as subsection (1) of this section, except that the child must be a member of a household that received FAP, instead of SNAP, between September 1, 2022, and May 11, 2023.

(b) State-funded P-EBT benefits are contingent on the availability of state funds.

(3) We calculate a standard benefit level for each month of P-EBT eligibility by:

(a) Using the full daily meal reimbursement rate of \$8.18 for breakfast, lunch, and snack;

(b) For September 2022, through April 2023, multiplied by the statewide average operating days of 18 days per month;

(c) For the partial prorated month of May 2023, multiplied by the nine operating days prior to the May 11 expiration of the PHE;

(d) Multiplied using a percentage of benefit reimbursement based on statewide child and adult care food program (CACFP) reported meal service prior to the COVID-19 PHE compared to the current school year, a 29.8 percent reduction, as follows:

Child Care Months	Daily Reimbursement Rate	Average Operating Days	Reduction in CACFP Claims	Average Monthly Benefits
September 2022 - April 2023	\$8.18	18	29.8%	\$43.88
May 1 - May 11, 2023	\$8.18	9	29.8%	\$28.94

(e) P-EBT benefits are issued for each month that the household receives a SNAP or FAP benefit more than zero dollars.

(4) P-EBT benefits are issued for a child under age six for a retroactive period of time as ~~((follows+))~~ a lump sum one-time payment covering eligible months from September 2022, through May 2023.

~~((a) A lump sum one-time P-EBT allotment is issued for eligible months from September 2022, through May 2023;~~

~~(b) P-EBT during the summer period benefits are disbursed under WAC 388-439-0025.)~~

(5) Benefits for a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(6) USDA requires all issuances of P-EBT benefits to be complete by December 31, 2023, as federal funding will be exhausted. Any and all P-EBT benefits issued beyond this date will be subject to additional USDA approval and funding.

AMENDATORY SECTION (Amending WSR 23-20-014, filed 9/22/23, effective 10/23/23)

WAC 388-439-0025 Eligibility for pandemic EBT benefits during the 2023 summer period. (1) During the summer period of July and August 2023, schools ~~((and covered childcare centers))~~ will be deemed as closed.

(2) To be eligible for the pandemic electronic benefits transfer (P-EBT) benefit during the summer period after the 2022-2023 school year, prior to August 31, 2023, a child must be ~~((+))~~ an eligible student as defined under WAC 388-439-0005 (2) (d) in June 2023.

~~((a) An eligible student as defined under WAC 388-439-0005 (2) (d) in June 2023; or~~

~~(b) A child under age six, as defined under WAC 388-439-0020(1), between July 1, 2023, and August 31, 2023.)~~

(3) Children under the age of six as defined in WAC 388-439-0020 are not eligible for Summer P-EBT benefits following the expiration of the federal public health emergency declaration.

(4) A child determined eligible in subsection (2) of this section will receive a one-time, lump sum payment of \$120 for the 2023 summer period.

~~((4))~~ (5) Summer P-EBT benefits for an eligible student or a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

~~((5))~~ (6) USDA requires all issuances of P-EBT benefits to be complete by December 31, 2023, as federal funding will be exhausted. Any and all P-EBT benefits issued beyond this date will be subject to additional USDA approval and funding.

WSR 24-07-077
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed March 18, 2024, 12:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-02-043.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to repeal WAC 388-450-0115 Does the department allocate the income of a financially responsible person who is excluded from the assistance unit? and 388-450-0116 How does the department count my income if I cannot get assistance because I am an alien? DSHS is proposing to amend WAC 388-408-0020 When am I not allowed to be in a TANF or SFA assistance unit?, 388-450-0050 How does your participation in the community jobs (CJ) program affect your cash assistance and basic food benefits?, 388-450-0105 Allocating the income of a financially responsible person included in the assistance unit, 388-450-0106 How does the department count my income if someone in my family cannot get assistance because of their alien status?, 388-450-0112 Does the department allocate the income of an ABD cash client to legal dependents?, 388-450-0113 Does the department allocate income of a housing and essential needs (HEN) referral recipient to legal dependents?, 388-450-0130 Does the department allocate the income of a nonapplying spouse to a caretaker relative?, 388-450-0137 Does the department allocate income of an ineligible spouse to an ABD cash client?, 388-450-0138 Does the department allocate income of an ineligible spouse to a housing and essential needs (HEN) referral recipient?, 388-450-0170 Does the department provide an earned income deduction as an incentive for persons who receive TANF/SFA to work?, 388-450-0177 Does the department offer an income deduction for the ABD cash program as an incentive for clients to work?, 388-450-0178 Does the department offer an income deduction for housing and essential needs (HEN) referral applicants and recipients as an incentive to work?, 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA, and RCA?, 388-486-0005 Unmarried pregnant or parenting minors—Required living arrangements, and 388-486-0010 Unmarried pregnant or parenting minors—Required school attendance. No amendments are being proposed to WAC 388-450-0120 as originally contemplated in the CR-101.

Hearing Location(s): On April 23, 2024, at 10:00 a.m., virtually via [Microsoft] Teams or call in at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings>. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: No earlier than April 24, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by April 23, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tenczasa@dshs.wa.gov, by April 9, 2024, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective August 1, 2024, these amendments will incorporate changes to earned income disregards for cash assistance programs, per 2SHB 1447 (chapter 418, Laws of 2023). As ap-

plicable, these amendments make additional changes required to improve clarity, update policy, or better align rule language with state and federal law or regulations.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 41.05.021, 49.46.120, 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.09.035, 74.09.530, and 74.62.030.

Statute Being Implemented: 2SHB 1447 (chapter 418, Laws of 2023).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Rocio Loera, P.O. Box 45470, Olympia, WA 98504-5470, 360-480-5477.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which in part states, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed amendments do not impact small business. They only impact DSHS clients.

Scope of exemption for rule proposal:

Is fully exempt.

March 14, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5023.2

AMENDATORY SECTION (Amending WSR 10-12-095, filed 6/1/10, effective 7/2/10)

WAC 388-408-0020 When am I not allowed to be in a TANF or SFA assistance unit (AU)? Some people cannot be in an AU for TANF or SFA. This section describes who cannot be in your TANF or SFA AU and how this will affect your benefits.

(1) We do not include the following people in your TANF or SFA AU:

(a) A minor parent or child who has been placed in Title IV-E, state, or locally-funded foster care unless the placement is a temporary absence under WAC 388-454-0015;

(b) An adult parent in a two-parent household when:

(i) The other parent is unmarried and under the age of (~~eighteen~~) 18; and

(ii) We decide (~~that~~) your living arrangement is not appropriate under WAC 388-486-0005.

(c) A court-ordered guardian, court-ordered custodian, or other adult acting *in loco parentis* (in the place of a parent) if they are not a relative of one of the children in the AU as defined under WAC 388-454-0010; or

(d) Someone who gets SSI benefits.

(2) If someone (~~that~~) lives with you who cannot be in the AU:

(a) We (~~do not~~) count them as a member of the AU when we determine the AU's (~~payment standard~~) household size for income deductions; and

(b) We do not count their income unless:

(i) They are financially responsible for a member of the AU under WAC 388-450-0095 through 388-450-0130(=); or

(ii) They are a child who does not meet the exclusions in WAC 388-450-0070.

AMENDATORY SECTION (Amending WSR 15-17-090, filed 8/18/15, effective 10/1/15)

WAC 388-450-0050 How does your participation in the community jobs (~~(CJ)~~) program affect your cash assistance and basic food benefits? (1) There are two different types of income in the community jobs program. They are:

(a) Subsidized, where your wages are paid from TANF or SFA funds; and

(b) Unsubsidized, where your wages are paid entirely by your employer.

(2) We figure your total monthly subsidized or unsubsidized income by:

(a) Estimating the number of hours you, your case manager, and the (~~CJ~~) community jobs contractor expect you to work for the month; and

(b) Multiplying the number of hours by the federal, state, or local minimum wage, whichever is higher.

(3) Because you are expected to participate and meet the requirements of (~~CJ~~) community jobs, once we determine what your total monthly income is expected to be, we do not change your TANF grant if your actual hours are more or less than anticipated.

(4) We treat the total income we expect you to get each month from your (~~CJ~~) community jobs position as:

(a) Earned income for cash assistance, except we do not count any of the (~~CJ~~) community jobs income for the first month you receive your paycheck.

(b) Earned income for basic food for all months.

(5) If your anticipated subsidized income is more than your grant amount, your cash grant is suspended. This means (~~that~~) you are still considered a TANF/SFA recipient, but you do not get a grant.

(a) Your grant can be suspended up to a maximum of nine months.

(b) You can keep participating in ~~((€))~~ community jobs even though your grant is suspended, as long as you would be eligible for a grant if we did not count your subsidized income.

(c) The months your grant is suspended do not count toward your ~~((sixty))~~ 60-month lifetime limit.

(6) If your unsubsidized income ~~((, after we subtract half of what you have earned is greater than your grant))~~ is greater than your grant after we apply the earned income deductions outlined in WAC 388-450-0170, your TANF/SFA case will close. This happens because your income is over the maximum you are allowed. You will still be able to participate in the ~~((€))~~ community jobs program for up to a total of nine months.

(7) If your income from other sources alone, not counting ~~((€))~~ community jobs income makes you ineligible for a cash grant, we terminate your grant and end your participation in ~~((€))~~ community jobs.

AMENDATORY SECTION (Amending WSR 13-18-007, filed 8/22/13, effective 10/1/13)

WAC 388-450-0105 Allocating the income of ((a)) financially responsible ((person)) persons included in the assistance unit. This section applies to TANF/SFA, PWA, and RCA. If you are included in the assistance unit, are financially responsible for someone and are disqualified or ineligible, as defined in WAC 388-450-0100, your income is available to meet the needs of the assistance unit. To figure out how much we count, we take the following steps: ((The income of a financially responsible person included in the assistance unit is countable to meet the needs of the assistance unit after the income is reduced by the following:

~~(1) Any applicable earned income incentive and work expense or deduction for the financially responsible person in the assistance unit, if that person is employed;~~

~~(2) The payment standard amount for the ineligible assistance unit members living in the home; and~~

~~(3) An amount not to exceed the department's standard of need for court or administratively ordered current or back support for legal dependents.)~~

(1) We start by totaling earned income, as defined in WAC 388-450-0030, and applying the earned income deductions outlined in WAC 388-450-0170.

(2) We add the unearned income, as defined in WAC 388-450-0025.

(3) We subtract the difference between the following payment standards (payment standards can be found in WAC 388-478-0020 and 388-478-0027):

(a) One that includes both eligible assistance unit members and those who cannot get assistance; and

(b) One that includes only the eligible assistance unit members who can get assistance.

(4) We subtract any court or administratively ordered child support paid for legal dependents. This includes both current and back support. The amount cannot be more than the need standard in WAC 388-478-0015 for the number of dependents.

(5) We subtract any employment-related child care expenses you had prior to approval.

(6) Whatever is left is countable income and subtracted from the grant.

AMENDATORY SECTION (Amending WSR 13-18-007, filed 8/22/13, effective 10/1/13)

WAC 388-450-0106 How does the department count ((my)) income if someone ((in my family)) cannot get assistance because of their ((alien)) immigration status? This section applies to TANF/SFA, PWA, and RCA.

