

**WSR 24-15-001**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)  
[Filed July 3, 2024, 12:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-048.

Title of Rule and Other Identifying Information: Chapter 388-833 WAC, Intensive habilitation services for children program.

Hearing Location(s): On August 27, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the department of social and health services (DSHS) website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than August 28, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, beginning noon on July 10, 2024, by 5:00 p.m. on August 27, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov), by 5:00 p.m. on August 13, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is amending these rules to allow DDA-contracted entities to provide intensive habilitation services for children and establish a connection between this chapter and the certification rules DDA is developing and plans to adopt under new chapter 388-825A WAC.

Reasons Supporting Proposal: These services were previously provided by state-operated providers who were certified by DDA. Proposed amendments would not only standardize certification requirements, but also increase the types of providers who can deliver intensive habilitation services for children.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.010 and 71A.12.120.

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

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: Kaitlyn Collins, P.O. Box 45310, Olympia, WA 98504-5310, 360-764-6936.

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 Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-790-4732, email [chantelle.diaz@dshs.wa.gov](mailto:chantelle.diaz@dshs.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(5).

Explanation of exemptions: The amendments do require contracted providers to meet training requirements under chapter 388-829 WAC, which have fees. The cost of training is covered by DSHS. Providers are reimbursed for training via a daily rate.

Scope of exemption for rule proposal:

Is fully exempt.

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. The amendments do require contracted providers to meet training requirements under chapter 388-829 WAC, which have fees. The cost of training is covered by DSHS. Providers are reimbursed for training via a daily rate.

July 2, 2024  
Katherine I. Vasquez  
Rules Coordinator

SHS-5032.3

**Chapter 388-833 WAC**  
**INTENSIVE HABILITATION SERVICES FOR CHILDREN PROGRAM**

**DEFINITIONS**

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

**WAC 388-833-0005 Definitions.** (~~("Crisis" means a set of circumstances or events that:~~

~~(1) Put a participant at risk of hospitalization, institutionalization, or loss of residence;~~

~~(2) Exceeds a participant's individual ability to cope/remain stable; or~~

~~(3) Exceeds the ability of the participant's caregivers to provide necessary supports.))~~

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020 and who has been determined eligible by DDA to receive services under chapter 388-823 WAC.

"CRM (/SW/SSS)" means the DDA case resource manager (, ~~DDA social worker, or DDA social service specialist~~) assigned to ((an individual or participant in the intensive habilitation services (IHS) for children program) a client.

~~(("Developmental disabilities administration" or))~~ "DDA" means the developmental disabilities administration within the department of social and health services.

"Habilitative goals" means the family-identified goals intended to assist the client to acquire, retain, and improve upon self-help, socialization, and adaptive skills.

"Habilitation" means support that assists people with developmental disabilities to acquire, retain, and improve upon the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.

~~(("IHS review team" means DDA staff who review referrals to the IHS for children program.~~

~~"Individual" means a person who has a developmental disability as defined in RCW 71A.10.020(5) who also has been determined eligible to receive services by the administration under chapter 71A.16 RCW. Other terms used in the field include "client" and "resident."~~

~~"Participant" means the individual who is accessing the intensive habilitation services.~~

~~"Participant team" means individuals who work together to provide formal and informal supports to a participant. A typical team includes IHS staff, the CRM/SW/SSS, the participant's family/legal representative(s), and service providers working with the participant.)~~

"Individualized team" means the group of people who work together to provide formal and informal supports to a client. A typical team includes the client, the client's family and legal representative, intensive habilitation services (IHS) staff, the client's case resource manager, managed care organization care coordinators, and any other service providers working with the client and family.

"Legal representative" means a parent of a client if the client is under age 18 and parental rights have not been terminated or revoked, a court-appointed guardian if a decision is within the scope of the guardianship order, or any other person authorized by law to act for the client.

"Parent" means a biological or adoptive parent with legal authority to make decisions on behalf of the client.

"Primary caregiver" means the person who provides the majority of the client's care and supervision and lives with the client.

"Provider" means the contracted or state-operated provider of intensive habilitation services.

~~(("Regional clinical team" means DDA staff who may respond to crisis situations by providing assessment, training, behavior support and consultation as well as behavioral health stabilization services to DDA enrolled individuals.)~~

## PURPOSE

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

**WAC 388-833-0010** What is ((the purpose of the intensive habilitation services for children program)) required of an IHS provider?  
 ((The purpose of the intensive habilitation services for children program is to provide short-term behavioral health supports to participants who are in crisis.))

(1) A provider of the intensive habilitation services (IHS) for children program provides the following:

- (a) The creation and implementation of a habilitative plan;
- (b) Opportunities for the client's family, natural supports, and community providers to participate in individualized team meetings, discuss effective environmental strategies, collaborate on techniques for implementing the client's habilitative plan; and
- (c) Medication administration and medication assistance as needed.

(2) IHS must provide the following to clients:

- (a) Three meals per day plus snacks;
- (b) Toiletries and personal care items;
- (c) Bedding and towels;
- (d) Access to laundry facilities;
- (e) Access to a telephone;
- (f) Opportunities for accessing the community; and
- (g) Transportation to necessary appointments or services.

### ELIGIBILITY

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

**WAC 388-833-0015 Who ((is)) may be eligible ((for the)) to receive stabilization services from an intensive habilitation services ((for children program)) provider?** A person ((is)) may be eligible ((for the)) to receive stabilization services from an intensive habilitation services ((for children program)) provider if:

- (1) The person is over age seven but under age 21;
- (2) The person is DDA-eligible ((for DDA services)) under chapter 388-823 WAC;
  - ~~((2) The person is eligible for medicaid services;~~
  - ~~(3) The person or their legal representative voluntarily consents to intensive habilitation services;~~
  - ~~(4) The person is age eight or older but under age twenty-one;~~
  - ~~(5) The person has no pending investigations of abuse or neglect with the department of children, youth, and families; and~~
  - ~~(6) DDA determines the person needs the level of service provided in the intensive habilitation services for children program.))~~
- (3) The person is eligible for stabilization services under WAC 388-845-1100;
- (4) The person has received medically necessary inpatient treatment for conditions related to behavioral health or autism, if recommended by the person's treating professional, and does not have a treatment recommendation for a locked or secured facility;
- (5) The person's medication needs can be met through nurse delegation;
- (6) The provider determines under WAC 388-833-0016 that the provider can safely meet the person's needs and that the person does not

pose a risk to the health or safety of themselves, IHS staff, or other clients supported by the provider;

(7) The person does not require an intervention prohibited in the setting or that cannot be provided based on staffing levels and credentials; and

(8) The person has an identified residential discharge setting to return to and the identified caregiver has agreed to participate in the IHS program requirements.

#### NEW SECTION

**WAC 388-833-0016 How does the provider determine if they can safely meet a client's needs?** To determine whether they can safely meet a client's needs, the intensive habilitation services provider reviews client information, such as:

- (1) The client's referral packet;
- (2) Information gathered from the client, collateral contacts, or case manager; and
- (3) Composition of clients currently supported by the provider.

### **PROVIDER QUALIFICATIONS**

#### NEW SECTION

**WAC 388-833-0017 Who may become an intensive habilitation services provider?** The following entities may become an intensive habilitation services provider:

- (1) A staffed residential home licensed under chapter 110-145 WAC; or
- (2) A DDA-certified state-operated provider.

#### NEW SECTION

**WAC 388-833-0018 Must the provider be certified?** The provider of intensive habilitation services for children must be certified by DDA under chapter 388-825A WAC.

#### NEW SECTION

**WAC 388-833-0019 Is a site visit required and what does DDA review during a site visit?** (1) To be certified, a provider must participate in site visits as required under chapter 388-825A WAC.

- (2) During a site visit, DDA reviews the provider's service site for the following safety requirements:
- (a) The common areas of the home are unrestricted.
  - (b) All entrances and exits are unblocked.
  - (c) The home is maintained in a safe and healthy manner.
  - (d) The home has a storage area for flammable and combustible materials.
  - (e) Every floor of the home has working smoke and carbon monoxide detectors.
  - (f) The home has a fire extinguisher that meets requirements for the residence type. There must be a fire extinguisher in the kitchen and at least one on every floor of the home.
  - (g) The home has a stocked first-aid kit.
  - (h) The home has a working and accessible telephone.
  - (i) The home has a working and accessible flashlight or alternative light source.
  - (j) Emergency contact information is available and accessible in the home (e.g., 911, poison control, nonemergency 911, adult protective services, child protective services).
  - (k) The contact information for the developmental disabilities ombuds is available and accessible in the home.
  - (l) The water temperature at the home is 120 degrees Fahrenheit or less.
  - (m) There is a safety plan for any body of water more than 24 inches deep at the home.
  - (n) The home has an evacuation plan and an emergency food and water supply.
  - (o) The home meets integrated setting requirements under WAC 388-823-1096.
  - (p) The home has a backup power source (e.g., generator, battery pack) if the provider supports a client who uses life sustaining medical equipment.

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

**WAC 388-833-0020 How long may a ((participant)) client receive ((services)) support from ((the)) a provider of intensive habilitation services ((for children program))?** (1) The ((participant)) client may receive services from an IHS provider for a maximum of ((one hundred eighty)) 90 consecutive days per admission(~~(, from the date of admission to the program))~~).

(2) Length of admission is based on the client's progress toward their family-identified goals.

(3) Upon discharge from the intensive habilitation services program, the legally responsible entity - parent, legal representative, or primary caregiver - must resume care for the client.

NEW SECTION

**WAC 388-833-0024 What training must a DDA-contracted provider complete?** (1) To provide direct support to a client receiving serv-

ices from a DDA-contracted provider, a direct support professional (DSP) must complete:

- (a) Training required under chapter 110-145 WAC;
  - (b) Training and continuing education required under chapter 388-829 WAC; and
  - (c) Nurse delegation training if the DSP will be performing tasks requiring delegation under WAC 246-840-930.
- (2) The provider must ensure that each direct support professional stays current on their CPR certification, food worker card, and first aid and bloodborne pathogens trainings.

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

**WAC 388-833-0025** ~~How does an individual access intensive habilitation services for children?)~~ **What training must a state-operated provider complete?** ((The individual or family/legal representative may request intensive habilitation services for children through the CRM/SW/SSS.))

(1) To provide direct support to a client receiving services from a state-operated provider, a direct support professional (DSP) must complete:

(a) Training and continuing education required under chapter 388-829 WAC;

(b) Nurse delegation training if the DSP is performing tasks requiring delegation under WAC 246-840-930.

(2) The provider must ensure that each DSP stays current on their CPR certification, food worker card, and first aid and bloodborne pathogens trainings.

## HEALTH AND SAFETY

### NEW SECTION

**WAC 388-833-0031** **What infection control practices must the provider implement?** (1) The provider must have written policies and procedures about the control of infections. These must include, but are not limited to, the following areas:

- (a) Isolation of sick individuals;
- (b) Germ control procedures;
- (c) Hygiene, including hand washing, toileting, and laundering;
- (d) Prevention of the transmission of communicable diseases including management and reporting;
- (e) First aid;
- (f) Care of minor illnesses;
- (g) Actions to be taken for medical emergencies; and
- (h) General health practices.

(2) The provider must promote personal hygiene to help prevent the spread of germs.

(3) The provider must provide staff with the supplies necessary for limiting the spread of infections.

(4) Staff with a reportable communicable disease or a notifiable disease condition in an infectious stage, as defined by the department of health in chapter 246-101 WAC, must not be on duty until they have a healthcare professional's approval for returning to work.

#### NEW SECTION

##### **WAC 388-833-0032 How must the provider store medication? (1)**

The provider must store a client's medication:

- (a) In a locked container, such as a locked box;
- (b) Separate from food and toxic chemicals;
- (c) Under proper conditions for sanitation, temperature, and ventilation; and
- (d) In the original medication container with the pharmacist-prepared or manufacturer's label, which must include the:
  - (i) Name of the client for whom the medication is prescribed;
  - (ii) Name of the medication; and
  - (iii) Dosage and frequency.

(2) The provider may store a client's medication in a medication organizer if the medication organizer was prepared by a pharmacist or registered nurse.

#### NEW SECTION

**WAC 388-833-0033 What must the provider do if a client refuses a prescribed medication?** If a client refuses a prescribed medication, the provider must:

- (1) Document the refusal, including the time, date, and medication refused;
- (2) Inform the client of the benefit of the medication;
- (3) Consult a pharmacist or licensed medical provider with prescription authority to determine if the medication refusal could significantly harm the client;
- (4) If recommended, continue to offer the medication following consultation in subsection (3) of this section; and
- (5) Inform the client's parent or legal representative of the refusal and any reasons for the refusal if shared by the client.

#### NEW SECTION

##### **WAC 388-833-0034 When must the provider dispose of medications?**

(1) The provider must dispose of all client medications that are discontinued, expired, or replaced by another medication in consultation with a pharmacist or other health professional.

(2) When disposing a client's medication, the provider must list the:

- (a) Client's name;



- (b) Medication name;
  - (c) Amount disposed; and
  - (d) Date of disposal.
- (3) Two people must verify the disposal by signature.

NEW SECTION

**WAC 388-833-0035 What must the provider do to prepare for emergencies?** (1) The provider must develop an emergency response plan.  
(2) The provider must complete a fire drill with clients at least once per month and document completion of the drill.

NEW SECTION

**WAC 388-833-0036 What water temperature safety measures must be met?** (1) The provider must regulate the facility's water temperature no higher than 120 degrees Fahrenheit.  
(2) The provider must complete and document monthly water temperature checks.

NEW SECTION

**WAC 388-833-0037 What safety requirements must be met?** (1) The provider must be located in an area with public fire protection.  
(2) The provider must have working smoke and carbon monoxide detectors installed. Each smoke and carbon monoxide detector must address the needs of clients who are deaf or hard of hearing.  
(3) Smoke detectors must:  
(a) Be in operating condition both inside and outside of all sleeping areas.  
(b) Be installed on each story of the facility, in all play areas, and in the basement.  
(c) Be installed and maintained according to the manufacturer's specifications.  
(d) If mounted on a wall, be 12 inches from the ceiling and a corner.  
(e) Be tested twice a year to ensure they are in working order. The provider must document the date and time of the test.  
(4) Carbon monoxide detectors must be located in or near each client's bedroom and on every floor of the facility.  
(5) The provider must have at least one approved 2A10BC-rated five pound or larger all-purpose (ABC) fire extinguisher readily available at all times. "Approved 2A10BC-rated" means a fire extinguisher with an underwriters laboratory label on the nameplate classifying the extinguisher as 2A10BC-rated or larger.  
(6) The provider must maintain and service fire extinguishers according to manufacturer's specifications.  
(7) An approved fire extinguisher must be located in the area of the normal path of exiting. The maximum travel distance to an extinguisher from any place on the premises must not exceed 75 feet. When

the travel distance exceeds 75 feet, additional extinguisher(s) are required.

(8) The provider must have at least one fire extinguisher on each floor of a multilevel facility.

(9) Fire extinguishers must:

(a) Be mounted in a bracket or in a fire extinguisher cabinet so that the top of the extinguisher is no more than five feet above the floor; and

(b) Receive an annual maintenance certification by a licensed firm specializing in this work, based on the manufacturer's recommended schedule. Maintenance means a thorough check of the extinguisher for:

(i) Mechanical parts;

(ii) Extinguishing agent; and

(iii) Expelling means.

(10) New fire extinguishers do not need to receive an additional certification test during the first year.

(11) The department may require that additional fire extinguishers be available on the premises, in consultation with the local fire authority or Washington State Patrol's Fire Protection Bureau.

#### NEW SECTION

**WAC 388-833-0038 Must the provider secure cleaning supplies and other potentially hazardous substances?** (1) The provider must safely secure cleaning supplies, flammables and other combustible materials, toxic or poisonous substances, and aerosols.

(2) If a container is filled with a toxic substance from a bulk supply, the provider must clearly label the container.

#### RECORDS

#### NEW SECTION

**WAC 388-833-0040 Must the provider keep a record of a client's property?** (1) The provider must maintain a property record for each client.

(2) The property record must include a descriptive list of the items the client possessed upon admission and discharge.

#### NEW SECTION

**WAC 388-833-0041 What records must the provider keep and how long must the records be retained?** (1) The provider must keep the following in the client's record:

- (a) Referral packet contents;
  - (b) Service notes;
  - (c) The client's habilitation plan; and
  - (d) The client's behavior intervention plan, if applicable.
- (2) The provider must retain a client's records for at least six years after delivering services to the client.

### RIGHTS AND RESPONSIBILITIES

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

**WAC 388-833-0045** ~~What are the ((expectations of family/legal representative)) rights and responsibilities of parents or legal representatives when their child is in the intensive habilitation services for children program? ((Family/legal representatives retain custody of their child at all times when the child is receiving services in the intensive habilitation services (IHS) for children program. Family/legal representative responsibilities include, but are not limited to, the following:))~~

(1) Accessing intensive habilitation services (IHS) is voluntary and does not affect a parent's or legal representative's rights and responsibilities as a legal custodian for the child.

(2) Before a client receives IHS, an IHS family agreement must be signed agreeing to:

~~((1))~~ (a) Maintain ((ongoing and regular)) at least weekly contact with their child;

~~((2))~~ Agree to work cooperatively with their child's DDA CRM/SW/SSS, and other DSHS staff and persons caring for the child;

~~((3))~~ (b) Participate in ((decision making for the child)) the child's individualized team meetings and service planning;

(c) Participate in weekly meetings about implementing strategies identified in the habilitation plan;

(d) Work with IHS staff to transition the child back home or to another identified residential setting; and

(e) Arrange with IHS to maintain the child's school enrollment.

(3) An IHS family agreement must be signed by:

(a) The client's parent or the client's legal representative; or

(b) The client's legal representative and primary caregiver if the client is the subject of court-ordered out-of-home care through a dependency action under RCW 13.34.060 or a tribal child welfare action.

~~((4))~~ The right to make all nonemergency decisions about medical care, enlistment in military service, marriage and other important legal decisions for the person under eighteen years of age; and

~~((5))~~ Agree that if their child's IHS placement disrupts, their child will return to the parents physical care until a new placement is developed.)

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

**WAC 388-833-0050** ~~((Who pays for the participant's care when they are))~~ What are the financial responsibilities of parents or legal representatives when their child is in the intensive habilitation services for children program? ((A combination of state and federal funds cover the cost of the participant's care while in the intensive habilitation services for children program. The family/legal representative is encouraged to support the participant with typical items or activities, e.g., presents, clothing, special items, special outings which are not supported by state or federal funds.))

A parent or legal representative remains financially responsible for all expenses for their child that the provider is not required to provide under this chapter or the provider's contract.

NEW SECTION

**WAC 388-833-0053** May the provider decide to stop providing services to a client and to whom must notice be sent? (1) The provider may decide to stop providing services if the provider determines and documents that the client's behavior jeopardizes:

(a) The client's health or safety; or

(b) The health or safety of staff or other clients the provider supports.

(2) The notice of the provider's decision must include:

(a) The reason for the decision; and

(b) The effective date of the decision.

(3) At least 72 hours before the effective date of the decision, the provider must notify:

(a) The client;

(b) The client's parent or legal representative;

(c) The client's DDA case manager; and

(d) The IHS program manager.

AMENDATORY SECTION (Amending WSR 21-14-088, filed 7/7/21, effective 8/7/21)

**WAC 388-833-0055** What are a client's appeal rights ((do-I have))? (1) ~~((You have the right to))~~ A client, the client's parent, or the client's legal representative may appeal decisions made by DDA in accordance with WAC 388-825-120 through 388-825-165 and WAC 388-845-4000 through 388-845-4015.

(2) A client, the client's parent, or the client's legal representative does not have a right to appeal a decision for admission to the intensive habilitation services program.

(3) A client does not have a right to appeal a provider's decision to terminate support to the client.

~~((2))~~ (4) Once the ((one hundred eighty day maximum stay is reached)) client has received services for the maximum of 90 days, the intensive habilitation services (IHS) ((have been completed and terminating the service and returning the participant to another residential placement is not considered a termination, denial, or move to a

~~different type of residential service as described in WAC 388-825-120)) are complete. The client, the client's parent, or the client's legal representative does not have a right to appeal the service end date.~~

~~((3) A participant may appeal eligibility for the IHS program but participation in the program is determined by WAC 388-833-0030 and is dependent on bed and funding availability. There is no appeal right to an IHS participation determination.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-833-0030      How is a decision made for participation in the intensive habilitation services for children program?

WAC 388-833-0060      Does DDA make exceptions to the requirements in this chapter?

## WSR 24-15-036

## PROPOSED RULES

## DEPARTMENT OF ECOLOGY

[Order 22-05—Filed July 11, 2024, 10:21 a.m.]

Continuance of WSR 24-11-047.

Preproposal statement of inquiry was filed as WSR 22-20-039.

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 the rule making:

- WAC 173-201A-020 Definitions, adding a definition for a performance-based approach method and adding a definition for local and regional sources of human-caused pollution.
- WAC 173-201A-200 (1)(c), aquatic life temperature criteria, subsection (i), updating the allowable insignificant changes to freshwater temperature criteria when natural conditions are the applicable criteria.
- WAC 173-201A-200 (1)(d), aquatic life dissolved oxygen (D.O.) criteria, subsection (i), updating the allowable insignificant changes to freshwater D.O. criteria when natural conditions are the applicable criteria.
- WAC 173-201A-210 (1)(c), aquatic life temperature criteria, subsection (i), updating the allowable insignificant changes to marine water temperature when natural conditions are the applicable criteria.
- WAC 173-201A-210 (1)(d), aquatic life D.O., subsection (i), updating the allowable insignificant changes to marine water D.O. when natural conditions are the applicable criteria.
- WAC 173-201A-260(1), natural and irreversible human conditions, updating the natural conditions criteria language and describing methods for determining natural conditions criteria values.
- WAC 173-201A-430(2), site-specific criteria, updating how analyses must be conducted.
- WAC 173-201A-470 Performance-based approach, adding this new section to describe and reference the methodology to determine natural conditions criteria values.
- Ecology publication 24-10-017, A Performance-Based Approach for Developing Site-Specific Natural Conditions Criteria for Aquatic Life in Washington, a separate rule document that provides the methodology to determine natural conditions criteria values.
- Minor, nonsubstantive edits to rule language in WAC 173-201A-430(2) to reflect the latest version of referenced documents.

This CR-102 continuance filing:

- Extends the comment period from May 10, 2024, to July 26, 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-natural-conditions>.

Hearing Location(s): On June 27, 2024, at 1:30 p.m., 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/tZcqd-Gvpj4iEtRh8qyEo6xIR-1kKMkEIszn>. For audio, call US Toll number 1-253-205-0468 and enter access code 837 0878 5880. Or to receive a free call back, provide your phone number when you join the event; and on July 2, 2024, at 5:30 p.m., 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/tZUud-quqT4pGtSAOQ4bwabHFIMDV2iwNfR2>. For audio, call US Toll number 1-253-205-0468 and enter access code 813 0367 5300. Or to receive a free call back, provide your phone number when you join the event.

Date of Intended Adoption: October 23, 2024.