~~((If you are included in the assistance unit and you are financially responsible for someone, as defined in WAC 388-450-0100, who does)) Some people cannot get assistance because they do not meet the ((alien)) requirements described in WAC 388-424-0010 ((, we do not count all of your income. We subtract some of it so that you can use that part to help support the people who cannot get assistance)). If you do not meet those requirements and are financially responsible for someone in the assistance unit, as defined in WAC 388-450-0100, we count some of your income. To figure out how much we count, we take the following ((seven)) steps:~~

~~(1) We start by ((only counting fifty percent of your)) totaling earned income, as defined in WAC 388-450-0030, and applying the earned income deductions outlined in WAC 388-450-0170 ((,)).~~

~~(2) We add all ((of your)) the unearned income, as defined in WAC 388-450-0025.~~

~~(3) We subtract the difference between the following payment standards (payment standards can be found in WAC 388-478-0020 and 388-478-0027):~~

~~(a) One that includes both eligible assistance unit members and those who cannot get assistance ((because of their alien status)); and~~

~~(b) One that includes only the eligible assistance unit members who can get assistance.~~

~~(4) ((We subtract the payment standard for the number of people who are ineligible for reasons other than alien status, as defined in WAC 388-450-0100 (4)(b) through (f)).~~

~~((5)) We subtract any court or administratively ordered child support ((you pay)) paid for legal dependents. This includes both current and back support. The amount cannot be more than the need standard in WAC 388-478-0015 for the number of dependents.~~

~~((6)) (5) We subtract any employment-related child care expenses you ((have)) had prior to approval.~~

~~((7)) (6) ((Then, we count)) Whatever is left ((as unearned)) is countable income and subtracted from the grant.~~

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-450-0112 Does the department allocate the income of an ABD cash client to legal dependents? This section applies to the aged, blind, or disabled (ABD) cash assistance program.

(1) The income of an ABD cash client is reduced by the following:

(a) The ABD cash earned income ((disregard)) deductions as specified in WAC 388-450-0177; and

(b) ~~((An))~~ The amount ((not to exceed the department's)) of both current and back child support the ABD cash client is paying each month under a court or administrative order. The amount cannot be more than the need standard ((of need for court or administratively ordered current or back support for legal dependents)) in WAC 388-478-0015 for the number of dependents.

(2) When ~~((a))~~ an ABD cash client in a medical institution, alcohol or drug treatment center, congregate care facility or adult family home has income, the income is countable to meet the client's needs after the income is reduced by the following:

(a) The payment standard amount for the nonapplying spouse and legal dependents living in the home; and

(b) The standard of assistance the client is eligible for while in an alternative care facility.

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

WAC 388-450-0113 Does the department allocate income of a housing and essential needs (HEN) referral ((recipient)) client to legal dependents? This section applies to referrals to the housing and essential needs (HEN) program.

(1) The income of a HEN referral ~~((recipient))~~ client is reduced by the following:

(a) The HEN referral earned income ~~((disregard))~~ deductions as specified in WAC 388-450-0178; and

(b) The amount of both current and ~~((/or))~~ back child support ~~((that))~~ the ~~((recipient))~~ HEN referral client is paying each month under a court or administrative order. ~~((If the monthly child support payment is greater than the department's standard of need, income is instead reduced by the department's standard of need.))~~ The amount cannot be more than the need standard in WAC 388-478-0015 for the number of dependents.

(2) When a HEN referral ~~((recipient))~~ client in a medical institution, alcohol or drug treatment center, congregate care facility or adult family home has income, the income is countable to meet the ~~((recipient's))~~ client's needs after the income is reduced by the following:

(a) The HEN referral program income limit for the nonapplying spouse and legal dependents living in the home; and

(b) The standard of assistance the client is eligible for while residing in the alternative care facility.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-450-0130 Does the department allocate the income of a nonapplying spouse to a caretaker relative? This section applies to TANF/SFA, PWA, and RCA programs.

~~((1))~~ The community income of the nonapplying spouse and applying spouse is combined. See WAC 388-450-0005 to determine what income is available as community income. To figure out how much we count, we take the following steps:

~~((2) Subtract a one person payment standard as specified in WAC 388-478-0020.~~

~~(3) The remainder is allocated to the caretaker relative.))~~

(1) We start by totaling earned income, as defined in WAC 388-450-0030, and applying the earned income disregards outlined in WAC 388-450-0170.

(2) We add all the unearned income, as defined in WAC 388-450-0025.

(3) We subtract the difference between the following payment standards (payment standards can be found in WAC 388-478-0020 and 388-478-0027):

(a) One that includes both eligible assistance unit members and those who cannot get assistance; and

(b) One that includes only the eligible assistance unit members who can get assistance.

(4) We subtract any court or administratively ordered child support paid for legal dependents. This includes both current and back support. The amount cannot be more than the need standard in WAC 388-478-0015 for the number of dependents.

(5) We subtract any employment-related child care expenses you had prior to approval.

(6) Whatever is left is countable income and subtracted from the grant.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-450-0137 Does the department allocate income of an ineligible spouse to an ABD cash client? This section applies to the aged, blind, or disabled (ABD) cash assistance program.

~~(1) ((When an ABD cash client is married and lives with the non-applying spouse, the following income is available to the client:~~

~~(a) The remainder of the client's wages, retirement benefits or separate property after reducing the income by:~~

~~(i) The ABD cash work incentive deduction, as specified in WAC 388-450-0177; and~~

~~(ii) An amount not to exceed the department's standard of need for court or administratively ordered current or back support for legal dependents.~~

~~(b) The remainder of the nonapplying spouse's wages, retirement benefits and separate property after reducing the income by:~~

~~(i) An amount not to exceed the department's standard of need for court or administratively ordered current or back support for legal dependents; and~~

~~(ii) The payment standard amount as specified under WAC 388-478-0033 which includes ineligible assistance unit members.~~

(c) One-half of all other community income, as provided in WAC 388-450-0005.)) The community income of the ineligible spouse and applying spouse is combined. See WAC 388-450-0005 to determine what income is available as community income. To figure out how much income we count, we take the following steps:

(a) We start by totaling earned income, as defined in WAC 388-450-0030, and subtract the earned income deductions outlined in WAC 388-450-0177;

(b) We add all the unearned income, as defined in WAC 388-450-0025;

(c) We subtract the difference between the two person and one person payment standards (payment standards can be found in WAC 388-478-0033).

(2) We subtract any court or administratively ordered child support paid for legal dependents. This includes both current and back support. The amount cannot exceed the standard of need in WAC 388-478-0015 for the number of dependents.

(3) Then, we compare the remaining income after deductions in subsections (1) and (2) of this section to the income limits defined in WAC 388-478-0090.

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

WAC 388-450-0138 Does the department allocate income of an ineligible spouse to a housing and essential needs (HEN) referral ((recipient)) client? This section applies to referrals to the housing and essential needs (HEN) program.

(1) When a HEN referral ((recipient)) client is married and lives with their ((nonapplying)) ineligible spouse, we take the following ((income is considered available to the client)) steps to figure out how much income we count:

(a) ((The remainder of the recipient's wages, retirement benefits and other income after reducing the total income by:

(i) The HEN referral work incentive deduction, as specified in WAC 388-450-0178; and

(ii) The amount of current and/or back child support that the recipient is paying each month under a court or administrative order. If the monthly child support payment is greater than the department's standard of need, income is instead reduced by the department's standard of need.

(b) The remainder of the nonapplying spouse's wages, retirement benefits and other income after reducing the total income by:

(i) An amount not to exceed the department's standard of need for court ordered or administratively ordered current or back child support for legal dependents; and

(ii) The HEN referral income limit amount as specified under WAC 388-478-0090 which includes ineligible assistance unit members.

(c) One-half of all other community income.)) We start by totaling earned income, as defined in WAC 388-450-0030, and subtract the earned income deduction, as defined in WAC 388-450-0178;

(b) We add all the unearned income, as defined in WAC 388-450-0025;

(c) We subtract the difference between the two person and one person payment standards (payment standards can be found in WAC 388-478-0033).

(2) We subtract any court or administratively ordered child support paid for legal dependents. This includes both current and back support. The amount cannot exceed the standard of need in WAC 388-478-0015 for the number of dependents.

(3) Then, we compare the remaining income after deductions in subsections (1) and (2) of this section to the income limits defined in WAC 388-478-0090.

AMENDATORY SECTION (Amending WSR 15-02-006, filed 12/26/14, effective 1/26/15)

WAC 388-450-0170 Does the department provide an earned income deduction ~~((as an incentive))~~ for ~~((persons who))~~ households that receive TANF/SFA, RCA, and PWA to work? ~~((This section applies to TANF/SFA, RCA and PWA.))~~

(1) ~~((a client works))~~ an individual is working, the department only counts some of the income to determine eligibility and benefit level.

(2) We start by deducting the first \$500 of the total household's earned income.

~~((3))~~ We ~~((only count fifty percent))~~ then subtract 50% of ~~((your))~~ the remaining monthly gross earned income. ~~((We do this to encourage you to work.))~~

~~((3))~~ (4) If you pay for care before we approve your benefits, we subtract the amount you ~~((pay))~~ paid for those dependent children or incapacitated adults who get cash assistance with you.

(a) The amount we subtract is:

(i) Prorated according to the date you are eligible for benefits;

(ii) Cannot be more than your gross monthly income; and

(iii) Cannot exceed the following for each dependent child or incapacitated adult:

Dependent Care Maximum Deductions

Hours Worked Per Month	Child Under Two Years of Age (& Under)	Child ((Over)) Two Years of Age and Older or Incapacitated Adult
0 - 40	\$ 50.00	\$ 43.75
41 - 80	\$ 100.00	\$ 87.50
81 - 120	\$ 150.00	\$ 131.25
121 or More	\$ 200.00	\$ 175.00

(b) In order to get this deduction:

(i) The person providing the care must be someone other than the parent or stepparent of the child or incapacitated adult; and

(ii) You must verify the expense.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-450-0177 Does the department ~~((offer))~~ provide an earned income deduction for the ABD cash program ~~((as an incentive for clients to work))~~? The department gives a deduction to people who receive income from work while receiving aged, blind, or disabled cash assistance. The deduction applies to aged, blind, or disabled cash benefits only. We allow the following income deduction when we determine the amount of your benefits:

We ~~((only count fifty percent of your monthly gross earned income. We do this to encourage you to work.))~~ deduct the first \$500 of gross monthly earnings and then one-half of remaining earnings.

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

WAC 388-450-0178 Does the department (~~(offer)~~) provide an earned income deduction for housing and essential needs (HEN) referral applicants and recipients ((as an incentive to work))? We give a deduction to housing and essential needs (HEN) referral applicants and recipients who receive income from work. The deduction applies to eligibility for referral to the HEN program only. We allow the following income deduction when we determine your eligibility for referral to the HEN program:

We (~~only count fifty percent of your monthly gross earned income. We do this to encourage work.~~) deduct the first \$500 of gross monthly earnings and then one-half of remaining earnings.