Submit Written Comments to: Marla Koberstein, send US mail to: Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600; or send parcel delivery services to: Department of ecology, water quality program. Submit comments by mail, online, or at the hearing(s), online at <https://wq.ecology.commentinput.com?id=gHacGx2j4E>, comment period extended from 12:00 a.m. on May 10, 2024, to 11:59 p.m. on July 26, 2024.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, speech disability may call TTY at 877-833-6341, impaired hearing may call Washington relay service at 711, email [ecyADAACoordinator@ecy.wa.gov](mailto:ecyADAACoordinator@ecy.wa.gov), by June 19, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing revisions to natural conditions provisions in our surface water quality standards to provide water quality protection for aquatic life organisms and to establish possible methods for deriving those protective values.

Natural conditions provisions recognize that conditions in some surface waters during some seasons and in some areas naturally do not meet water quality criteria. For example, a naturally low-flowing stream in a natural prairie without any human alteration or human-caused pollution may have seasonally higher temperatures than the limit set to protect fish. These inconsistencies may be due to natural processes or seasonal conditions that prevent a waterbody from meeting the applicable aquatic life criteria. Our proposed revisions refine the natural conditions provisions to protect characteristics inherent and unique to a specific waterbody.

We evaluated the latest scientific data, methods, modeling tools, and approaches to propose updates to the natural conditions provisions necessary for refining aquatic life protection in Washington's surface waters. As part of this process, we considered the Environmental Protection Agency's (EPA) recommended approaches for natural conditions in water quality standards. This includes considering and proposing a performance-based approach, which would adopt into rule a sufficiently detailed process that ensures predictable, repeatable outcomes that could be used to develop criteria that would protect the designated uses for a specific waterbody.

The list below shows existing and new criteria we propose to update in Washington's water quality standards.

**Proposed revisions to existing criteria:**

- Updates to the natural conditions provision to limit use to aquatic life criteria.

- Updating allowances for human impacts to fresh and marine waters for D.O. and temperature when the natural conditions constitute the water quality criteria.
- Updates to the site-specific criteria process for an allowance for natural conditions to be used as a basis for developing these criteria.

**Other proposed changes:**

- Adding definitions for the performance-based approach and local and regional sources of human-caused pollution.
- Adding a new section detailing the use of the performance-based approach and applicable aquatic life criteria.
- Adding rule document referenced in the water quality standards that details the methodology of the performance-based approach.

**Minor nonsubstantive edits:**

- One update to reflect the latest and current revision for a referenced EPA document.

## Reasons Supporting Proposal:

**A. Reason for Rule Making:** We propose these revisions to address EPA's 2021 disapproval of previously approved natural condition provisions in our standards, including for fresh and marine D.O. and temperature human allowances (excluding lakes).

We recognized that it is important Washington has a provision in the water quality standards recognizing that conditions in some surface waters naturally do not always meet water quality criteria throughout the year. We propose these provisions to effectively implement our Clean Water Act programs.

Further, this rule making was identified as a priority in our most recent triennial review, which was submitted to EPA in April 2022.

**B. Approach to Rule Making:** We have decided to proceed with updating all necessary natural conditions provisions in a single rule making. We have engaged with stakeholders, tribes, and other interested parties as we developed the full scope of procedures for natural conditions provisions. This included development of the general provisions, procedures for determining what conditions are natural to surface waters, and some parameter specific considerations for temperature and D.O.

In this rule making, we considered all the latest scientific data, methods, modeling tools, and natural conditions provision approaches. Further, we evaluated previous natural conditions provision approaches in Washington and other states, as well as previous EPA policies and decisions regarding natural conditions (such as a performance-based approach). We worked with EPA and other federal agencies responsible for reviewing biological impacts of a rule to anticipate whether the proposed rule language will meet Endangered Species Act (ESA) protection requirements.

**C. Rule-Making Scope:** The scope of this rule making includes the natural conditions provisions and parameter-specific natural condition criteria in all surface water types.

This rule making is specific to the aquatic life criteria and how native aquatic species have acclimated or adapted to their environment, even if that environment does not naturally meet our state's aquatic life criteria. The natural conditions provisions are not related to any of the human health criteria in our state.



We evaluated EPA recommendations during this rule making, including draft, deliberative, staff-level recommendations made specifically for Washington's performance-based approach, and are proposing to adopt natural conditions criteria and criteria value development methodologies based on these EPA recommendations.

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 Federal Clean Water Act authority to periodically review and update the 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 24-10-015, the draft Rule Implementation Plan, Ecology Publication 24-10-016, and the Preliminary Regulatory Analyses, Ecology Publication 24-10-022, available on our rule-making web page.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Kalman Bugica, Lacey Headquarters, 360-972-4638; 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 47600, Olympia, WA 98504-7600, phone 360-628-6376, speech disability may call TTY at 877-833-6341, impaired hearing may 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.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: We analyzed the compliance costs of the proposed rule amendments in Chapter 3 of the Preliminary Regulatory Analysis (Publication 24-10-022). We conclude that the proposed rule amendments are not likely to result in compliance costs for any businesses. The proposed rule is likely to result only in cost-savings for dischargers, as compared to the baseline. Based on this analysis, ecology is exempt from performing additional analyses under the Regulatory Fairness Act (RFA), under RCW 19.85.025(4), which states that, "This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small busi-

nesses." Moreover, by not imposing compliance costs, the proposed rule amendments do not meet the RFA applicability standard under RCW 19.85.030 (1) (a).

Scope of exemption for rule proposal:  
Is fully exempt.

July 11, 2024  
Heather R. Bartlett  
Deputy Director

## OTS-5282.2

AMENDATORY SECTION (Amending WSR 24-01-088, filed 12/18/23, effective 1/18/24)

**WAC 173-201A-020 Definitions.** The following definitions are intended to facilitate the use of chapter 173-201A WAC:

**"1-DMax" or "1-day maximum temperature"** is the highest water temperature reached on any given day. This measure can be obtained using calibrated maximum/minimum thermometers or continuous monitoring probes having sampling intervals of 30 minutes or less.

**"7-DADMax" or "7-day average of the daily maximum temperatures"** is the arithmetic average of seven consecutive measures of daily maximum temperatures. The 7-DADMax for any individual day is calculated by averaging that day's daily maximum temperature with the daily maximum temperatures of the three days prior and the three days after that date.

**"Action value"** means a total phosphorus (TP) value established at the upper limit of the trophic states in each ecoregion (see Table 230(1)). Exceedance of an action value indicates that a problem is suspected. A lake-specific study may be needed to confirm if a nutrient problem exists.

**"Actions"** refers broadly to any human projects or activities.

**"Acute conditions"** are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of short-term exposure to the substance or detrimental environmental condition.

**"AKART"** is an acronym for "all known, available, and reasonable methods of prevention, control, and treatment." AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.

**"Ambient water quality"** refers to the conditions and properties of a surface water of the state as determined by the results of water samples, measurements, or observations.

**"Background"** means the biological, chemical, and physical conditions of a water body, outside the area of influence of the discharge under consideration. Background sampling locations in an enforcement action would be up-gradient or outside the area of influence of the discharge. If several discharges to any water body exist, and enforce-

ment action is being taken for possible violations to the standards, background sampling would be undertaken immediately up-gradient from each discharge.

**"Best management practices (BMP)"** means physical, structural, and/or managerial practices approved by the department that, when used singularly or in combination, prevent or reduce pollutant discharges.

**"Biological assessment"** is an evaluation of the biological condition of a water body using surveys of aquatic community structure and function and other direct measurements of resident biota in surface waters.

**"Bog"** means those wetlands that are acidic, peat forming, and whose primary water source is precipitation, with little, if any, outflow.

**"Carcinogen"** means any substance or agent that produces or tends to produce cancer in humans. For implementation of this chapter, the term carcinogen will apply to substances on the United States Environmental Protection Agency lists of A (known human) and B (probable human) carcinogens, and any substance which causes a significant increased incidence of benign or malignant tumors in a single, well conducted animal bioassay, consistent with the weight of evidence approach specified in the United States Environmental Protection Agency's Guidelines for Carcinogenic Risk Assessment as set forth in 51 FR 33992 et seq. as presently published or as subsequently amended or republished.

**"Chronic conditions"** are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of repeated or constant exposure over an extended period of time to a substance or detrimental environmental condition.

**"Combined sewer overflow (CSO) treatment plant"** is a facility that provides at-site treatment as provided for in chapter 173-245 WAC. A CSO treatment plant is a specific facility identified in a department-approved CSO reduction plan (long-term control plan) that is designed, operated and controlled by a municipal utility to capture and treat excess combined sanitary sewage and stormwater from a combined sewer system.

**"Compliance schedule"** or **"schedule of compliance"** is a schedule of remedial measures included in a permit or an order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with an effluent limit, other prohibition, or standard.

**"Created wetlands"** means those wetlands intentionally created from nonwetland sites to produce or replace natural wetland habitat.

**"Critical condition"** is when the physical, chemical, and biological characteristics of the receiving water environment interact with the effluent to produce the greatest potential adverse impact on aquatic biota and existing or designated water uses. For steady-state discharges to riverine systems the critical condition may be assumed to be equal to the 7Q10 flow event unless determined otherwise by the department.

**"Damage to the ecosystem"** means any demonstrated or predicted stress to aquatic or terrestrial organisms or communities of organisms which the department reasonably concludes may interfere in the health or survival success or natural structure of such populations. This stress may be due to, but is not limited to, alteration in habitat or changes in water temperature, chemistry, or turbidity, and shall consider the potential build up of discharge constituents or temporal in-

creases in habitat alteration which may create such stress in the long term.

**"Department"** means the state of Washington department of ecology.

**"Designated uses"** are those uses specified in this chapter for each water body or segment, regardless of whether or not the uses are currently attained.

**"Director"** means the director of the state of Washington department of ecology.

**"Drainage ditch"** means that portion of a designed and constructed conveyance system that serves the purpose of transporting surplus water; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

**"Ecoregions"** are defined using EPAs *Ecoregions of the Pacific Northwest* Document No. 600/3-86/033 July 1986 by Omernik and Gallant.

**"Enterococci"** refers to a subgroup of fecal streptococci that includes *S. faecalis*, *S. faecium*, *S. gallinarum*, and *S. avium*. The enterococci are differentiated from other streptococci by their ability to grow in 6.5% sodium chloride, at pH 9.6, and at 10°C and 45°C.

**"E. coli"** is a bacterium in the family Enterobacteriaceae named *Escherichia coli* and is a common inhabitant of the intestinal tract of warm-blooded animals, and its presence in water samples is an indication of fecal pollution and the possible presence of enteric pathogens.

**"Existing uses"** means those uses actually attained in fresh or marine waters on or after November 28, 1975, whether or not they are designated uses. Introduced species that are not native to Washington, and put-and-take fisheries comprised of nonself-replicating introduced native species, do not need to receive full support as an existing use.

**"Fecal coliform"** means that portion of the coliform group which is present in the intestinal tracts and feces of warm-blooded animals as detected by the product of acid or gas from lactose in a suitable culture medium within 24 hours at 44.5 plus or minus 0.2 degrees Celsius.

**"Geometric mean"** means either the nth root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

**"Ground water exchange"** means the discharge and recharge of ground water to a surface water. Discharge is inflow from an aquifer, seeps or springs that increases the available supply of surface water. Recharge is outflow downgradient to an aquifer or downstream to surface water for base flow maintenance. Exchange may include ground water discharge in one season followed by recharge later in the year.

**"Hardness"** means a measure of the calcium and magnesium salts present in water. For purposes of this chapter, hardness is measured in milligrams per liter and expressed as calcium carbonate (CaCO<sub>3</sub>).

**"Intake credit"** is a procedure for establishing effluent limits that takes into account the amount of a pollutant that is present in waters of the state, at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water.

**"Intragravel dissolved oxygen"** means the concentration of dissolved oxygen in the spaces between sediment particles in a streambed.

**"Irrigation ditch"** means that portion of a designed and constructed conveyance system that serves the purpose of transporting irriga-

tion water from its supply source to its place of use; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

**"Lakes"** shall be distinguished from riverine systems as being water bodies, including reservoirs, with a mean detention time of greater than 15 days.

**"Lake-specific study"** means a study intended to quantify existing nutrient concentrations, determine existing characteristic uses for lake class waters, and potential lake uses. The study determines how to protect these uses and if any uses are lost or impaired because of nutrients, algae, or aquatic plants. An appropriate study must recommend a criterion for total phosphorus (TP), total nitrogen (TN) in µg/l, or other nutrient that impairs characteristic uses by causing excessive algae blooms or aquatic plant growth.

**"Local and regional sources of human-caused pollution"** means sources of pollution caused by human actions, and the pollution originates from: (1) Within the boundaries of the state; or (2) Within the boundaries of a U.S. jurisdiction abutting to the state that impacts surface waters of the state.

**"Mean detention time"** means the time obtained by dividing a reservoir's mean annual minimum total storage by the 30-day 10-year low-flow from the reservoir.

**"Migration"** or **"translocation"** means any natural movement of an organism or community of organisms from one locality to another locality.

**"Migration for naturally limited waters"** is a subcategory of the aquatic life use of salmonid rearing and migration that is limited by the natural physical, chemical, or biological characteristics of the water body.

**"Mixing zone"** means that portion of a water body adjacent to an effluent outfall where mixing results in the dilution of the effluent with the receiving water. Water quality criteria may be exceeded in a mixing zone as conditioned and provided for in WAC 173-201A-400.

**"Natural conditions"** or **"natural background levels"** means surface water quality that was present before any human-caused pollution. When estimating natural conditions in the headwaters of a disturbed watershed it may be necessary to use the less disturbed conditions of a neighboring or similar watershed as a reference condition. (See also WAC 173-201A-260(1).)

**"New or expanded actions"** mean human actions that occur or are regulated for the first time, or human actions expanded such that they result in an increase in pollution, after July 1, 2003, for the purpose of applying this chapter only.

**"Nonpoint source"** means pollution that enters any waters of the state from any dispersed land-based or water-based activities including, but not limited to, atmospheric deposition; surface water runoff from agricultural lands, urban areas, or forest lands; subsurface or underground sources; or discharges from boats or marine vessels not otherwise regulated under the National Pollutant Discharge Elimination System program.

**"Outstanding resource waters"** are high quality waters designated by the state due to their exceptional water quality, ecological or recreational significance, unique habitat, or cold water refuge. Outstanding resource waters are given the highest level of protection under the state antidegradation policy.

**"Performance-based approach"** means a water quality standard that is a transparent process (i.e., methodology) which is sufficiently detailed and has suitable safeguards that ensures predictable and repeatable outcomes, rather than a specific outcome (i.e., concentration limit for a pollutant) consistent with 40 C.F.R. 131.11 and 40 C.F.R. 131.13.

**"Permit"** means a document issued pursuant to chapter 90.48 RCW specifying the waste treatment and control requirements and waste discharge conditions.

**"pH"** means the negative logarithm of the hydrogen ion concentration.

**"Pollution"** means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

**"Primary contact recreation"** means activities where a person would have direct contact with water to the point of complete submergence including, but not limited to, skin diving, swimming, and water skiing.

**"Salmonid spawning, rearing, and migration for naturally limited waters"** is a subcategory of the aquatic life use of salmonid spawning, rearing, and migration that is limited by the natural physical, chemical, or biological characteristics of the water body.

**"Shoreline stabilization"** means the anchoring of soil at the water's edge, or in shallow water, by fibrous plant root complexes; this may include long-term accretion of sediment or peat, along with shoreline progradation in such areas.

**"Spatial median"** is the middle value of multiple ranked measurements taken within the sampling area.

**"Stormwater"** means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater drainage system into a defined surface water body, or a constructed infiltration facility.

**"Stormwater attenuation"** means the process by which peak flows from precipitation are reduced and runoff velocities are slowed as a result of passing through a surface water body.

**"Surface waters of the state"** includes lakes, rivers, ponds, streams, inland waters, saltwaters, wetlands and all other surface waters and water courses within the jurisdiction of the state of Washington.

**"Temperature"** means water temperature expressed in degrees Celsius (°C).

**"Treatment wetlands"** means those wetlands intentionally constructed on nonwetland sites and managed for the primary purpose of wastewater or stormwater treatment. Treatment wetlands are considered part of a collection and treatment system, and generally are not subject to the criteria of this chapter.

**"Trophic state"** means a classification of the productivity of a lake ecosystem. Lake productivity depends on the amount of biologically available nutrients in water and sediments and may be based on to-

tal phosphorus (TP). Secchi depth and chlorophyll-a measurements may be used to improve the trophic state classification of a lake. Trophic states used in this rule include, from least to most nutrient rich, ultra-oligotrophic, oligotrophic, lower mesotrophic, upper mesotrophic, and eutrophic.

**"Turbidity"** means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

**"Upwelling"** means the natural process along Washington's Pacific Coast where the summer prevailing northerly winds produce a seaward transport of surface water. Cold, deeper more saline waters rich in nutrients and low in dissolved oxygen, rise to replace the surface water. The cold oxygen deficient water enters Puget Sound and other coastal estuaries at depth where it displaces the existing deep water and eventually rises to replace the surface water. Such surface water replacement results in an overall increase in salinity and nutrients accompanied by a depression in dissolved oxygen. Localized upwelling of the deeper water of Puget Sound can occur year-round under influence of tidal currents, winds, and geomorphic features.

**"USEPA"** means the United States Environmental Protection Agency.

**"Variance"** is a time-limited designated use and criterion as defined in 40 C.F.R. 131.3, and must be adopted by rule.

**"Wetlands"** means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. (Water bodies not included in the definition of wetlands as well as those mentioned in the definition are still waters of the state.)

**"Wildlife habitat"** means waters of the state used by, or that directly or indirectly provide food support to, fish, other aquatic life, and wildlife for any life history stage or activity.

AMENDATORY SECTION (Amending WSR 22-07-095, filed 3/22/22, effective 4/22/22)

**WAC 173-201A-200 Fresh water designated uses and criteria.** The following uses are designated for protection in fresh surface waters of the state. Use designations for water bodies are listed in WAC 173-201A-600 and 173-201A-602.

(1) **Aquatic life uses.** Aquatic life uses are designated based on the presence of, or the intent to provide protection for, the key uses identified in (a) of this subsection. It is required that all indigenous fish and nonfish aquatic species be protected in waters of the state in addition to the key species described below.

(a) The categories for aquatic life uses are:

(i) **Char spawning and rearing.** The key identifying characteristics of this use are spawning or early juvenile rearing by native char (bull trout and Dolly Varden), or use by other aquatic species similarly dependent on such cold water. Other common characteristic aquatic life uses for waters in this category include summer foraging and migration of native char; and spawning, rearing, and migration by other salmonid species.

(ii) **Core summer salmonid habitat.** The key identifying characteristics of this use are summer (June 15 - September 15) salmonid spawning or emergence, or adult holding; use as important summer rearing habitat by one or more salmonids; or foraging by adult and subadult native char. Other common characteristic aquatic life uses for waters in this category include spawning outside of the summer season, rearing, and migration by salmonids.

(iii) **Salmonid spawning, rearing, and migration.** The key identifying characteristic of this use is salmon or trout spawning and emergence that only occurs outside of the summer season (September 16 - June 14). Other common characteristic aquatic life uses for waters in this category include rearing and migration by salmonids.

(iv) **Salmonid rearing and migration only.** The key identifying characteristic of this use is use only for rearing or migration by salmonids (not used for spawning).

(v) **Nonanadromous interior redband trout.** For the protection of waters where the only trout species is a nonanadromous form of self-reproducing interior redband trout (*O. mykiss*), and other associated aquatic life.

(vi) **Indigenous warm water species.** For the protection of waters where the dominant species under natural conditions would be temperature tolerant indigenous nonsalmonid species. Examples include dace, redband shiner, chiselmouth, sucker, and northern pikeminnow.

(b) **General criteria.** General criteria that apply to all aquatic life fresh water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(c) **Aquatic life temperature criteria.** Except where noted, water temperature is measured by the 7-day average of the daily maximum temperatures (7-DADMax). Table 200 (1)(c) lists the temperature criteria for each of the aquatic life use categories.

**Table 200 (1)(c)  
Aquatic Life Temperature Criteria in Fresh  
Water**

Category	Highest 7-DADMax
Char Spawning and Rearing*	12°C (53.6°F)
Core Summer Salmonid Habitat*	16°C (60.8°F)
Salmonid Spawning, Rearing, and Migration*	17.5°C (63.5°F)
Salmonid Rearing and Migration <b>Only</b>	17.5°C (63.5°F)
Nonanadromous Interior Redband Trout	18°C (64.4°F)
Indigenous Warm Water Species	20°C (68°F)



\*Note: Some streams have a more stringent temperature criterion that is applied seasonally to further protect salmonid spawning and egg incubation. See (c)(iv) of this subsection.

(i) When a water body's temperature is warmer than the criteria in Table 200 (1)(c) (or within  $0.3^{\circ}\text{C}$  ( $0.54^{\circ}\text{F}$ ) of the criteria) and that condition is due to natural conditions, then ~~((human actions))~~ local and regional sources of human-caused pollution considered cumulatively may not cause the 7-DADMax temperature of that water body to increase more than  $0.3^{\circ}\text{C}$  ( $0.54^{\circ}\text{F}$ ) above natural conditions.

(ii) When the background condition of the water is cooler than the criteria in Table 200 (1)(c), incremental temperature increases resulting from individual point source activities must not exceed the numeric criteria and must not, at any time, exceed  $28/(T+7)$  as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge).

(iii) Temperatures are not to exceed the criteria at a probability frequency of more than once every 10 years on average.

(iv) Spawning and incubation protection. The department has identified waterbodies, or portions thereof, which require special protection for spawning and incubation in ecology publication 06-10-038 (also available on ecology's website at [www.ecology.wa.gov](http://www.ecology.wa.gov)). This publication indicates where and when the following criteria are to be applied to protect the reproduction of native char, salmon, and trout:

- Maximum 7-DADMax temperatures of  $9^{\circ}\text{C}$  ( $48.2^{\circ}\text{F}$ ) at the initiation of spawning and at fry emergence for char; and

- Maximum 7-DADMax temperatures of  $13^{\circ}\text{C}$  ( $55.4^{\circ}\text{F}$ ) at the initiation of spawning for salmon and at fry emergence for salmon and trout.

The two criteria above are protective of incubation as long as human actions do not significantly disrupt the normal patterns of fall cooling and spring warming that provide significantly colder temperatures over the majority of the incubation period.

(v) For lakes, human actions considered cumulatively may not increase the 7-DADMax temperature more than  $0.3^{\circ}\text{C}$  ( $0.54^{\circ}\text{F}$ ) above natural conditions.

(vi) Temperature measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should:

(A) Be taken from well mixed portions of rivers and streams; and

(B) Not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(vii) The department will incorporate the following guidelines on preventing acute lethality and barriers to migration of salmonids into determinations of compliance with the narrative requirements for use protection established in this chapter (e.g., WAC 173-201A-310(1), 173-201A-400(4), and 173-201A-410 (1)(c)). The following site-level considerations do not, however, override the temperature criteria established for waters in subsection (1)(c) of this section or WAC 173-201A-600 through 173-201A-602:

(A) Moderately acclimated ( $16-20^{\circ}\text{C}$ , or  $60.8-68^{\circ}\text{F}$ ) adult and juvenile salmonids will generally be protected from acute lethality by discrete human actions maintaining the 7-DADMax temperature at or below  $22^{\circ}\text{C}$  ( $71.6^{\circ}\text{F}$ ) and the 1-day maximum (1-DMax) temperature at or below  $23^{\circ}\text{C}$  ( $73.4^{\circ}\text{F}$ ).