AMENDATORY SECTION (Amending WSR 23-23-054, filed 11/8/23, effective 1/1/24)

WAC 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA, and RCA? To be eligible for temporary assistance for needy families (TANF), state family assistance (SFA), refugee cash assistance (RCA), or pregnant women assistance (PWA), a family's gross earned income must be below the following levels (~~(+)~~), which includes the \$500 family earnings deduction:

Number of family members	Maximum earned income level	Number of family members	Maximum monthly earned income level
1	\$(900) <u>1,400</u>	6	\$(2,180) <u>2,680</u>
2	((1,140)) <u>1,640</u>	7	((2,516)) <u>3,016</u>
3	((1,412)) <u>1,912</u>	8	((2,784)) <u>3,284</u>
4	((1,666)) <u>2,166</u>	9	((3,058)) <u>3,558</u>
5	((1,918)) <u>2,418</u>	10 or more	((3,324)) <u>3,824</u>

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-486-0005 Unmarried pregnant or parenting minors—Required living arrangement. (1) This rule affects only the minor's eligibility for cash assistance. It does not affect the eligibility of the minor parent's child for a cash grant.

(2) The following definitions apply to terms used in this section:

(a) "Unmarried" means a person who has never been married or whose marriage has been annulled. It does not include a person who has been divorced or widowed.

- (b) "Minor" means a person younger than (~~(eighteen)~~) 18 years of age.
- (c) "Legal guardian" means a court-appointed legal guardian or court-appointed permanent custodian.
- (d) "Relative" is a person who is related to the pregnant or parenting minor as defined under RCW 74.15.020(~~((4))~~).
- (3) An unmarried pregnant or parenting minor is not eligible for TANF, SFA, or PWA unless the person:
- (a) Has been emancipated by a court; or
 - (b) Lives in a home approved by the department and has a protective payee.
- (4) The home of a minor's parent, legal guardian, or adult relative may be approved unless:
- (a) The minor has no living parent, legal guardian, or adult relative that can be located or those persons do not want the minor to live with them;
 - (b) The minor or the minor's child is being or has been seriously harmed either physically, emotionally, or sexually in the home of the parent, legal guardian, or adult relative;
 - (c) Substantial evidence exists of an act or failure to act by the parent, legal guardian, or adult relative that presents imminent or serious harm to the minor or the minor's child if they lived there; or
 - (d) The department determines that it is in the best interest of the minor or the minor's child to waive the requirement of living in the home of a parent, legal guardian, or adult relative.
- (5) If the home of a minor's parent, legal guardian, or adult relative is not available or suitable, one of the following alternatives may be approved:
- (a) A facility or home licensed under chapter 74.15 RCW that provides a supportive and supervised living arrangement requiring residents to learn parenting skills;
 - (b) A maternity home;
 - (c) Other adult-supervised living arrangement; or
 - (d) The minor's current or proposed living arrangement, if the department determines it is appropriate.
- (6) A home that includes the other natural parent of the minor's child or unborn child is never approved if:
- (a) The minor is under age (~~(sixteen)~~) 16; and
 - (b) The other parent is (~~(eighteen)~~) 18 or older and meets the age criteria for rape of a child as set forth in RCW 9A.44.073, 9A.44.076, and 9A.44.079.
- (7) The income of a minor parent found ineligible under this section is treated according to WAC 388-450-0100 and (~~(388-450-0115)~~) 388-450-0105 when determining the eligibility and benefit level of the minor parent's child.

AMENDATORY SECTION (Amending WSR 13-24-043, filed 11/26/13, effective 1/1/14)

WAC 388-486-0010 Unmarried pregnant or parenting minors—Required school attendance. (1) This rule affects only the minor's eligibility for cash assistance. It does not affect the eligibility of the minor parent's child for a cash grant.

(2) To be eligible for TANF or SFA, an unmarried pregnant or parenting minor who has not completed high school or a high school equivalency certificate program must participate in educational activities leading to the attainment of a high school diploma or high school equivalency certificate.

(3) The minor must meet the standard for satisfactory attendance set by the school or program in which the minor is enrolled.

(4) An unmarried minor is exempt from this rule if the minor has:

(a) Been emancipated by a court; or

(b) A child who is less than (~~twelve~~) 12 weeks old.

(5) The income of a minor parent found ineligible under this section is treated according to WAC 388-450-0100 and (~~388-450-0115~~) 388-450-0105 when determining the eligibility and benefit level of the minor parent's child.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-450-0115	Does the department allocate the income of a financially responsible person who is excluded from the assistance unit?
WAC 388-450-0116	How does the department count my income if I cannot get assistance because I am an alien?

WSR 24-07-081
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed March 18, 2024, 2:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-136.

Title of Rule and Other Identifying Information: Implementing public safety employees' retirement plan membership for public safety telecommunicators.

Hearing Location(s): On April 30, 2024, at 3:00 p.m. The hearing will be conducted through Microsoft Teams. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details. Microsoft Teams link is available on <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 246 993 892 126, Passcode FECm3F; or phone 833-322-1218, Code 681 187 672#.

Date of Intended Adoption: May 6, 2024.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by April 25, 2024.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by April 25, 2024.

Statutory Authority for Adoption: RCW 41.50.050 and chapter 199, Laws of 2023.

Statute Being Implemented: Chapter 199, Laws of 2023.

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

Name of Proponent: DRS, governmental.

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

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and DRS is not voluntarily making it applicable to the agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Rules from DRS only affect members and beneficiaries of the state retirement systems and participating public employers. As a result, the rules do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

March 18, 2024
Bianca Stoner
Rules Coordinator

OTS-5216.2

AMENDATORY SECTION (Amending WSR 22-13-091, filed 6/13/22, effective 7/14/22)

WAC 415-106-105 May I join PSERS if my duties qualify for PSERS membership, but my employer is not specifically listed in ((WAC 415-106-010)) RCW 41.37.010? You do not qualify for membership unless your ((department or agency)) employer is specifically listed in ((WAC 415-106-010)) RCW 41.37.010, even if your employer employs one or more elected or appointed officials who are PSERS members.

AMENDATORY SECTION (Amending WSR 22-13-091, filed 6/13/22, effective 7/14/22)

WAC 415-106-110 If I am a member of PERS, may I change my membership to PSERS? You may have the right to change your retirement system membership from PERS to PSERS according to the requirements in this section.

(1) You may change retirement system membership from PERS to PSERS if:

(a) You were a member of either PERS Plan 2 or Plan 3 before July 1, 2006; and

(b) On July 1, 2006, you meet the requirements for membership in RCW 41.37.010; and

(c) You submit a properly completed election form to your employer between July 1, 2006, and September 30, 2006.

(2) You may also change retirement system membership from PERS to PSERS if:

(a) You were a member of either PERS Plan 2 or Plan 3 before January 1, 2019; and

(b) On January 1, 2019, you met the requirements for membership in RCW 41.37.010; and

(c) You submit a properly completed election form to your employer between January 1, 2019, and March 1, 2019.

(3) You may also change retirement system membership from PERS to PSERS if:

(a) You were a member of either PERS Plan 2 or Plan 3 before June 1, 2024; and

(b) On June 1, 2024, you met the requirements for membership in RCW 41.37.010 (19) (f); and

(c) You submit a properly completed election form to your employer between June 1, 2024, and September 1, 2024.

(4) Your change in membership is prospective only.

~~((4))~~ (5) You will become a dual member of PSERS and PERS. All service credit and compensation previously reported in PERS will remain in PERS. Your retirement benefits will be governed by the dual member "portability" provisions in chapters 41.54 RCW and 415-113 WAC.

~~((5))~~ (6) If you meet the conditions in subsection (1) ~~((or)),~~ (2), or (3) of this section and do not elect PSERS membership during the election window, you cannot become a member of PSERS while you continue employment with the same employer; however, if you terminate your employment with that employer after the election window begins, and subsequently become employed in a PSERS eligible position, you will be mandated into PSERS membership.

WSR 24-07-082

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed March 18, 2024, 2:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-20-110.

Title of Rule and Other Identifying Information: Amending WAC 192-500-195 Placement and 192-800-155 When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commission is publicly disclosable?

Hearing Location(s): On April 24, 2024, at 9:00 a.m., on Microsoft Teams. Join online, link available at paidleave.wa.gov/rulemaking; or join by phone 564-999-2000, PIN 239 339 620#.

Date of Intended Adoption: On or after May 1, 2024.

Submit Written Comments to: Janette Benham, Employment Security Department (ESD), P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by April 24, 2024.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, email teckstein@esd.wa.gov, by April 17, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The paid family and medical leave (PFML) program is proposing amendments to the definition of "placement" to clarify under which circumstances family leave can be taken to bond with a child placed in the home. Clarification was also added that an employee is only entitled to a maximum of 12 weeks of family leave for the placement of a child.

In addition, the PFML program is proposing amendments to outline that a decision appealed to the commissioner's review office may be made available to the public and that all personal identifying information will be redacted. If a commissioner's decision is appealed to superior court, the department is required to file the record unsealed and court rules will apply if an interested party moves to seal the record.

Reasons Supporting Proposal: The proposed amendments to WAC 192-500-195 allow qualifying leave to be taken *either* within 12 months of the date a child is physically placed in the employee's home or within 12 months of the date a child's adoption is legally finalized. The change will provide clarity regarding family leave that can be taken to bond with a child placed in the home.

The proposed amendments to WAC 192-800-155 allow for publication of decisions appealed to the commissioner's review office. Publishing decisions that set precedent for the PFML program will allow for added transparency and consistency in interpreting the law, from program adjudication through the appeal process.

Statutory Authority for Adoption: RCW 50A.05.060.

Statute Being Implemented: RCW 50A.05.010, 50A.15.020; chapter 50A.50 RCW.

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

Name of Proponent: ESD, leave and care division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Olympia, Washington, 360-485-2816.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. WAC 192-500-195 Placement. This rule is exempt under RCW 34.05.328 (5)(c)(ii) because it is an interpretive rule that sets forth the agency's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

WAC 192-800-155 When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable? This rule is exempt under RCW 34.05.328 (5)(c)(i)(A) because it is a procedural rule related to agency hearings. Procedural rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

	Proposed WAC Sections and Title	This proposed rule section is exempt. Provide RCW to support this exemption.
1.	WAC 192-500-195 Placement.	RCW 19.85.025(4) The rule does not affect businesses and pertains only to individuals applying for paid family leave benefits.
2.	WAC 192-800-155 When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable?	RCW 34.05.310 (4)(g) The rule outlines a procedure, practice, or requirement relating to agency hearings.

March 18, 2024
 April Amundson
 Policy and Rules Manager
 Leave and Care Programs

OTS-5267.1

AMENDATORY SECTION (Amending WSR 23-11-083, filed 5/17/23, effective 7/1/23)

WAC 192-500-195 Placement. (1) For the purposes of qualifying for paid family leave to bond with a child under RCW 50A.05.010, "placement" means the adoptive, guardianship, foster care, ~~((or))~~ non-parental custody placement, or legal adoption of a child under the age of 18 with the employee. A placement is considered:

(a) An adoptive placement when the employee is legally and permanently assuming the responsibility of raising the child as their own, and the placement of the child into the employee's home is made through a private arrangement, a child placement agency, or a government agency ~~((or))~~;

(b) A guardianship placement when the employee is granted guardianship of a child by court order, and the child is placed in the home under:

(i) Title 11 RCW;
 (ii) Title 13 RCW; or
 (iii) Any other applicable guardianship that reflects the purpose, permanency, and legal authority of guardianships under Titles 11 and 13 RCW, including guardianships granted out of this state or country~~((-))~~;

(c) A foster care placement when the employee is providing care for a child placed in the employee's home. Such placements must involve voluntary or involuntary removal of the child from the child's parents or guardian, and an agreement between a government agency and the foster family that the foster family will take care of the child. Although foster care placement may be with a relative of the child or another individual who may not have a foster care license, government agency action must be involved in the removal of the child~~((-))~~;

(d) A nonparental custody placement when the child is placed into the home of the employee by court order granting the employee nonparental custody; or

(e) A legally finalized adoption as described in chapter 26.33 RCW.