(B) Lethality to developing fish embryos can be expected to occur at a 1-DMax temperature greater than  $17.5^{\circ}\text{C}$  ( $63.5^{\circ}\text{F}$ ).

(C) To protect aquatic organisms, discharge plume temperatures must be maintained such that fish could not be entrained (based on plume time of travel) for more than two seconds at temperatures above 33°C (91.4°F) to avoid creating areas that will cause near instantaneous lethality.

(D) Barriers to adult salmonid migration are assumed to exist any time the 1-DMax temperature is greater than 22°C (71.6°F) and the adjacent downstream water temperatures are 3°C (5.4°F) or more cooler.

(viii) Nothing in this chapter shall be interpreted to prohibit the establishment of effluent limitations for the control of the thermal component of any discharge in accordance with 33 U.S.C. 1326 (commonly known as section 316 of the Clean Water Act).

(d) **Aquatic life dissolved oxygen (D.O.) criteria.** The D.O. criteria are measured in milligrams per liter (mg/L) or percent oxygen saturation. Table 200 (1)(d) lists the D.O. criteria for each of the aquatic life use categories. Compliance may be demonstrated through either the water column or intragravel criteria in Table 200 (1)(d).

**Table 200 (1)(d)  
Aquatic Life Dissolved Oxygen Criteria in  
Fresh Water**

Category	Water Column (1-Day Minimum)
Char Spawning and Rearing*	10 mg/L or 90% saturation
Core Summer Salmonid Habitat*	10 mg/L or 95% saturation
Salmonid Spawning, Rearing, and Migration*	10 mg/L or 90% saturation
Salmonid Rearing and Migration <b>Only</b>	6.5 mg/L
Nonanadromous Interior Redband Trout*	10 mg/L or 90% saturation
Indigenous Warm Water Species	6.5 mg/L

\* Intragravel D.O. criteria for these aquatic life use categories may be used for compliance purposes. When intragravel D.O. is used for compliance, the intragravel D.O. (1-day minimum) concentration must be 8.0 mg/L or greater, and the D.O. water column (1-day minimum) concentration must be 9.0 mg/L or greater. Intragravel D.O. must be measured as a spatial median within the same habitat area.

(i) When a water body's D.O. is lower than the criteria in Table 200 (1)(d) (or within 0.2 mg/L of the criteria) and that condition is due to natural conditions, then (~~human actions~~) local and regional sources of human-caused pollution considered cumulatively may not cause the D.O. of that water body to decrease more than 10 percent or 0.2 mg/L below natural conditions, whichever decrease is smaller.

(ii) For lakes, human actions considered cumulatively may not decrease the dissolved oxygen concentration more than 0.2 mg/L below natural conditions.

(iii) Concentrations of D.O. are not to fall below the criteria in the table at a probability frequency of more than once every 10 years on average.

(iv) D.O. measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should:

(A) Be taken from well mixed portions of rivers and streams; and

(B) Not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(e) **Aquatic life turbidity criteria.** Turbidity is measured in "nephelometric turbidity units" or "NTUs." Table 200 (1)(e) lists the maximum turbidity criteria for each of the aquatic life use categories.

**Table 200 (1)(e)  
Aquatic Life Turbidity Criteria in Fresh Water**

Category	NTUs
Char Spawning and Rearing	Turbidity shall not exceed: <ul style="list-style-type: none"> <li>• 5 NTU over background when the background is 50 NTU or less; or</li> <li>• A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.</li> </ul>
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration Salmonid Rearing and Migration <b>Only</b>	Same as above.  Turbidity shall not exceed: <ul style="list-style-type: none"> <li>• 10 NTU over background when the background is 50 NTU or less; or</li> <li>• A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.</li> </ul>
Nonanadromous Interior Redband Trout	Turbidity shall not exceed: <ul style="list-style-type: none"> <li>• 5 NTU over background when the background is 50 NTU or less; or</li> <li>• A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.</li> </ul>
Indigenous Warm Water Species	Turbidity shall not exceed: <ul style="list-style-type: none"> <li>• 10 NTU over background when the background is 50 NTU or less; or</li> <li>• A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.</li> </ul>

The turbidity criteria established under WAC 173-201A-200 (1)(e) shall be modified, without specific written authorization from the department, to allow a temporary area of mixing during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This temporary area of mixing is subject to the constraints of WAC 173-201A-400 (4) and (6) and can occur only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-

place sediments and exceedances of the turbidity criteria. A temporary area of mixing shall be as follows:

(i) For waters up to 10 cfs flow at the time of construction, the point of compliance shall be 100 feet downstream from the activity causing the turbidity exceedance.

(ii) For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be 200 feet downstream of the activity causing the turbidity exceedance.

(iii) For waters above 100 cfs flow at the time of construction, the point of compliance shall be 300 feet downstream of the activity causing the turbidity exceedance.

(iv) For projects working within or along lakes, ponds, wetlands, or other nonflowing waters, the point of compliance shall be at a radius of 150 feet from the activity causing the turbidity exceedance.

(f) **Aquatic life total dissolved gas (TDG) criteria.** TDG is measured in percent saturation. Table 200 (1) (f) lists the maximum TDG criteria for each of the aquatic life use categories.

**Table 200 (1) (f)  
Aquatic Life Total Dissolved Gas Criteria  
in Fresh Water**

<b>Category</b>	<b>Percent Saturation</b>
Char Spawning and Rearing	Total dissolved gas shall not exceed 110 percent of saturation at any point of sample collection.
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration	Same as above.
Salmonid Rearing and Migration <b>Only</b>	Same as above.
Nonanadromous Interior Redband Trout	Same as above.
Indigenous Warm Water Species	Same as above.

(i) The water quality criteria established in this chapter for TDG shall not apply when the stream flow exceeds the seven-day, 10-year frequency flood.

(ii) The TDG criteria may be adjusted to aid fish passage over hydroelectric dams that spill for anadromous juvenile fish as of the 2020 spill season. The elevated TDG levels are intended to allow increased fish passage without causing more harm to fish populations than caused by turbine fish passage. The following special fish passage exemptions for the Snake and Columbia rivers apply when spilling water at dams is necessary to aid fish passage:

(A) TDG must not exceed:

- An average of 115 percent as measured in the forebays of the next downstream dams and must not exceed an average of 120 percent as measured in the tailraces of each dam (these averages are calculated as an average of the 12 highest hourly readings in a calendar day, relative to atmospheric pressure); and

- A maximum TDG saturation level of 125 percent calculated as an average of the two highest hourly TDG measures in a calendar day during spillage for fish passage.

(B) To further aid fish passage during the spring spill season (generally from April through June), spill may be increased up to the

following levels as measured at the tailrace fixed site monitoring location:

- A maximum TDG saturation level of 125 percent calculated as an average of the 12 highest hourly TDG measures in a calendar day; and
- A maximum TDG saturation level of 126 percent calculated as an average of any two consecutive hourly TDG measures.

These TDG criteria may be applied in place of (f)(ii)(A) of this subsection during spring spill operations when applied in accordance with the following conditions:

(I) In addition to complying with the requirements of this chapter, the tailrace maximum TDG criteria at hydropower dams shall be applied in accordance with Endangered Species Act consultation documents associated with spill operations on the Snake and Columbia rivers, including operations for fish passage. The Endangered Species Act consultation documents are those by which dams may legally operate during the time that the adjusted criteria in (f)(ii)(B) of this subsection are in use.

(II) Application of the tailrace maximum TDG criteria must be accompanied by a department approved biological monitoring plan designed to measure impacts of fish exposed to increased TDG conditions throughout the spring spill season. Beginning in the year 2021, plans must include monitoring for nonsalmonid fish species and must continue for a minimum of five years, and thereafter as determined by the department.

(III) TDG must be reduced to allowances specified in (f)(ii)(A) of this subsection if the calculated incidence of gas bubble trauma in salmonids (with a minimum sample size of 50 fish required weekly) or nonsalmonids (with a minimum sample size of 50 fish required weekly) exceeds:

- Gas bubble trauma in nonpaired fins of 15 percent; or
- Gas bubble trauma in nonpaired fins of five percent and gas bubbles occlude more than 25 percent of the surface area of the fin.

If gas bubble trauma exceeds these biological thresholds, additional monitoring must demonstrate the incidence of gas bubble trauma below biological thresholds before TDG can be adjusted to allowances specified in this subsection. Gas bubble trauma monitoring data shall be excluded from comparison to biological thresholds when higher than normal river flow contributes to excess spill above the ability to meet (f)(ii)(B) of this subsection. This monitoring data exclusion shall apply for one full calendar day after reduced river flow allows attainment of (f)(ii)(B) of this subsection.

(g) **Aquatic life pH criteria.** Measurement of pH is expressed as the negative logarithm of the hydrogen ion concentration. Table 200 (1)(g) lists the pH levels for each of the aquatic life use categories.

**Table 200 (1)(g)  
Aquatic Life pH Criteria in Fresh Water**

Use Category	pH Units
Char Spawning and Rearing	pH shall be within the range of 6.5 to 8.5, with a human-caused variation within the above range of less than 0.2 units.
Core Summer Salmonid Habitat	Same as above.

Use Category	pH Units
Salmonid Spawning, Rearing, and Migration	pH shall be within the range of 6.5 to 8.5 with a human-caused variation within the above range of less than 0.5 units.
Salmonid Rearing and Migration <b>Only</b>	Same as above.
Nonanadromous Interior Redband Trout	Same as above.
Indigenous Warm Water Species	Same as above.

(h) **Aquatic life fine sediment criteria.** The following narrative criteria apply to all existing and designated uses for fresh water:

(i) Water bodies shall not contain excess fine sediment (<2 mm) from human-caused sources that impair designated uses.

(ii) When reference values are used to demonstrate compliance with the fine sediment criteria, measured conditions shall be compared to those from reference sites or regional data that represent least disturbed site conditions of a comparable water body or ecoregion. Reference locations should be comparable in hydrography, geology, ecology, and habitat to that of the water body evaluated.

(2) **Recreational uses.** The recreational use is primary contact recreation.

(a) **General criteria.** General criteria that apply to fresh water recreational uses are described in WAC 173-201A-260 (2) (a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(b) **Water contact recreation bacteria criteria.** Table 200 (2) (b) lists the bacteria criteria to protect water contact recreation in fresh waters. These criteria are based on *Escherichia coli* (*E. coli*) and fecal coliform organism levels, and expressed as colony forming units (CFU) or most probable number (MPN). The use of fecal coliform organism levels to determine compliance will expire December 31, 2020.

**Table 200 (2) (b)  
Primary Contact Recreation Bacteria Criteria in Fresh Water**

Bacterial Indicator	Criteria
<i>E. coli</i>	<i>E. coli</i> organism levels within an averaging period must not exceed a geometric mean value of 100 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than 10 sample points exist) obtained within the averaging period exceeding 320 CFU or MPN per 100 mL.

Bacterial Indicator	Criteria
Fecal coliform (expires 12/31/2020)	Fecal coliform organism levels within an averaging period must not exceed a geometric mean value of 100 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than 10 sample points exist) obtained within an averaging period exceeding 200 CFU or MPN per 100 mL.

(i) A minimum of three samples is required to calculate a geometric mean for comparison to the geometric mean criteria. Sample collection dates shall be well distributed throughout the averaging period so as not to mask noncompliance periods.

(A) Effluent bacteria samples: When averaging effluent bacteria sample values for comparison to the geometric mean criteria, or for determining permit compliance, the averaging period shall be 30 days or less.

(B) Ambient water quality samples: When averaging bacteria sample values for comparison to the geometric mean criteria, it is preferable to average by season. The averaging period of bacteria sample data shall be 90 days or less.