(2) For the purposes of this section, a "government agency" may include an agency of any branch of government at the county, state, or federal level, or a foreign jurisdiction.

(3) The entitlement to paid family leave benefits for placement of a child expires at the end of the 12-month period ~~((beginning on))~~;

(a) From the date the child was first placed in the home; or

(b) From the date the child's adoption was legally finalized as described in chapter 26.33 RCW if no leave was taken within 12 months of when the child was first placed in the home.

(4) When applying for paid family leave to bond with a child, the employee must provide documentation referenced in WAC 192-610-025 to verify placement of the child.

(5) Qualifying paid family leave to bond with a child placed for adoption, guardianship, foster care, or nonparental custody does not include:

(a) Any arrangement where the child is already in the care and custody of a parent and remains in that same parent's care and custody;

(b) Any arrangement where a child is returned to the care and custody of a parent or is placed with a parent whose entitlement to family leave to bond with that child has already expired; and

(c) Any adoptive, guardianship, foster care, or nonparental custody placement of a child with an employee that occurs more than 12 months after that child is first placed in the employee's home, except for leave taken under subsection (1)(e) of this section.

(6) An employee is only entitled to a maximum of 12 weeks of family leave for the placement of a child.

OTS-5268.1

AMENDATORY SECTION (Amending WSR 21-11-009, filed 5/7/21, effective 6/7/21)

WAC 192-800-155 When are proceedings open to the public, and what information from a proceeding before the appeal tribunal or commissioner is publicly disclosable? (1) To maintain confidentiality of records under chapter 50A.25 RCW:

~~((1))~~ (a) All proceedings will be closed to the public unless otherwise agreed upon by all parties appearing for hearing;

~~((2))~~ (b) All proceeding records will be sealed for hearings closed to the public and are not publicly disclosable; and

~~((3))~~ (c) All personal identifying information concerning an individual or employer will be redacted from the record if the hearing is open to the public.

(2) If a decision is appealed to the commissioner's review office, that decision may be published online or in another manner approved by the department. All personal identifying information concerning an individual or employer will be redacted if the decision is made public.

(3) If an interested party appeals a commissioner's decision to superior court, the department will file the record with the court unsealed as required by RCW 34.05.566. Any interested party may move to seal those records under applicable court rules.

WSR 24-07-086
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed March 19, 2024, 9:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-19-075.

Title of Rule and Other Identifying Information: Chapter 296-49A WAC, Director's factory assembled structures advisory board; chapter 296-150P WAC, Recreational park trailers; and chapter 296-150R WAC, Recreational vehicles.

Hearing Location(s): On April 29, 2024, at 9:00 a.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501; or join electronically <https://lni-wa-gov.zoom.us/j/87630171877?pwd=NWg1K0pqa29sZ3BaZmlYd0pOOVd4QT09>, Passcode t3LN6i&R; or join by phone (audio only) 253-215-8782, Meeting ID 876 3017 1877, Passcode 76983050. The in-person and virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: June 18, 2024.

Submit Written Comments to: Meagan Edwards, L&I, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, email Meagan.Edwards@lni.wa.gov, fax 360-704-1980, by 5 p.m. on April 29, 2024.

Assistance for Persons with Disabilities: Contact Meagan Edwards, phone 360-522-0125, fax 360-704-1980, email Meagan.Edwards@lni.wa.gov, by April 15, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making proposes amendments to the factory assembled structures (FAS) rules. The proposed amendments affect L&I's FAS advisory board, and distributing inspection insignia to manufacturers of recreational vehicles. The amendments are necessary after passage of two bills in 2023 that took effect July 23, 2023: HB 1514, chapter 78, Laws of 2023; and SB 5089, chapter 36, Laws of 2023.

HB 1514 allows recreational vehicles (RVs) and recreational park trailer manufacturers with an agency approved quality control program to request and purchase insignia while their plans are under review by the FAS program.

SB 5089 was an L&I request bill that amends membership for the FAS advisory board. Amendments include:

- Increasing the number of board members from nine to at least 11;
- Adding a representative for allied trades such as electricians, plumbers, and contractors;
- Adding diversity considerations for board appointments; and
- Requiring members to apply for reappointment if serving consecutive terms.

The new statutory amendments also make technical and clean-up changes under chapters 43.22 and 43.22A RCW.

Proposed amendments to this chapter are as follows:

Amended Sections:

WAC 296-49A-010 What definitions apply to this chapter?

- Amends language for general housekeeping, such as updating the title and terminology.

WAC 296-49A-020 What is the purpose of these rules?

- Amends language that clarifies the primary purpose of the rules.

WAC 296-49A-030 What is the purpose of the board?

- Amends the purpose of the board to include matters pertaining to conversion vendor units and medical units.
- Clarifies that recreational park trailers are also known as park model recreational vehicles.

WAC 296-49A-040 Who are the members and officers of the board?

- Amends the rule for updates and consistency with the statutory amendments under SB 5089. This includes:
 - Amending the number of FAS advisory board members from nine to 11.
 - Requiring board members to apply for reappointment if serving consecutive terms.
 - Adding members of the allied trades and conversion vendor units to the list of representatives on the board.
 - Allowing for the appointment of additional members by the director.
 - Adding diversity considerations for appointing board members.
 - Allowing members to be removed from the board for cause.

WAC 296-49A-050 When does the board meet?

- Amends language to allow regular meetings to be rescheduled by the FAS program manager.
- Amends language to allow the FAS program manager or chair of the board to call special meetings with approval of the FAS program manager on behalf of the director.
- Amends the title of the rule from a question to statement format.

WAC 296-49A-060 How are board meetings conducted?

- Clarifies the board must adopt bylaws to govern its internal management and post them on the website.
- Amends the title from a question to statement format.

WAC 296-49A-070 What are the duties of the board?

- Amends the requirements for the board to review the rules and regulations for FAS.
- Adds clarifying language for the information that board members should share with their stakeholder groups and the department.
- Amends language for housekeeping, such as updating the title from a question to statement format and clarification changes.

WAC 296-49A-080 Who can speak at board meetings?

- Amends language for general housekeeping, such as updating the title from a question to statement format, for grammatical corrections, and clarification changes.

WAC 296-49A-090 Can a person appearing before the board solicit business?

- Amends language for housekeeping, such as updating the title from a question to statement format and clarification changes.

WAC 296-49A-100 What standards of ethical conduct are expected of the board members and persons appearing before the board?

- Amends language to align with the applicable state ethics laws.
- Adds language that allows the removal of board members for not following state ethics laws and standards in the Boards and Commissions Membership Handbook.

WAC 296-150P-0020 What definitions apply to this chapter?

- Adds a new definition to define the meaning of "submitted design plan" to align with the statutory amendments in HB 1514.

WAC 296-150P-0220 How do I obtain insignia based on state-plan approval?

- Amends language to clarify the application process for obtaining insignia to align with the statutory amendments in HB 1514.
- Removes the requirement that manufacturers include a list of their approved plans with each insignia application.
- Creates a new subsection that adds restrictions for park model recreational vehicle labels.

WAC 296-150P-0300 What is required to obtain insignia based on state-plan approval?

- Amends language for general housekeeping, such as updating the title from a question to statement format and clarification changes.

WAC 296-150R-0020 What definitions apply to this chapter?

- Adds a new definition to define the meaning of "submitted design plan" to align with the statutory amendments in HB 1514.

WAC 296-150R-0220 How do I obtain insignia based on state-plan approval?

- Amends language to clarify the application process for obtaining insignia to align with the statutory amendments in HB 1514.
- Removes the requirement that manufacturers include a list of their approved plans with each insignia application.
- Creates a new subsection that adds restrictions for recreational vehicle labels.

WAC 296-150R-0300 What is required to obtain insignia based on state-plan approval?

- Amends language to clarify the application process for obtaining insignia to align with the statutory amendments in HB 1514.
- Removes the requirement that manufacturers include a list of their approved plans with each insignia application.
- Amends language for housekeeping, such as updating the title from a question to statement format and grammatical and clarification changes.

Repealed Sections:

WAC 296-49A-110 What statute governs the adoption of FAS rules and regulations? Repeals the provisions pertaining to the adoption of FAS rules and procedures according to chapter 24.05 [34.05] RCW, the Administrative Procedures Act.

Reasons Supporting Proposal: Rules are required for consistency with HB 1514 and SB 5089 that took effect July 23, 2023. Rule making is also necessary to make various updates and clean-up changes under chapter 296-49A WAC, as the rules have not been updated for many years.

Statutory Authority for Adoption: HB 1514 (chapter 78, Laws of 2023), SB 5089 (chapter 36, Laws of 2023), including chapters 43.22 and 43.22A RCW.

Statute Being Implemented: HB 1514 (chapter 78, Laws of 2023), SB 5089 (chapter 36, Laws of 2023), including chapters 43.22 and 43.22A RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Rarig, Acting Program Manager, Tumwater, Washington, 425-577-8064; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Meagan Edwards, L&I, Field Services and Public Safety, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-522-0125, fax 360-704-1980, email Meagan.Edwards@Lni.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: See explanation in section 2 below.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions:

	Proposed WAC Sections	This proposed rule section is <i>not exempt</i> - Analysis is required.	This proposed rule section <i>is exempt</i>. Provide RCW to support this exemption.
1.	WAC 296-49A-010 What definitions apply to this chapter?		This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of a rule without changing the substance or effect of requirements.
2.	WAC 296-49A-020 The purpose of these rules.		This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of a rule without changing the substance or effect of requirements.
3.	WAC 296-49A-030 The purpose of the board.		This section is exempt under RCW 34.05.310 (4)(c) and 34.05.310 (4)(d) because it adopts changes that clarify language of a rule without changing the substance or effect of requirements and rules adopting or incorporating by reference without material change Washington state statutes or rules.

	Proposed WAC Sections	This proposed rule section is <i>not</i> exempt - Analysis is required.	This proposed rule section is <i>exempt</i>. Provide RCW to support this exemption.
4.	WAC 296-49A-040 The members and officers of the board.	X	
5.	WAC 296-49A-050 Board meeting dates.	X	
6.	WAC 296-49A-060 Conduct of board meetings.		This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of a rule without changing the substance or effect of requirements.
7.	WAC 296-49A-070 What are the duties of the board?	X	
8.	WAC 296-49A-080 Who can speak at board meetings?		This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of a rule without changing the substance or effect of requirements.
9.	WAC 296-49A-090 Can a person appearing before the board solicit business?		This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of a rule without changing the substance or effect of requirements.
10.	WAC 296-49A-100 What standards of ethical conduct are expected of the board members and persons appearing before the board?	X	
11.	WAC 296-49A-110 What statute governs the adoption of FAS rules and regulations?		As this is being repealed.
12.	WAC 296-150P-0020 What definitions apply to this chapter?	X	
13.	WAC 296-150P-0220 How do I obtain insignia based on state-plan approval?	X	
14.	WAC 296-150P-0300 What is required to obtain insignia based on state-plan approval?		This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of a rule without changing the substance or effect of requirements.
15.	WAC 296-150R-0020 What definitions apply to this chapter?	X	
16.	WAC 296-150R-0220 How do I obtain insignia based on state-plan approval?	X	
17.	WAC 296-150R-0300 What is required to obtain insignia based on state-plan approval?		This section is exempt under RCW 34.05.310 (4)(d) because it adopts changes that clarify language of a rule without changing the substance or effect of requirements.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. As the portions of the rule amendments not meeting exemptions will either result in a cost savings to customers or no increased costs over current practice or the baseline, the proposed amendments are not expected to impose more-than-minor costs, so a small business economic impact statement is not required.

March 19, 2024
Joel Sacks
Director

OTS-5148.4

Chapter 296-49A WAC
((DIRECTOR'S)) THE FACTORY ASSEMBLED STRUCTURES ADVISORY BOARD

AMENDATORY SECTION (Amending WSR 97-16-043, filed 7/31/97, effective 12/1/97)

WAC 296-49A-010 ((What)) Definitions that apply to this chapter((?)). "Board" is the ((director's)) factory assembled structures advisory board.

"Department" is the Washington state department of labor and industries.

"Director" is the director of the department of labor and industries.

"((Section)) **Program**" is the factory assembled structures (FAS) ((section)) program of the department.

AMENDATORY SECTION (Amending WSR 97-16-043, filed 7/31/97, effective 12/1/97)

WAC 296-49A-020 ((What-is)) The purpose of these rules((?)). The primary purpose of these rules is to ((establish)) provide a ((uniform)) formal means of communication between the ((department)) factory assembled structures program and ((persons, firms or corporations engaged in the manufacture of factory assembled structures)) stakeholders. Generally, the topics of this communication will involve either ((proposed)) WAC rule revisions or the operation of the ((section)) program.

AMENDATORY SECTION (Amending WSR 97-16-043, filed 7/31/97, effective 12/1/97)

WAC 296-49A-030 ((What-is)) The purpose of the board((?)). The purpose of the board, as authorized by RCW 43.22.420, is to advise the director on all matters pertaining to the enforcement of chapter 43.22 RCW including but not limited to standards of body and frame design, construction and plumbing, heating and electrical installations, minimum inspection procedures and the adoption of rules and regulations pertaining to the manufacture of factory assembled structures, manufactured (mobile) homes, commercial coaches, conversion vendor units,

medical units, recreational vehicles, and recreational park trailers (park model recreational vehicles).

AMENDATORY SECTION (Amending WSR 97-16-043, filed 7/31/97, effective 12/1/97)

WAC 296-49A-040 ((Who are)) The members and officers of the board(?). (1) The board has ~~((nine))~~ at least 11 members. Each is appointed by the director to a four-year term and board members must apply for reappointment if terms would be consecutive. The members must represent consumer interests, regulated industries, allied trades, and allied professionals. Consequently, the composition of the board will be:

- Two members representing consumers;
- Two members representing manufactured housing;
- Two members representing factory-built structures;
- One member representing recreational vehicles and recreational park trailers (park model recreational vehicles);
- One member representing building officials; ~~((and))~~
- One member who will either be an architect or an engineer ~~((-));~~
- One member representing conversion vendor units; and
- One member representing the allied trades.

Additional board members may be appointed at the discretion of the director.

(2) When appointing board members, consideration will be given to the gender, racial, ethnic and geographic diversity of the state, including the interests of persons with disabilities.

(3) Board members serve at the discretion of the director and may be removed from the board for cause.

(4) The board will elect a chairperson and vice chairperson. The department's ~~((chief prefab building specialist))~~ FAS program manager shall serve as secretary of the board.

~~((According to))~~ (5) In accordance with RCW 43.03.050 and 43.03.060, each board member shall be paid travel expenses. Those expenses will be paid out of department appropriations upon the presentation of a voucher approved by the director or the director's designee.

AMENDATORY SECTION (Amending WSR 97-16-043, filed 7/31/97, effective 12/1/97)

WAC 296-49A-050 ((When does the board meet?)) Board meeting dates. The board holds regular quarterly meetings on the third Thursday of February, May, August, and November. Regular meetings may be rescheduled by the FAS program manager with advance notice. If needed, the ~~((director))~~ FAS program manager may call special meetings or the board chair may call special meetings with the approval of the FAS program manager on behalf of the director. Regular and special meetings are open to the public.

AMENDATORY SECTION (Amending WSR 97-16-043, filed 7/31/97, effective 12/1/97)

WAC 296-49A-060 (~~((How are))~~) Conduct of board meetings (~~((conducted?))~~). The board must adopt written (~~((rules of procedure))~~) bylaws governing its internal management. These (~~((rules))~~) bylaws must include *Roberts' Rules of Order, Revised*. (~~((Upon written request, copies of these rules of procedure must be provided to all interested persons.))~~) The bylaws must be posted on the department's website.

AMENDATORY SECTION (Amending WSR 97-16-043, filed 7/31/97, effective 12/1/97)

WAC 296-49A-070 (~~((What are the))~~) Duties of the board(~~((?))~~). (1) (~~((Every three years))~~) The board must review (~~((existing FAS rules and recommend revisions if needed))~~) any new rules and regulations proposed by the program and make recommendations regarding their adoption. Also, the board (~~((must review any new rules and regulations proposed by the director and make recommendations regarding their adoption))~~) may review existing FAS rules and recommend revisions.

(2) The board may (~~((periodically develop))~~) advise the program on administrative procedures, organizational plans, and rules for improving the operation of the (~~((section and submit them to the director for consideration))~~) program.

(3) (~~((Upon the request of the director, the board will assist in the administrative interpretation of national codes and Washington state rules and regulations regarding all matters pertaining to the enforcement of chapter 43.22 RCW and the manufacture of factory assembled structures, manufactured (mobile) homes, commercial coaches, recreational vehicles, and recreational park trailers. This interpretative assistance will include but will not be limited to standards of body and frame design, construction and plumbing, heating and electrical installations, and minimum inspection procedures.~~

~~However,))~~ Board members should provide their respective stakeholder groups with information about program proposals, issues, and changes. Members should also provide the program with feedback from stakeholders and provide insight as to their opinions, attitudes, and needs.

(4) The board will neither function as a board of appeals nor will it render decisions regarding the application or interpretation of any adopted rule or regulation (~~((to any person, firm or corporation engaged in the business of manufacturing factory assembled structures))~~).

(~~((4))~~) (5) At any board meeting, the board must consider any written proposals made by any person (~~((, firm or corporation))~~) regarding new rules and regulations or changes in administrative procedures related to the (~~((section))~~) program.

(~~((However,))~~) These written proposals must be submitted to the board's secretary at least (~~((fifteen))~~) 15 days prior to the meeting so that they can be included on the meeting agenda and in the meeting packet distributed to board members. If the parties submitting these proposals wish to address them at that meeting, their proposals must be accompanied by a written request to address the board.

AMENDATORY SECTION (Amending WSR 97-16-043, filed 7/31/97, effective 12/1/97)

WAC 296-49A-080 ((Who can speak)) Speaking at board meetings ((?)). Any person (~~(, firm or corporation)~~) can speak at board meetings. (~~(However,)~~) Those persons (~~(, firms and corporations)~~) wishing to formally address the board regarding specific proposals relating to (~~(any)~~) FAS rule adoptions, amendments or repeals or changes in the (~~(section's)~~) program's administrative procedures, must (~~(be in good ethical standing with the board. (See WAC 296-49A-100.))~~) do so in accordance with WAC 296-49A-070 and with the board's bylaws.

AMENDATORY SECTION (Amending WSR 97-16-043, filed 7/31/97, effective 12/1/97)

WAC 296-49A-090 ((Can a person appearing before the board solicit)) Soliciting business ((?)). The board considers it unethical for anyone appearing before the board to (~~(use any kind of solicitor to)~~) solicit business (~~(or to solicit business)~~) directly or indirectly, through circulars, advertisements or by personal communications or interviews unwarranted by personal relations. It is permissible to publish or circulate business cards.

AMENDATORY SECTION (Amending WSR 97-16-043, filed 7/31/97, effective 12/1/97)

WAC 296-49A-100 ((What)) Standards of ethical conduct ((are expected)) required of board members ((and persons appearing before the board?)). Anyone serving on the board (~~(or appearing before it)~~) must adhere to chapter 42.52 RCW (Ethics in Public Service Act) and the standards described in (~~(*"Ethics and the Appearance of Fairness," State of Washington Boards and Commissions Membership Handbook*)~~) "Boards and Commissions Membership Handbook" (issued by the office of the governor). Failure to conform to these standards may result in (~~(forfeiting the opportunity to either appear before the board or serve)~~) removal as a board member.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-49A-110 What statute governs the adoption of FAS rules and regulations?

OTS-5166.2

AMENDATORY SECTION (Amending WSR 23-09-024, filed 4/11/23, effective 4/11/23)

WAC 296-150P-0020 What definitions apply to this chapter? "Alteration" is the replacement, addition, modification, or removal of any equipment or material that affects the fire and life safety provisions, structural system, plumbing systems, fuel systems and equipment or electrical systems of a recreational park trailer.

The following changes are not considered alterations for purposes of this chapter:

- Repairs with approved parts;
- Modification of a fuel-burning appliance according to the terms of its listing; and
- Adjustment and maintenance of equipment.

"Alteration insignia" is an insignia which indicates a recreational park trailer alteration was approved by the department.

"ANSI" is the American National Standards Institute, Inc., and the institute's rules applicable to recreational park trailers. For the purposes of this chapter, references to ANSI mean ANSI A119.5 Recreational Park Trailers, current edition.

"Approved" is approved by the department of labor and industries.

"Audit" by the department is the department inspection of a manufacturer's quality control procedures, comprehensive plans, and recreational park trailers.

"Comprehensive design plan" consists of the design plans and copies of drawings such as:

- Floor plans relating to fire and life safety, structural, electrical, plumbing, liquefied petroleum (LP) and/or natural gas systems and appliances and air conditioning systems, if applicable to the plan of each recreational park trailer.
- Plumbing line drawings which describe the size, length and location of gas piping lines, liquid and body waste lines, liquid and body waste tanks, and potable water tanks.
- Electrical drawings. (See WAC 296-150P-0330.)

"Consumer" is a person or organization who buys or leases recreational park trailers.

"Dealer" is a person or organization whose business is offering recreational park trailers for sale or lease.

"Department" is the department of labor and industries. The department may be referred to as "we" or "us" in this chapter. Note: You may contact us at: Department of Labor and Industries, Specialty Compliance, P.O. Box 44430, Olympia, WA 98504-4430.

"Equipment" is all material, appliances, fixtures, and accessories used in the manufacture or alteration of recreational park trailers.

"Manual" is a reference containing instructions, procedures, responsibilities and other information used to implement and maintain the quality control program of a recreational park trailer manufacturer.

"National Electrical Code" see Appendix 'C' of ANSI A119.5 for reference to the appropriate edition to use for compliance.