(ii) When determining compliance with the bacteria criteria in or around small sensitive areas, such as swimming beaches, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iii) As determined necessary by the department, more stringent bacteria criteria may be established for rivers and streams that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the river or stream are being met.

(iv) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis as described in WAC 173-201A-430.

(3) **Water supply uses.** The water supply uses are domestic, agricultural, industrial, and stock watering.

**General criteria.** General criteria that apply to the water supply uses are described in WAC 173-201A-260 (2) (a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

(4) **Miscellaneous uses.** The miscellaneous fresh water uses are wildlife habitat, harvesting, commerce and navigation, boating, and aesthetics.

**General criteria.** General criteria that apply to miscellaneous fresh water uses are described in WAC 173-201A-260 (2) (a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

AMENDATORY SECTION (Amending WSR 20-02-091, filed 12/30/19, effective 1/30/20)

**WAC 173-201A-210 Marine water designated uses and criteria.** The following uses are designated for protection in marine surface waters of the state of Washington. Use designations for specific water bodies are listed in WAC 173-201A-612.

(1) **Aquatic life uses.** Aquatic life uses are designated using the following general categories. It is required that all indigenous fish and nonfish aquatic species be protected in waters of the state.

(a) **The categories for aquatic life uses are:**

(i) **Extraordinary quality.** Water quality of this use class shall markedly and uniformly exceed the requirements for all uses including, but not limited to, salmonid migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

(ii) **Excellent quality.** Water quality of this use class shall meet or exceed the requirements for all uses including, but not limited to, salmonid migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

(iii) **Good quality.** Water quality of this use class shall meet or exceed the requirements for most uses including, but not limited to, salmonid migration and rearing; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

(iv) **Fair quality.** Water quality of this use class shall meet or exceed the requirements for selected and essential uses including, but not limited to, salmonid and other fish migration.

(b) **General criteria.** General criteria that apply to aquatic life marine water uses are described in WAC 173-201A-260 (2) (a) and (b), and are for:

(i) Toxic, radioactive, and deleterious materials; and

(ii) Aesthetic values.

(c) **Aquatic life temperature criteria.** Except where noted, temperature is measured as a 1-day maximum temperature (1-DMax). Table 210 (1)(c) lists the temperature criteria for each of the aquatic life use categories.

**Table 210 (1)(c)  
Aquatic Life Temperature Criteria in Marine  
Water**

Category	Highest 1-DMax
<i>Extraordinary quality</i>	13°C (55.4°F)
<i>Excellent quality</i>	16°C (60.8°F)
<i>Good quality</i>	19°C (66.2°F)
<i>Fair quality</i>	22°C (71.6°F)

(i) When a water body's temperature is warmer than the criteria in Table 210 (1)(c) (or within 0.3°C (0.54°F) of the criteria) and that condition is due to natural conditions, then ((human actions)) local and regional sources of human-caused pollution considered cumulatively may not cause the 7-DADMax temperature of that water body to increase more than 0.3°C (0.54°F) above natural conditions.



(ii) When the natural condition of the water is cooler than the criteria in Table 210 (1) (c), incremental temperature increases resulting from individual point source activities must not exceed the numeric criteria and must not, at any time, exceed  $12/(T-2)$  as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge).

(iii) Temperatures are not to exceed the criteria at a probability frequency of more than once every (~~ten~~) 10 years on average.

(iv) Temperature measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(v) The department will incorporate the following guidelines on preventing acute lethality and barriers to migration of salmonids into determinations of compliance with the narrative requirements for use protection established in this chapter (e.g., WAC 173-201A-310(1), 173-201A-400(4), and 173-201A-410 (1) (c)). The following site-level considerations do not, however, override the temperature criteria established for waters in subsection (1) (c) of this subsection or WAC 173-201A-612:

(A) Moderately acclimated (16-20°C, or 60.8-68°F) adult and juvenile salmonids will generally be protected from acute lethality by discrete human actions maintaining the 7-DADMax temperature at or below 22°C (71.6°F) and the 1-DMax temperature at or below 23°C (73.4°F).

(B) Lethality to developing fish embryos can be expected to occur at a 1-DMax temperature greater than 17.5°C (63.5°F).

(C) To protect aquatic organisms, discharge plume temperatures must be maintained such that fish could not be entrained (based on plume time of travel) for more than two seconds at temperatures above 33°C (91.4°F) to avoid creating areas that will cause near instantaneous lethality.

(D) Barriers to adult salmonid migration are assumed to exist any time the 1-DMax temperature is greater than 22°C (71.6°F) and the adjacent downstream water temperatures are 3°C (5.4°F) or more cooler.

(vi) Nothing in this chapter shall be interpreted to prohibit the establishment of effluent limitations for the control of the thermal component of any discharge in accordance with 33 U.S.C. 1326 (commonly known as section 316 of the Clean Water Act).

(d) **Aquatic life dissolved oxygen (D.O.) criteria.** Except where noted, D.O. concentrations are measured as a 1-day minimum in milligrams per liter. Table 210 (1) (d) lists the D.O. criteria for each of the aquatic life use categories.

**Table 210 (1) (d)  
Aquatic Life Dissolved Oxygen Criteria in  
Marine Water**

Category	Lowest 1-Day Minimum
<i>Extraordinary quality</i>	7.0 mg/L
<i>Excellent quality</i>	6.0 mg/L
<i>Good quality</i>	5.0 mg/L
<i>Fair quality</i>	4.0 mg/L

(i) When a water body's D.O. is lower than the criteria in Table 210 (1)(d) (or within 0.2 mg/L of the criteria) and that condition is due to natural conditions, then (~~human actions~~) local and regional sources of human-caused pollution considered cumulatively may not cause the D.O. of that water body to decrease more than 10 percent or 0.2 mg/L below natural conditions, whichever decrease is smaller.

(ii) Concentrations of D.O. are not to fall below the criteria in the table at a probability frequency of more than once every (~~ten~~) 10 years on average.

(iii) D.O. measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(e) **Aquatic life turbidity criteria.** Turbidity is measured in "nephelometric turbidity units" or "NTUs." Table 210 (1)(e) lists the one-day maximum turbidity allowed as a result of human actions for each of the aquatic life use categories.

**Table 210 (1)(e)  
Aquatic Life Turbidity Criteria in Marine  
Water**

Category	NTUs
<i>Extraordinary quality</i>	Turbidity must not exceed: • 5 NTU over background when the background is 50 NTU or less; or • A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
<i>Excellent quality</i>	Same as above.
<i>Good quality</i>	Turbidity must not exceed: • 10 NTU over background when the background is 50 NTU or less; or • A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.
<i>Fair quality</i>	Same as above.

(i) The turbidity criteria established under WAC 173-201A-210 (1)(e) shall be modified, without specific written authorization from the department, to allow a temporary area of mixing during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This temporary area of mixing is subject to the constraints of WAC 173-201A-400 (4) and (6) and can occur only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. For estuaries or marine waters, the point of compliance for a temporary area of mixing shall be at a radius of (~~one hundred fifty~~) 150 feet from the activity causing the turbidity exceedance.

(f) **Aquatic life pH criteria.** Measurement of pH is expressed as the negative logarithm of the hydrogen ion concentration. Table 210 (1)(f) lists the pH levels allowed as a result of human actions for each of the aquatic life use categories.

**Table 210 (1)(f)**

## Aquatic Life pH Criteria in Marine Water

Use Category	pH Units
<i>Extraordinary quality</i>	pH must be within the range of 7.0 to 8.5 with a human-caused variation within the above range of less than 0.2 units.
<i>Excellent quality</i>	pH must be within the range of 7.0 to 8.5 with a human-caused variation within the above range of less than 0.5 units.
<i>Good quality</i>	Same as above.
<i>Fair quality</i>	pH must be within the range of 6.5 to 9.0 with a human-caused variation within the above range of less than 0.5 units.

(2) **Shellfish harvesting.**

(a) General criteria. General criteria that apply to shellfish harvesting uses for marine water are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(b) **Shellfish harvesting bacteria criteria.** Fecal coliform organism levels are used to protect shellfish harvesting. Criteria are expressed as colony forming units (CFU) or most probable number (MPN). Fecal coliform must not exceed a geometric mean value of 14 CFU or MPN per 100 mL, and not have more than 10 percent of all samples (or any single sample when less than ~~((ten))~~ 10 sample points exist) obtained for calculating the geometric mean value exceeding 43 CFU or MPN per 100 mL.

(i) Shellfish growing areas approved for unconditional harvest by the state department of health are fully supporting the shellfish harvest goals of this chapter, even when comparison with the criteria contained in this chapter suggest otherwise.

(ii) When averaging bacteria sample data for comparison to the geometric mean criteria, it is preferable to average by season and include five or more data collection events within each period. Averaging of data collected beyond a ~~((thirty))~~ 30-day period, or beyond a specific discharge event under investigation, is not permitted when such averaging would skew the data set so as to mask noncompliance periods. The period of averaging should not exceed ~~((twelve))~~ 12 months, and should have sample collection dates well distributed throughout the reporting period.

(iii) When determining compliance with the bacteria criteria in or around small sensitive areas, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iv) As determined necessary by the department, more stringent bacteria criteria may be established for waters that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the water are being met.

(v) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis by the department.

(3) **Recreational uses.** The recreational use is primary contact recreation.

(a) **General criteria.** General criteria that apply to water contact uses for marine water are described in WAC 173-201A-260 (2) (a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(b) **Water contact recreation bacteria criteria.** Table 210 (3) (b) lists the bacteria criteria to protect water contact recreation in marine waters. These criteria are based on enterococci and fecal coliform organism levels, and expressed as colony forming units (CFU) or most probable number (MPN). The use of fecal coliform levels to determine compliance will expire December 31, 2020.

**Table 210 (3) (b)  
Primary Contact Recreation Bacteria Criteria in Marine Water**

<b>Bacterial Indicator</b>	<b>Criteria</b>
Enterococci	Enterococci organism levels within an averaging period must not exceed a geometric mean value of 30 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than <del>((ten))</del> <u>10</u> sample values exist) obtained within the averaging period exceeding 110 CFU or MPN per 100 mL.
Fecal coliform (expires 12/31/2020)	Fecal coliform organism levels within an averaging period must not exceed a geometric mean value of 14 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than <del>((ten))</del> <u>10</u> sample points exist) obtained within an averaging period exceeding 43 CFU or MPN per 100 mL.

(i) A minimum of three samples is required to calculate a geometric mean for comparison to the geometric mean criterion. Sample collection dates shall be well distributed throughout the averaging period so as not to mask noncompliance periods.

(A) Effluent bacteria samples: When averaging effluent bacteria sample values for comparison to the geometric mean criteria, or for determining permit compliance, the averaging period shall be (~~(thirty))~~ 30 days or less.

(B) Ambient water quality samples: When averaging ambient bacteria sample values for comparison to the geometric mean criteria, it is preferable to average by season. The averaging period of bacteria sample data shall be (~~(ninety))~~ 90 days or less.

(ii) When determining compliance with the bacteria criteria in or around small sensitive areas, such as swimming beaches, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together.

er (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iii) As determined necessary by the department, more stringent bacteria criteria may be established for waters that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the water are being met.

(iv) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis as described in WAC 173-201A-430.

(4) **Miscellaneous uses.** The miscellaneous marine water uses are wildlife habitat, harvesting, commerce and navigation, boating, and aesthetics.

**General criteria.** General criteria that apply in miscellaneous marine water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

AMENDATORY SECTION (Amending WSR 11-09-090, filed 4/20/11, effective 5/21/11)

**WAC 173-201A-260 Natural conditions and other water quality criteria and applications.** (1) **Natural and irreversible human conditions.**

(a) It is recognized that portions of many water bodies cannot meet the assigned aquatic life criteria due to the natural conditions of the water body. When a water body does not meet its assigned aquatic life criteria due to natural climatic or landscape attributes, the natural conditions constitute the water quality criteria.