"Recreational park trailer" also known as a "park model recreational vehicle" is a trailer-type unit that is primarily designed to provide temporary living quarters for recreational, camping or seasonal use, that meets the following criteria:

- Built on a single chassis, mounted on wheels;

- Having a gross trailer area not exceeding 400 square feet (37.15 square meters) in the set-up mode; and
- Certified by the manufacturer as complying with ANSI A119.5.

"**Quality control**" is the plan and method for ensuring that the manufacture, fabrication, assembly, installation, storing, handling, and use of materials complies with this chapter and ANSI.

"**State-plan insignia**" is an insignia which is obtained under the state design-plan approval process.

"Submitted design plan" is a plan that:

- Has been received by the department for review; and
- The plan approval fee is paid; and
- Is awaiting an initial design plan review.

"**System**" is a part of a recreational park trailer that is designed to serve a particular function such as plumbing, electrical, heating, mechanical or structural system.

AMENDATORY SECTION (Amending WSR 97-16-043, filed 7/31/97, effective 12/1/97)

WAC 296-150P-0220 How do I obtain insignia based on state-plan approval? (1) If you are approved to purchase insignia based on state-plan approval, you may purchase the insignia by submitting the insignia application with the required fees. (See WAC 296-150P-3000.)

(2) The application must be on the department's approved "application for insignia" form F622-021-000 and include(~~(~~
~~(a)) a signed statement from you certifying that you are manufacturing your units according to your approved and/or "submitted design plans" and your quality control program(~~~~(; and~~

~~(b) A list of the approved design plans against which you will apply the insignia))~~.

(3) Insignia may not be purchased for or applied to units for which:

(a) The plans are being approved by a licensed professional in accordance with WAC 296-150P-0315 and have not been assigned a plan approval number by the department; or

(b) The submitted design plans have been at the department less than 10 working days; or

(c) The submitted design plans have been reviewed by the department, and are not approved.

AMENDATORY SECTION (Amending WSR 97-16-043, filed 7/31/97, effective 12/1/97)

WAC 296-150P-0300 ~~((What is required to obtain insignia based on))~~ Obtaining approval as a state-plan ((approval?)) manufacturer.

~~((If you want to))~~ Before you can obtain insignia based on state-plan approval, you must:

(1) Have your ~~((design plan and))~~ quality control manual approved by us; and

(2) Have your design plan(s) approved in accordance with WAC 296-150P-0315 (see WAC 296-150P-0220); and

(3) Pass a quality control program audit which includes a random inspection of your recreational park trailers.

OTS-5167.2

AMENDATORY SECTION (Amending WSR 12-15-061, filed 7/17/12, effective 9/1/12)

WAC 296-150R-0020 What definitions apply to this chapter? "**Alteration**" is the replacement, addition, modification, or removal of any equipment or material that affects the fire and life safety provisions, plumbing systems, fuel systems and equipment or electrical systems of a recreational vehicle.

The following changes are not considered alterations for purposes of this chapter:

- Repairs with approved parts;
- Modification of a fuel burning appliance according to the terms of its listing; and
- Adjustment and maintenance of equipment.

"**Alteration insignia**" is an insignia which indicates a vehicle alteration was approved by the department.

"**ANSI**" is the American National Standards Institute, Inc., and the institute's rules applicable to *Low Voltage Systems in Conversion and Recreational Vehicles and Uniform Plan Approval for Recreational Vehicles*. For the purposes of this chapter, references to ANSI mean ANSI/RVIA 12V *Low Voltage Systems*, current edition, and ANSI/RVIA UPA-1 *Standard on Uniform Plan Approval for Recreational Vehicles*, current edition.

"**Approved**" is approved by the department of labor and industries.

"**Audit**" by the department can be either a comprehensive audit or a performance audit. A comprehensive audit is the department inspection of a manufacturer's quality control procedures, comprehensive plans, and vehicles. A performance audit is the department's review of the manufacturer's audit performed by the industry association or other independent auditor.

"**Comprehensive design plan**" consists of the design plans and copies of drawings such as:

- Floor plans relating to fire and life safety, electrical, plumbing, liquefied petroleum (LP) and/or natural gas systems and appliances and air conditioning systems, if applicable to the plan of each vehicle.
- Plumbing line drawings which describe the size, length and location of gas piping lines, liquid and body waste lines, liquid and body waste tanks, and potable water tanks.
- Electrical drawings. (See WAC 296-150R-0330 and 296-150R-0820.)

"**Consumer**" is a person or organization who buys or leases recreational vehicles.

"**Dealer**" is a person or organization whose business is offering recreational vehicles for sale or lease.

"**Department**" is the department of labor and industries. The department may be referred to as "we" or "us" in this chapter. Note: You may contact us at: Department of Labor and Industries, Specialty Compliance, P.O. Box 44430, Olympia, WA 98504-4430.

"**Equipment**" is all material, appliances, fixtures, and accessories used in the manufacture or alteration of recreational vehicles or park trailers.

"**Manual**" is a reference containing instructions, procedures, responsibilities and other information used to implement and maintain the quality control program of a recreational vehicle manufacturer.

"National Electrical Code" see Chapter 2 of NFPA 1192 *Standard on Recreational Vehicles*, current edition, for reference to the appropriate edition to use for compliance.

"NFPA" is National Fire Protection Association, and the institute's rules applicable to recreation vehicles. For the purpose of this chapter, references to NFPA means NFPA 1192 *Standard on Recreational Vehicles*, current edition.

"Quality control" is the plan and method for ensuring that the manufacture, fabrication, assembly, installation, storing, handling, and use of materials complies with this chapter, ANSI, and NFPA.

"Recreational vehicle" is a vehicular type unit primarily designed as temporary living quarters for recreational camping, travel, or seasonal use that either has its own motive power or is mounted on, or towed by, another vehicle or as defined by NFPA 1192 *Standard on Recreational Vehicles*, current edition. Recreational vehicles include: Camping trailers, fifth-wheel trailers, motor homes, travel trailers, and truck campers.

"Self-certification insignia" is an insignia which is obtained under the self-certification approval process.

"State-plan insignia" is an insignia which is obtained under the state design-plan approval process.

"Submitted design plan" is a plan that:

- Has been received by the department for review; and
- The plan approval fee is paid; and
- Is awaiting an initial design plan review.

"System" is a part of a recreational vehicle that is designed to serve a particular function such as plumbing, electrical, heating, or mechanical system.

"Vehicle" for the purposes of this chapter, is a recreational vehicle.

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150R-0220 How do I obtain insignia based on state-plan approval? (1) If you are approved to purchase insignia based on state-plan approval, you may purchase the insignia by submitting the insignia application with the required fees. (See WAC 296-150R-3000.)

(2) The application must be on the department's approved "application for insignia" form F622-021-000 and include((~~+~~

~~(a-))~~ a signed statement from you certifying that you are manufacturing your units according to your approved and/or "submitted design plans" and your quality control program((~~;~~~~and~~

~~(b) A list of the approved design plans against which you will apply the insignia))~~.

(3) Insignia may not be purchased for or applied to units for which:

(a) The plans are being approved by a licensed professional in accordance with WAC 296-150R-0315 and have not been assigned a plan approval number by the department; or

(b) The submitted design plans have been at the department less than 10 working days; or

(c) The submitted design plans have been reviewed by the department, and are not approved.

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150R-0300 (~~(What is required to obtain insignia based on)~~) **Obtaining approval as a state-plan ((approval?)) manufacturer.**
(~~(If you want to)~~) Before you can obtain insignia based on state-plan approval, you must:

(1) Have your (~~(design plan and)~~) quality control manual approved by us; and

(2) Have your design plan(s) approved in accordance with WAC 296-150R-0315 (see WAC 296-150R-0220); and

(3) Pass a quality control program comprehensive audit which includes a random inspection of your vehicles.

WSR 24-07-087
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed March 19, 2024, 9:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-24-080.

Title of Rule and Other Identifying Information: Medical aid rules: Conversion factors and maximum daily fees (WAC 296-20-135, 296-23-220, and 296-23-230).

Hearing Location(s): On April 23, 2024, at 10:00 a.m., via Zoom <https://lni-wa-gov.zoom.us/j/81337561952?pwd=RjNUM1VNNks0aUElOWxubWN3eFo2QT09>, Meeting ID 813 3756 1952, Passcode Hearing%26; or join by phone (audio only) 253-205-0468 US, 253-215-8782 US (Tacoma), Meeting ID 813 3756 1952, Passcode 9382515180. The hearing will begin at 10:00 a.m. (Pacific Time US and Canada) and will continue until all oral comments are received.

Date of Intended Adoption: May 31, 2024.

Submit Written Comments to: Megan Lemon, Department of Labor and Industries (L&I), Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, email Megan.Lemon@Lni.wa.gov, fax 360-902-4249, by April 23, 2024.

Assistance for Persons with Disabilities: Contact Megan Lemon, phone 360-902-5161, fax 360-902-4249, email Megan.Lemon@Lni.wa.gov, by April 16, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will (1) increase the conversion factor used to calculate payment for anesthesia services; and (2) increase the maximum daily payment for physical and occupational therapy.

WAC 296-20-135(3): Increase the resource-based relative value scale conversion factor from \$59.54 to \$59.98 and increase the anesthesia conversion factor from \$3.83 to \$3.89 per minute.

WAC 296-23-220 and 296-23-230: Increase the maximum daily rate for physical and occupational therapy services from \$143.66 to \$147.97.

Reasons Supporting Proposal: These rules are to be updated to continually follow the established methodologies of L&I and maintain consistency with the health care authority and medicaid purchasing administration. This rule will provide medical aid updates regarding rate setting for professional health care services for injured workers.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Megan Lemon, Tumwater, Washington, 360-902-5161; Implementation and Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply because the content of this rule sets fees and fits within the exception listed in RCW 34.05.328 (5) (b) (vi).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is fully exempt.

March 19, 2024

Joel Sacks

Director

OTS-5240.1

AMENDATORY SECTION (Amending WSR 23-11-126, filed 5/23/23, effective 7/1/23)

WAC 296-20-135 Conversion factors. (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of (~~(\$59.54)~~) \$59.98. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of (~~(\$3.83)~~) \$3.89 per minute, which is equivalent to (~~(\$57.45)~~) \$58.35 per 15 minutes. The base units and payment policies can be found in the fee schedules.

OTS-5241.1

AMENDATORY SECTION (Amending WSR 23-11-126, filed 5/23/23, effective 7/1/23)

WAC 296-23-220 Physical therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist, a physical therapist assistant serving under the direction of a licensed physical therapist as required in RCW 18.74.180 (3)(a),

or a licensed athletic trainer serving under the direction of a licensed physical therapist as required in RCW 18.250.010 (4)(a)(v). In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or (~~(\$143.66)~~) \$147.97 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following 12 treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial 12 treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 23-11-126, filed 5/23/23, effective 7/1/23)

WAC 296-23-230 Occupational therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following 12 treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial 12 treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or (~~(\$143.66)~~) \$147.97 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

WSR 24-07-101

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 20, 2024, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-03-088.

Title of Rule and Other Identifying Information: WAC 182-550-4650 "Full cost" public hospital certified public expenditure (CPE) payment program.

Hearing Location(s): On April 23, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_JTdON_X4TTW-icgTnUcj8Q. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: April 24, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 23, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by April 12, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending this rule to add clarifying language to subsection (5)(c). HCA is adding that if the state's applicable federal medical assistance percentage (FMAP) is zero percent, the amount derived in subsection (5)(b) is multiplied by the lowest Washington state specific medicaid FMAP in effect at the time of claim payment.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Abby Cole, 626 8th Avenue S.E., Olympia, WA 98504, 360-725-1835.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

March 20, 2024
Wendy Barcus
Rules Coordinator

OTS-5238.1

AMENDATORY SECTION (Amending WSR 22-09-079, filed 4/20/22, effective 5/21/22)

WAC 182-550-4650 "Full cost" public hospital certified public expenditure (CPE) payment program. (1) The medicaid agency's "full cost" public hospital certified public expenditure (CPE) inpatient payment program provides payments to participating government-operated hospitals based on the "full cost" of covered medically necessary services and requires the expenditure of local funds in lieu of state funds to qualify for federal matching funds. The agency's inpatient payments to participating hospitals equal the federal matching amount for allowable costs. The agency uses the ratio of costs-to-charges (RCC) method described in WAC 182-550-4500 to determine "full cost."

(2) To be eligible for the "full cost" public hospital CPE payment program, the hospital must be:

(a) Operated by a public hospital district in the state of Washington, not certified by the department of health (DOH) as a critical access hospital, and has not chosen to opt-out of the CPE payment program as allowed in subsection (6) of this section;

(b) Harborview Medical Center; or

(c) University of Washington Medical Center.

(3) Payments made under the inpatient CPE payment program are limited to medically necessary services provided to medical assistance clients eligible for inpatient hospital services.

(4) Each hospital described in subsection (2) of this section is responsible to provide certified public expenditures as the required state match for claiming federal medicaid funds.

(5) The agency determines the initial payment for inpatient hospital services under the CPE payment program by:

(a) Multiplying the hospital's medicaid RCC by the covered charges (to determine allowable costs), then;

(b) Subtracting the client's responsibility and any third party liability (TPL) from the amount derived in (a) of this subsection, then;

(c) Multiplying the state's federal medical assistance percentage (FMAP) by the amount derived in (b) of this subsection. If the state's applicable FMAP is zero percent, the amount derived in (b) of this subsection is multiplied by the lowest Washington state-specific medicaid FMAP in effect at the time of claim payment.

(6) A hospital may opt-out of the inpatient CPE payment program if the hospital:

(a) Meets the criteria for the inpatient rate enhancement under RCW 74.09.5225; or

(b) Is not eligible for public hospital disproportionate share hospital (PHDSH) payments under WAC 182-550-5400.

(7) To opt-out of the inpatient CPE payment program, the hospital must submit a written request to opt-out to the agency's chief financial officer by July 1st in order to be effective for January 1st of the following year.

(8) Hospitals participating in the inpatient CPE payment program must complete the applicable CPE medicaid cost reports as described in WAC 182-550-5410 for the inpatient fee-for-service cost settlements.

WSR 24-07-106

PROPOSED RULES

DEPARTMENT OF HEALTH

(Washington Medical Commission)

[Filed March 20, 2024, 11:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-094.

Title of Rule and Other Identifying Information: General provisions for opioid prescribing and tapering rules for allopathic physicians and physician assistants. The Washington medical commission (commission) is proposing amendments to the commission's opioid prescribing rules to exclude patients with sickle cell disease, to clarify tapering considerations, and to clarify the use of biological specimen testing. Amending WAC 246-918-801 Exclusions, 246-918-870 Periodic Review—Chronic pain, and 246-918-900 Tapering considerations—Chronic pain for physician assistants, as well as WAC 246-919-851 Exclusions, 246-919-920 Periodic Review—Chronic pain, and 246-919-950 Tapering considerations—Chronic pain for allopathic physicians.

Hearing Location(s): On April 26, 2024, at 9:15 a.m., virtually. Register for this virtual meeting to be held via Microsoft Teams <http://tinyurl.com/5cppd9ea>; or in person at the Department of Health, 111 Israel Road S.E., Room 153, Tumwater, WA 98501. To join the commission's rules interested parties email list, please visit https://public.govdelivery.com/accounts/WADOH/subscriber/new?topic_id=WADOH_153.

Date of Intended Adoption: April 26, 2024.

Submit Written Comments to: Amelia Boyd, Program Manager, P.O. Box 47866, Olympia, WA 98504-7866, email <https://fortress.wa.gov/doh/policyreview/>, by April 19, 2024.

Assistance for Persons with Disabilities: Contact Amelia Boyd, program manager, phone 1-800-525-0127, TTY 711, email medical.rules@wmc.wa.gov, by April 19, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On November 3, 2022, the Center for Disease Control and Prevention (CDC) released the Clinical Practice Guideline for Prescribing Opioids for Chronic Pain (<https://www.cdc.gov/opioids/healthcare-professionals/prescribing/guideline/index.html>) (guideline). This guideline updated the *CDC Guideline for Prescribing Opioids for Chronic Pain—United States, 2016* (2016 Guideline). Since the release of the 2016 guideline, new evidence has emerged on the benefits and risks of prescription opioids for both acute and chronic pain comparisons with nonopioid treatments, dosing strategies, opioid dose dependent effects, risk mitigation strategies, and opioid tapering and discontinuation. The update expands the 2016 guideline to provide evidence-based recommendations for prescribing opioid pain medication for acute, subacute, and chronic pain for outpatients aged ≥18 years, excluding pain management related to sickle cell disease, cancer-related pain treatment, palliative care, and end-of-life care. This update leverages new data to expand content on prescription opioids for acute and subacute pain throughout the recommendations.

RCW 18.71.800 and 18.71A.800 directs the commission to consider the guidelines from the CDC when developing opioid prescribing rules. As such, when the new guideline was released in 2022, the commission contracted with Gregory Terman, MD, to do a comprehensive comparison of the commission's opioid prescribing rules covering physicians (WAC

246-919-850 through 246-919-990) and physician assistants (WAC 246-918-800 through 246-918-835) to the guideline. Dr. Terman is a former pro tempore commissioner of the commission as well as a professor of anesthesiology and pain medicine at the University of Washington in Seattle. Dr. Terman was asked to recommend changes to the commission's opioid prescribing rules based on the differences found between the commission's opioid prescribing rules and the guideline. Dr. Terman provided the commission with a report, titled "Comparing and Contrasting the 2022 CDC Opioid Prescribing Guideline and the 2019 Washington State Prescribing Rules" (report). Based on the recommendations in the report, the commission is proposing amending the rules as follows:

(1) Exempting patients with sickle cell disease.

(2) Stating in rule that not all chronic pain patients need to be tapered off opioids.

(3) Stating in rule that decisions regarding patient treatment should not be based solely on one aberrant biological specimen test.

Reasons Supporting Proposal: The commission is proposing rules based on the following recommendations from Dr. Terman's report:

(1) Exempting patients with sickle cell disease: The guideline exempts sickle cell disease along with cancer and patients receiving palliative or end-of-life care and states that these patients "can be at risk for inadequate pain treatment." The commission's rules already exclude patients with cancer and the provision of palliative, hospice, or other end-of-life care because those patients typically need a different level of care than a patient with chronic pain that is not related to cancer, palliative, or end-of-life care.

(2) Stating in rule that not all chronic pain patients need to be tapered off opioids: Since their opioid rules were updated in 2018, the commission has seen a number of complaints from chronic pain patients who have been tapered too rapidly or their opioid regimen has been discontinued completely. The department of health released a statement on September 20, 2019, that spoke to this issue:

"Neither the Washington State opioid prescribing rules nor the CDC opioid prescribing guideline support rapidly tapering or discontinuing opioids for patients on existing opioid doses exceeding 90 mg MME per day under most circumstances. Abruptly tapering or discontinuing opioids in a patient who is physically dependent may cause serious patient harms including severe withdrawal symptoms, uncontrolled pain, psychological distress, and in rare instances, suicide."

In the Report, Dr. Terman notes: "The CDC states that one of the primary reasons for updating the rules, was 'misapplication of the 2016 CDC Opioid Prescribing Guideline (66), benefits and risks of different tapering strategies and rapid tapering associated with patient harm (68,71-73), challenges in patient access to opioids (6), patient abandonment and abrupt discontinuation of opioids (71)' (page 4). In perhaps the clearest example of the CDC attempting to avoid inflexible interpretations of this version of the guideline, CDC removed all specific doses and durations from all 12 of the 2022 recommendations - relegating the same doses seen in the 2016 recommendations (based largely on the same data) to the supporting text. The rules (commission's rules) attempted to avoid dose-focused inflexibility of care by reassuring prescribers that the "commission will judge the validity of the physician's treatment of the patient based on available documentation, rather than solely on the quantity and duration of medication administration" (WAC 246-919-850). Whether this has been successful in avoiding opioid treatment related patient stigma, abandonment and in-

appropriate discontinuation of opioids is a matter of discussion beyond the scope of this document but the desire to avoid these patient punishments is clearly a similarity between the CDC and the Rules." The commission believes that including in the rule a statement that tapering is not always necessary would be beneficial for achieving this objective.

(3) Stating in rule that decisions regarding patient treatment should not be based solely on one aberrant biological specimen test: In the report, Dr. Terman highlights that both the commission's rules and the guideline recognize biological specimen testing, such as urine toxicology testing, as an effective risk mitigation strategy for subacute and chronic opioid prescribing. He goes on to say that the guideline describes the correct utilization of biological specimen testing involves applying it universally to prevent bias, emphasizing discussions over punishment for unexpected results, and integrating results into broader clinical assessments to formulate action plans following unexpected outcomes. The commission's rules do not address how to handle an unexpected result. Additionally, the commission has received reports that physicians and physician assistants have stopped prescribing opioids and, in some cases, dismissed patients solely based on a single abnormal biological specimen test. This abrupt change in a patient's care greatly raises the risk of patient harm. By providing some guidance in rule regarding biological specimen testing, the commission is working toward reducing patient harm.

RCW 18.71.800 and 18.71A.800 require that the commission consider the Agency Medical Directors Group (AMDG) and CDC guidelines when adopting rules regarding opioid prescribing. The proposed rules implement the statute's goals and objectives by:

(1) Revising the established rules to be consistent with the CDC's guideline; and

(2) Supporting the overarching goals of RCW 18.71.015 by protecting and promoting public health, safety, and welfare.

Statutory Authority for Adoption: RCW 18.71.017, 18.71.800, 18.71A.800, and 18.130.050.

Statute Being Implemented: RCW 18.71.800 and 18.71A.800.

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

Name of Proponent: Washington medical commission, governmental.

Name of Agency Personnel Responsible for Drafting: Amelia Boyd, 111 Israel Road S.E., Tumwater, WA 98501, 360-918-6336; Implementation and Enforcement: Kyle Karinen, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4810.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Amelia Boyd, Program Manager, P.O. Box 47866, Olympia, WA 98504-7866, phone 360-918-6336, TTY 711, email medical.rules@wmc.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules do not impact businesses, they only impact providers.

Scope of exemption for rule proposal:

Is fully exempt.