When natural conditions constitute the aquatic life water quality criteria, criteria values may be established using site-specific criteria (see WAC 173-201A-430), use attainability analysis (see WAC 173-201A-440), or the performance-based approach (see WAC 173-201A-470).

(b) When a water body does not meet its assigned criteria due to human structural changes that cannot be effectively remedied (as determined consistent with the federal regulations at 40 C.F.R. 131.10), then alternative estimates of the attainable water quality conditions, plus any further allowances for human effects specified in this chapter for when natural conditions exceed the criteria, may be used to establish an alternative criteria for the water body (see WAC 173-201A-430 and 173-201A-440).

(2) **Toxics and aesthetics criteria.** The following narrative criteria apply to all existing and designated uses for fresh and marine water:

(a) Toxic, radioactive, or deleterious material concentrations must be below those which have the potential, either singularly or cumulatively, to adversely affect characteristic water uses, cause acute or chronic conditions to the most sensitive biota dependent upon those waters, or adversely affect public health (see WAC 173-201A-240, toxic substances, and 173-201A-250, radioactive substances).

(b) Aesthetic values must not be impaired by the presence of materials or their effects, excluding those of natural origin, which offend the senses of sight, smell, touch, or taste (see WAC 173-201A-230 for guidance on establishing lake nutrient standards to protect aesthetics).

(3) **Procedures for applying water quality criteria.** In applying the appropriate water quality criteria for a water body, the department will use the following procedure:

(a) The department will establish water quality requirements for water bodies, in addition to those specifically listed in this chapter, on a case-specific basis where determined necessary to provide full support for designated and existing uses.

(b) Upstream actions must be conducted in manners that meet downstream water body criteria. Except where and to the extent described otherwise in this chapter, the criteria associated with the most upstream uses designated for a water body are to be applied to headwaters to protect nonfish aquatic species and the designated downstream uses.

(c) Where multiple criteria for the same water quality parameter are assigned to a water body to protect different uses, the most stringent criterion for each parameter is to be applied.

(d) At the boundary between water bodies protected for different uses, the more stringent criteria apply.

(e) In brackish waters of estuaries, where different criteria for the same use occurs for fresh and marine waters, the decision to use the fresh water or the marine water criteria must be selected and applied on the basis of vertically averaged daily maximum salinity, referred to below as "salinity."

(i) The fresh water criteria must be applied at any point where (~~ninety-five~~) 95 percent of the salinity values are less than or equal to one part per thousand, except that the fresh water criteria for bacteria applies when the salinity is less than (~~ten~~) 10 parts per thousand; and

(ii) The marine water criteria must apply at all other locations where the salinity values are greater than one part per thousand, except that the marine criteria for bacteria applies when the salinity is (~~ten~~) 10 parts per thousand or greater.

(f) Numeric criteria established in this chapter are not intended for application to human created waters managed primarily for the removal or containment of pollution. This special provision also includes private farm ponds created from upland sites that did not incorporate natural water bodies.

(i) Waters covered under this provision must be managed so that:

(A) They do not create unreasonable risks to human health or uses of the water; and

(B) Discharges from these systems meet down gradient surface and ground water quality standards.

(ii) This provision does not apply to waterways designed and managed primarily to convey or transport water from one location to another, rather than to remove pollution en route.

(g) When applying the numeric criteria established in this chapter, the department will give consideration to the precision and accuracy of the sampling and analytical methods used, as well as the existing conditions at the time.

(h) The analytical testing methods for these numeric criteria must be in accordance with the "*Guidelines Establishing Test Procedures for the Analysis of Pollutants*" (40 C.F.R. Part 136) or super-

seeding methods published. The department may also approve other methods following consultation with adjacent states and with the approval of the USEPA.

(i) The primary means for protecting water quality in wetlands is through implementing the antidegradation procedures described in Part III of this chapter.

(i) In addition to designated uses, wetlands may have existing beneficial uses that are to be protected that include ground water exchange, shoreline stabilization, and stormwater attenuation.

(ii) Water quality in wetlands is maintained and protected by maintaining the hydrologic conditions, hydrophytic vegetation, and substrate characteristics necessary to support existing and designated uses.

(iii) Wetlands must be delineated using the *Washington State Wetlands Identification and Delineation Manual*, in accordance with WAC 173-22-035.

AMENDATORY SECTION (Amending WSR 03-14-129, filed 7/1/03, effective 8/1/03)

**WAC 173-201A-430 Site-specific criteria.** (1) Where the attainable condition of existing and designated uses for the water body would be fully protected using an alternative criterion, site-specific criteria may be adopted.

(a) The site-specific criterion must be consistent with the federal regulations on designating and protecting uses (currently 40 C.F.R. 131.10 and 131.11); and

(b) The decision to approve a site-specific criterion must be subject to a public involvement and intergovernmental coordination process.

(2) The site-specific analyses for the development of a new water quality criterion must be conducted in a manner that is scientifically justifiable and consistent with (~~the assumptions and rationale in "Guidelines for Deriving National Water Quality Criteria for the Protection of Aquatic Organisms and their Uses," EPA 1985~~) 40 C.F.R. 131.11; and conducted in accordance with the procedures established in the *"Water Quality Standards Handbook,"* EPA ((1994)) 2023, as revised.

(3) The decision to approve the site-specific criterion must be based on a demonstration that it will protect the existing and attainable uses of the water body.

(4) Site-specific criteria are not in effect until they have been incorporated into this chapter and approved by the USEPA.

NEW SECTION

**WAC 173-201A-470 Performance-based approach.** Where the natural water quality of a water body constitutes the aquatic life water quality criteria, a performance-based approach may be used to establish criteria that are fully protective of existing and designated aquatic life uses.

(1) Aquatic life water quality criteria must be derived using the procedures referenced in ecology publication 24-10-017, *"A Perform-*

*ance-Based Approach for Developing Site-Specific Natural Conditions Criteria for Aquatic Life in Washington,"* as revised.

(2) Use of the performance-based approach for establishing aquatic life water quality criteria is limited to the following listed water quality constituents:

- (a) Aquatic life temperature criteria in fresh water;
- (b) Aquatic life dissolved oxygen criteria in fresh water;
- (c) Aquatic life pH criteria in fresh water;
- (d) Aquatic life temperature criteria in marine water;
- (e) Aquatic life dissolved oxygen criteria in marine water.

(3) Aquatic life water quality criteria developed using this approach are applicable to the water body upon derivation.

(4) If development of aquatic life criteria using the performance-based approach cannot meet the requirements set forth in these procedures, then alternatives specified in the paragraph following WAC 173-201A-260 (1) (a) may be used.



## WSR 24-15-056

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed July 16, 2024, 12:18 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.328(5).

Title of Rule and Other Identifying Information: Chapter 246-105 WAC, Immunization of child care and school children against certain vaccine-preventable diseases.

Hearing Location(s): On September 18, 2024, at 1:00 p.m., at the Department of Health, Room 166 and 167, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501; or virtual. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_PEqVHOSyQ367dCANypGB7Q](https://us02web.zoom.us/webinar/register/WN_PEqVHOSyQ367dCANypGB7Q). After registering, you will receive a confirmation email containing information about joining the webinar. Individuals wishing to attend this hearing may attend either in person or virtually.

Date of Intended Adoption: September 25, 2024.

Submit Written Comments to: Meghan Cichy, P.O. Box 47830, Olympia, WA 98504-7830, phone 564-669-3834, email [Meghan.Cichy@doh.wa.gov](mailto:Meghan.Cichy@doh.wa.gov), beginning the date and time of filing, by September 18, 2024, at midnight.

Assistance for Persons with Disabilities: Contact Meghan Cichy, phone 564-669-3834, TTY 771 [711], email [Meghan.Cichy@doh.wa.gov](mailto:Meghan.Cichy@doh.wa.gov), by September 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Under WAC 246-105-040, the department of health (department) develops and distributes implementation guidelines for schools and child care centers consistent with national immunization guidelines. Guidelines are determined by the Centers for Disease Control and Prevention's (CDC) Advisory Committee on Immunization Practices (ACIP) and are published annually in the Morbidity and Mortality Weekly Report as the Recommended Immunization Schedule for Children and Adolescents Aged 18 Years or Younger—United States.

The proposed change to WAC 246-105-040 updates the ACIP recommendations from the 2019 version to the most recent 2024 version. The proposed rule references the "*Advisory Committee on Immunization Practices (ACIP) Recommended Immunization Schedule for Children and Adolescents Aged 18 Years or Younger—United States, 2024*"; as published in the *Morbidity and Mortality Weekly Report* (MMWR) 2024; 73(1):6-10."

Under WAC 246-105-060, schools and child care centers are required to submit an annual immunization status report. WAC 246-105-060 requires these reports to be submitted to the department by November 1st. The department, in collaboration with schools, has determined it is necessary to update WAC 246-105-060 to remove the school immunization status reporting date from the rule. The proposed change removes the reporting date from the rule and replace it with, "Submit an annual immunization status report under RCW 28A.210.110 at a time and in a manner approved by the department."

Reasons Supporting Proposal: WAC 246-105-040 references the 2019 immunization schedule. Changes to the immunization schedule between 2019 and 2024 impact the recommended ages of vaccine administration for required school and child care immunizations requiring the WAC to be updated. Updating the reference to the 2024 guidelines would allow

the rule to remain consistent with national consensus regulating clinical standards of care as recommended by the CDC's ACIP.

For WAC 246-105-060, RCW 28A.210.110 requires the chief administrator to file a written annual report with the department on the immunization status of students or children attending child care on a date and on forms prescribed by the department. The deadline by which schools and child care centers must report is communicated in multiple ways and shown on the reporting form. Removing the date from the rule would enable the department to determine the reporting date as authorized by RCW 28A.210.110 and provide flexibility to better support schools and child care centers in meeting the reporting deadline.

Statutory Authority for Adoption: RCW 43.20.050, 28A.210.110.

Statute Being Implemented: RCW 43.20.050, 28A.210.110.

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

Name of Proponent: State board of health and department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Meghan Cichy, 111 Israel Road S.E., Tumwater, WA 98501, 564-669-3834; Implementation: Jeux Rinehald, 111 Israel Road S.E., Tumwater, WA 98501, 360-688-6142; and Enforcement: Molly Dinardo, 111 Israel Road S.E., Tumwater, WA 98501, 564-669-3455.

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 proposed changes to WAC 246-105-040 are exempt under RCW 34.05.328 (5)(b)(iii) because they specifically reference national consensus codes that generally establish industry standards. The proposed changes to WAC 246-105-060 are exempt under RCW 34.05.328 (5)(b)(v). The reporting requirements are explicitly and specifically dictated by statute.

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 rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 34.05.310 (4)(c) and (e).

Explanation of exemptions: WAC 246-105-040 adopts national consensus codes and is exempt under RCW 34.05.310 (4)(c) Rules adopting or incorporating by reference without material change ... 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.

WAC 246-105-060 is exempt under RCW 34.05.310 (4)(e) because the requirements are explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

July 16, 2024

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

**OTS-5424.1**

AMENDATORY SECTION (Amending WSR 19-21-161, filed 10/22/19, effective 11/22/19)

**WAC 246-105-040 Requirements based on national immunization guidelines.** The department shall develop and distribute implementation guidelines for schools and child care centers that are consistent with the national immunization guidelines described in this section and the requirements in WAC 246-105-090.

(1) Unless otherwise stated in this section, a child must be vaccinated against, or provide documentation of immunity against, each vaccine-preventable disease listed in WAC 246-105-030 at ages and intervals according to the national immunization guidelines in the "Advisory Committee on Immunization Practices (ACIP) Recommended Immunization Schedule for Children and Adolescents Aged 18 Years or Younger—United States, ((2019)) 2024"; as published in the *Morbidity and Mortality Weekly Report* (MMWR) ((2019; 68(5):112-114)) 2024; 73(1):6-10.