March 18, 2023 [2024]

Kyle S. Karinen
Executive Director

OTS-5085.1

AMENDATORY SECTION (Amending WSR 22-22-039, filed 10/25/22, effective 11/25/22)

WAC 246-918-801 Exclusions. WAC 246-918-800 through 246-918-935 do not apply to:

- (1) The treatment of patients with cancer-related pain;
- (2) The treatment of patients with sickle cell disease;
- (3) The provision of palliative, hospice, or other end-of-life care;
- ((3)) (4) The provision of procedural medications;
- ((4)) (5) The treatment of patients who have been admitted to any of the following facilities for more than 24 hours:
 - (a) Acute care hospitals licensed under chapter 70.41 RCW;
 - (b) Psychiatric hospitals licensed under chapter 71.12 RCW;
 - (c) Nursing homes licensed under chapter 18.51 RCW and nursing facilities as defined in WAC 388-97-0001;
 - (d) Long-term acute care hospitals as defined in RCW 74.60.010;
- or
- (e) Residential treatment facilities as defined in RCW 71.12.455;
- or
- ((5)) (6) The treatment of patients in residential habilitation centers as defined in WAC 388-825-089 when the patient has been transferred directly from a facility listed in subsection ((4)) (5) of this section.

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-918-870 Periodic review—Chronic pain. (1) The physician assistant shall periodically review the course of treatment for chronic pain. The frequency of visits(~~(, biological testing,)~~) and PMP queries in accordance with the provisions of WAC 246-918-935, must be determined based on the patient's risk category:

- (a) For a high-risk patient, at least quarterly;
 - (b) For a moderate-risk patient, at least semiannually;
 - (c) For a low-risk patient, at least annually;
 - (d) Immediately upon indication of concerning aberrant behavior;
- and
- (e) More frequently at the physician assistant's discretion.
- (2) During the periodic review, the physician assistant shall determine:
- (a) The patient's compliance with any medication treatment plan;
 - (b) If pain, function, and quality of life have improved, diminished, or are maintained; and

(c) If continuation or modification of medications for pain management treatment is necessary based on the physician assistant's evaluation of progress towards or maintenance of treatment objectives and compliance with the treatment plan.

(3) Periodic patient evaluations must also include:

(a) History and physical examination related to the pain;

(b) Use of validated tools or patient report from reliable patients to document either maintenance or change in function and pain control; and

(c) Review of the Washington state PMP at a frequency determined by the patient's risk category in accordance with the provisions of WAC 246-918-935 and subsection (1) of this section.

(4) If the patient violates the terms of the agreement, the violation and the physician assistant's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

(5) Biological specimen testing should not be used in a punitive manner but should be used in the context of other clinical information to inform and improve patient care. Physician assistants should not dismiss patients from care on the basis of a biological specimen test result alone.

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-918-900 Tapering considerations—Chronic pain. Not all chronic pain patients will need their opioid prescriptions tapered. Relying on medical decision making and patient-centered treatment, the physician assistant shall consider tapering or referral for a substance use disorder evaluation when:

(1) The patient requests;

(2) The patient experiences a deterioration in function or pain;

(3) The patient is noncompliant with the written agreement;

(4) Other treatment modalities are indicated;

(5) There is evidence of misuse, abuse, substance use disorder, or diversion;

(6) The patient experiences a severe adverse event or overdose;

(7) There is unauthorized escalation of doses; or

(8) The patient is receiving an escalation in opioid dosage with no improvement in their pain or function.

OTS-5086.1

AMENDATORY SECTION (Amending WSR 22-22-039, filed 10/25/22, effective 11/25/22)

WAC 246-919-851 Exclusions. WAC 246-919-850 through 246-919-985 do not apply to:

(1) The treatment of patients with cancer-related pain;

(2) The treatment of patients with sickle cell disease;

- (3) The provision of palliative, hospice, or other end-of-life care;
- ~~((3))~~ (4) The provision of procedural medications;
- ~~((4))~~ (5) The treatment of patients who have been admitted to any of the following facilities for more than 24 hours:
- (a) Acute care hospitals licensed under chapter 70.41 RCW;
 - (b) Psychiatric hospitals licensed under chapter 71.12 RCW;
 - (c) Nursing homes licensed under chapter 18.51 RCW and nursing facilities as defined in WAC 388-97-0001;
 - (d) Long-term acute care hospitals as defined in RCW 74.60.010;
- or
- (e) Residential treatment facilities as defined in RCW 71.12.455;
- or
- ~~((5))~~ (6) The treatment of patients in residential habilitation centers as defined in WAC 388-825-089 when the patient has been transferred directly from a facility listed in subsection ~~((4))~~ (5) of this section.

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

- WAC 246-919-920 Periodic review—Chronic pain.** (1) The physician shall periodically review the course of treatment for chronic pain. The frequency of visits (~~(, biological testing,)~~) and PMP queries in accordance with the provisions of WAC 246-919-985, must be determined based on the patient's risk category:
- (a) For a high-risk patient, at least quarterly;
 - (b) For a moderate-risk patient, at least semiannually;
 - (c) For a low-risk patient, at least annually;
 - (d) Immediately upon indication of concerning aberrant behavior;
- and
- (e) More frequently at the physician's discretion.
- (2) During the periodic review, the physician shall determine:
- (a) The patient's compliance with any medication treatment plan;
 - (b) If pain, function, and quality of life have improved, diminished, or are maintained; and
 - (c) If continuation or modification of medications for pain management treatment is necessary based on the physician's evaluation of progress towards or maintenance of treatment objectives and compliance with the treatment plan.
- (3) Periodic patient evaluations must also include:
- (a) History and physical examination related to the pain;
 - (b) Use of validated tools or patient report from reliable patients to document either maintenance or change in function and pain control; and
 - (c) Review of the Washington state PMP at a frequency determined by the patient's risk category in accordance with the provisions of WAC 246-919-985 and subsection (1) of this section.
- (4) If the patient violates the terms of the agreement, the violation and the physician's response to the violation will be documented, as well as the rationale for changes in the treatment plan.
- (5) Biological specimen testing should not be used in a punitive manner but should be used in the context of other clinical information to inform and improve patient care. Physicians should not dismiss pa-

tients from care on the basis of a biological specimen test result alone.

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-919-950 Tapering considerations—Chronic pain. Not all chronic pain patients will need their opioid prescriptions tapered. Relying on medical decision making and patient-centered treatment, the physician shall consider tapering or referral for a substance use disorder evaluation when:

- (1) The patient requests;
- (2) The patient experiences a deterioration in function or pain;
- (3) The patient is noncompliant with the written agreement;
- (4) Other treatment modalities are indicated;
- (5) There is evidence of misuse, abuse, substance use disorder, or diversion;
- (6) The patient experiences a severe adverse event or overdose;
- (7) There is unauthorized escalation of doses; or
- (8) The patient is receiving an escalation in opioid dosage with no improvement in their pain or function.

WSR 24-07-107

PROPOSED RULES

DEPARTMENT OF HEALTH

(Washington Medical Commission)

[Filed March 20, 2024, 11:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-18-005.

Title of Rule and Other Identifying Information: Postgraduate medical training for physicians. The Washington medical commission (commission) is proposing amendments to WAC 246-919-330(4) to remove two requirements that have become a barrier to licensure.

Hearing Location(s): On April 26, 2024, at 9:45 a.m., virtually. Register for this virtual meeting to be held via [Microsoft] Teams <http://tinyurl.com/5cppd9ea>; or in person at the Department of Health, 111 Israel Road S.E., Room 153, Tumwater, WA 98501. To join the commission's rules interested parties email list, please visit https://public.govdelivery.com/accounts/WADOH/subscriber/new?topic_id=WADOH_153.

Date of Intended Adoption: April 26, 2024.

Submit Written Comments to: Amelia Boyd, Program Manager, P.O. Box 47866, Olympia, WA 98504-7866, email <https://fortress.wa.gov/doh/policyreview/>, by April 19, 2024.

Assistance for Persons with Disabilities: Contact Amelia Boyd, program manager, phone 1-800-525-0127, TTY 711, email medical.rules@wmc.wa.gov, by April 19, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend the rules to align them with current practices and remove barriers to licensure for qualified applicants entering the physician workforce.

Due to the practitioner shortage, multiple pathways to board certification eligibility have been opened by the University of Washington (UW), the Accreditation Council for Graduate Medical Education (ACGME), and the American Board of Medical Specialties (ABMS). Multiple ABMS boards have programs that specifically target international medical graduates and place them in four-year training programs, with only years one and three ACGME accredited. The outcome of these programs would be physicians who are ineligible for a license through the commission, despite four years of postgraduate training through UW.

Separately and recently, applications have come through where the physician has six years of postgraduate training from their efforts to become dually licensed as a physician and a dentist. This clause has resulted in denial of those applications since parts of the training are accredited under ACGME and the rest under the Commission on Dental Accreditation (CODA), the dental profession equivalent of ACGME.

The proposed rule eliminates the requirement for consecutive years of training in no more than two programs which will remove the barrier for qualified applicants to obtain a physician license.

Reasons Supporting Proposal: The proposed rule is necessary for the preservation of public health, safety, and general welfare. Continued demand for health care professionals, especially qualified physicians, make it essential that qualified applicants are able to obtain a license. This proposed rule will result in increasing the quantity of health care professionals able to respond to current and ongoing staffing demands.

In 2023, the commission filed emergency rules originally filed on July 13, 2023, under WSR 23-15-056 and continued under emergency rule filed on November 9, 2023, under WSR 23-23-071. This rule making contains the same language used in the emergency rules and aims to make them permanent.

Statutory Authority for Adoption: RCW 18.71.017 and 18.130.050.

Statute Being Implemented: RCW 18.71.050 [(1)](b).

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

Name of Proponent: Washington medical commission, governmental.

Name of Agency Personnel Responsible for Drafting: Amelia Boyd, 111 Israel Road S.E., Tumwater, WA 98501, 360-918-6336; Implementation and Enforcement: Kyle Karinen, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4810.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Amelia Boyd, Program Manager, P.O. Box 47866, Olympia, WA 98504-7866, phone 360-918-6336, TTY 711, email medical.rules@wmc.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules only impact applicants seeking a physician license.

Scope of exemption for rule proposal:

Is fully exempt.

March 20, 2024
 Kyle S. Karinen
 Executive Director

OTS-4663.1

AMENDATORY SECTION (Amending WSR 20-22-003, filed 10/21/20, effective 11/21/20)

WAC 246-919-330 Postgraduate medical training. (1) Postgraduate medical training means clinical training approved by the commission in general medicine or surgery, or a specialty or subspecialty in the field of medicine or surgery as recognized by the American Board of Medical Specialties listed in the 2017-2018 ABMS Board Certification Report and new specialties or subspecialties approved by the commission.

(2) The commission approves only the following postgraduate clinical training courses:

(a) Programs accredited by the Accreditation Council for Graduate Medical Education (ACGME) at the time of residency.

(b) Programs accredited by the Royal College of Physicians and Surgeons of Canada (RCPSC) or the College of Family Physicians of Canada (CFPC), or programs accredited by the RCPSC or CFPC at the time of residency.

(3) Postgraduate medical training includes, but is not limited to, internships, residencies and medical or surgical fellowships.

(4) A physician must complete two (~~consecutive~~) years of postgraduate medical training (~~in no more than two programs~~). The physician must acquire this training after completion of a formal course of undergraduate medical instruction outlined in RCW 18.71.055. The commission will accept only satisfactory clinical performance evaluations.