(2) As part of the implementation guidelines, the department shall align the ages and intervals specified in the national immunization guidelines and this chapter with a corresponding grade level.

(3) In addition to the ages and intervals required by subsections (1) and (2) of this section, the following vaccine administration guidelines shall apply.

(a) Schools shall accept proof of immunization status by grade level as required by subsection (2) of this section.

(b) Schools and child care centers may accept one of the following as proof of a child's immunization status against varicella:

(i) Documentation on the CIS form that the child received age appropriate varicella vaccine; or

(ii) Diagnosis or verification of a history of varicella disease by a health care provider acting within their scope of practice; or

(iii) Diagnosis or verification of a history of herpes zoster by a health care provider acting within their scope of practice; or

(iv) Serologic proof of immunity against varicella; or

(v) Documentation by the parent that a child has a history of varicella. This type of proof will be accepted only for certain grade levels described in the department's implementation guidelines according to WAC 246-105-090(2).

AMENDATORY SECTION (Amending WSR 19-21-161, filed 10/22/19, effective 8/1/20)

**WAC 246-105-060 Duties of schools and child care centers.** (1) Schools and child care centers shall require on or before the first

day of attendance either a CIS or COE form that documents a child's immunization status as required by WAC 246-105-050:

(a) For new enrollees registering for admission into preschool and kindergarten through grade (~~(twelve)~~) 12 or a child care center as a requirement of admission;

(b) Annually for continued enrollment in a child care center; and

(c) Any child identified as experiencing homelessness under the McKinney-Vento Homeless Assistance Act 42 U.S.C. 11431 et seq., or in foster care under 20 U.S.C. 6311 (g) (1) (E) lacking documentation of immunization status on or before the first day of attendance must be immediately enrolled and allowed to fully participate in all school activities.

(2) A school nurse, child care health consultant, or chief administrator shall use information from the CIS or COE form to determine the immunization status of a child as: Fully immunized, out of compliance, conditional, or exempt.

(a) For enrollees attending under conditional status or an enrollee with an expired temporary medical exemption, except those identified under subsection (1)(c) of this section, the following schedule for documenting proof of full immunization applies:

(i) Any doses the child is eligible to receive based on the requirements established in WAC 246-105-040 must be administered on or before the first day of attendance. Any additional missing immunizations must be received within (~~(thirty)~~) 30 calendar days after the first day of attendance or after a temporary medical exemption is no longer valid, unless receipt within such time is inconsistent with the national immunization guidelines; or

(ii) When the immunizations are part of a series with recommended intervals between doses, each additional missing immunization must be received no later than (~~(thirty)~~) 30 calendar days past the recommended date of administration of the next dose as established by the national immunization guidelines.

(b) Failure to document proof of full immunization consistent with the schedule established in (a) of this subsection shall result in exclusion of a child from a school or a child care center as described in WAC 246-105-080.

(3) In maintaining child immunization records, schools and child care centers shall:

(a) Keep all department-approved forms described in WAC 246-105-050 for each enrolled child attending their school or child care.

(b) Keep or be able to produce within (~~(twenty-four)~~) 24 hours a current list of children who are not fully immunized. This list must be transmitted to the local health department upon request.

(c) Return the applicable department-approved CIS or COE or a legible copy of such documents to the parent if the child is withdrawn from a school or child care center or transferred from the school. A school or child care center may not withhold from the parent a child's department-approved CIS or COE for any reasons, including nonpayment of school or child care center fees.

(d) Provide access to immunization records to agents of the state or local health department of each child enrolled.

(4) In maintaining child immunization records, the chief administrator shall:

(a) Retain records for at least three years on a child who is excluded from school under this chapter. The record must include the child's name, address, and date of exclusion.

(b) Submit an immunization status report under RCW 28A.210.110 at a time and in a manner approved by the department. (~~The report must be submitted to the department by November 1 of each year. If a school opens after October 1, the report is due thirty calendar days from the first day of school.~~)

## WSR 24-15-061

## PROPOSED RULES

## GAMBLING COMMISSION

[Filed July 16, 2024, 2:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-067.

Title of Rule and Other Identifying Information: Aligning expiration date for organization licenses.

Hearing Location(s): On September 12, 2024, at 9:30 a.m., at Liquor and Cannabis Board, 1025 Union Avenue S.E., Olympia, WA 98501. The meeting time and location are tentative. Visit our website at [www.wsgc.wa.gov](http://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: September 12, 2024.

Submit Written Comments to: Adam Amorine, P.O. Box 42400, Olympia, WA 98504-2400, email [rules.coordinator@wsgc.wa.gov](mailto:rules.coordinator@wsgc.wa.gov), beginning July 15, 2024, by September 11, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email [julie.anderson@wsgc.wa.gov](mailto:julie.anderson@wsgc.wa.gov), [www.wsgc.wa.gov](http://www.wsgc.wa.gov), by September 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule change aims to align all organizational license expiration dates to June 30th of each calendar year. This action will create two new rules (WAC 230-03-002 and 230-05-177) and amend two existing rules (WAC 230-05-128 and 230-05-136).

Reasons Supporting Proposal: This rule change will aid in revenue forecasting as well as simplify implementation and communication to licensees when adjusting license fees in the future.

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 Agency Personnel Responsible for Drafting: Adam Amorine, Rules Coordinator, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3455; 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. This rule change aims to align all organizational license expiration dates to June 30th of each calendar year. This will aid in revenue forecasting as well as simplify implementation and communication to licensees when adjusting license fees in the future.

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.

Scope of exemption for rule proposal:

Is fully exempt.

July 15, 2024

Adam Amorine

**OTS-5613.1**NEW SECTION

**WAC 230-03-002 Expiration date for organizational licenses.** (1) As used in this section, "organization" means a charitable or nonprofit organization holding one or more licenses listed in WAC 230-05-160, a commercial stimulant organization holding one or more licenses listed in WAC 230-05-165, and other businesses holding one or more licenses listed in WAC 230-05-170.

(2) Regardless of date of approval, all organization licenses expire June 30th of each calendar year.

**OTS-5624.1**

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

**WAC 230-05-128 Renew your license in a timely manner.** (1) You must renew online, unless you have received a waiver as outlined in this chapter and allow enough time to:

(a) Print the license prior to midnight before the license expires; or

(b) Have us print the license and mail it to you so you receive it before your license expires.

(2) If you have a waiver and are not renewing your license online, you must ensure a properly completed renewal application and all applicable license fees are received at our administrative office in Lacey at least ~~((fifteen))~~ 30 days before the expiration date on the license.

(3) If you do not submit a properly completed renewal application and all fees and your license expires, you must immediately stop the gambling activity covered by your license.

(4) If your license expires, you must submit an application and you must not operate any gambling activity until a new license is issued.

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

**WAC 230-05-136 Prorating or refunding fees.** (1) ~~((We may prorate organization license fees when we adjust expiration dates to schedule our workload.~~

~~(2) We may adjust expiration dates to end on the same day for organizations licensed for more than one activity. Whenever we adjust~~

~~license expiration dates under this provision, we may prorate the required fees.~~

~~(3))~~ We will not prorate or refund fees when:

- (a) You discontinue your gambling activities; or
- (b) You voluntarily surrender your license or permit; or
- (c) We suspend or revoke your license.

~~((4))~~ (2) We keep a portion of your application or license fees for processing costs when:

- (a) We deny or administratively close your application; or
- (b) You withdraw your application; or
- (c) You overpaid us; or
- (d) We received duplicate license fees.

**OTS-5614.1**

NEW SECTION

**WAC 230-05-177 Temporary reduction of base license fees.** (1) As used in this section, "organization" means a charitable or nonprofit organization holding one or more licenses listed in WAC 230-05-160, a commercial stimulant organization holding one or more licenses listed in WAC 230-05-165, and other businesses holding one or more licenses listed in WAC 230-05-170.

(2) For organizations renewing their license with a license effective date between October 1, 2024, and April 1, 2025, the base license fee will be prorated as follows:

License effective date	Base license fee reduction
October 1, 2024	25 percent
January 1, 2025	50 percent
April 1, 2025	75 percent

(3) Organizations that renewed before the effective date of this rule will receive a refund of 25 percent of the base fee paid. All other organizations renewing will pay a reduced base fee amount.

(4) This rule is only effective through June 30, 2025.



**WSR 24-15-062**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed July 16, 2024, 2:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-09-048.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-310-0800 WorkFirst—Support services.

Hearing Location(s): On August 27, 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: No earlier than August 28, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, beginning at noon on July 24, 2024, by 5:00 p.m. on August 27, 2024.

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](mailto:Tencza@dshs.wa.gov), by 5:00 p.m. on August 13, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments expand access to support services to assist housing and utility needs for WorkFirst families. Funding for this purpose is supported within the operating budget and WorkFirst spending plan for state fiscal year 2025. Additionally, these amendments increase support service flexibility by removing particular restrictions.

Related emergency rules are currently in place, effective July 1, 2024, under WSR 24-14-046.

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, 74.08A.120, and 74.08A.250.

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: Gary Fryer, P.O. Box 45470, Olympia, WA 98504-5470, 253-720-5306.

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, "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).

Is exempt under RCW 19.85.025(4).

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.

July 12, 2024  
Katherine I. Vasquez  
Rules Coordinator

### SHS-5042.3

AMENDATORY SECTION (Amending WSR 22-20-016, filed 9/22/22, effective 10/23/22)

#### **WAC 388-310-0800 WorkFirst—Support services. (1) Who can get support services?**

People who can get support services include:

- (a) WorkFirst participants who receive a TANF cash grant;
- (b) Sanctioned WorkFirst participants during the required participation before the sanction is lifted or applicants who were terminated while in noncompliance sanction who are doing activities required to reopen cash assistance (WAC 388-310-1600);
- (c) TANF/SFA applicants as needed to meet the WorkFirst orientation requirements under WAC 388-400-0005(2) or 388-400-0010(3);
- (d) Unmarried or pregnant minors who are income eligible to receive TANF and are:
  - (i) Living in a department approved living arrangement (WAC 388-486-0005) and are meeting the school requirements (WAC 388-486-0010); or
  - (ii) Are actively working with a social worker and need support services to remove the barriers that are preventing them from living in a department approved living arrangement or meeting the school requirements.
- (e) American Indians who receive a TANF cash grant and have identified specific needs due to location or employment.
- (f) Former WorkFirst participants who are working at least 15 hours per week or more, for up to three months after leaving TANF if they need employment-related transportation support services to meet a temporary need or emergency.

#### **(2) Why do I receive support services?**

Although not an entitlement, you may receive support services for the following reasons:

- (a) To help you participate in work and WorkFirst activities that lead to independence.
- (b) To help you to participate in job search, accept a job, keep working, advance in your job, or increase your wages.
- (c) You can also get help in paying your child care expenses through the working connections child care assistance program. (Chapter 110-15 WAC describes the rules for this child care assistance program.)

#### **(3) What type of support services may I receive and what limits apply?**

There is a limit of \$5,000 per person per program year (July 1st to June 30th) for WorkFirst support services you may receive.

The chart below shows the potential types of support services that are available ((for the different activities (as indicated by an "x") and the restrictions that apply.

Definitions:

- ~~Work-related activities include looking for work or participating in workplace activities, such as community jobs or a work experience position.~~

- ~~Safety-related activities include meeting significant or emergency family safety needs, such as dealing with family violence.~~

- ~~Some support services are available if you need them for other required activities in your IRP).~~

Type of Support Service	Restrictions	(( Work))	(( Safety))	(( Other))
Reasonable accommodation for employment		((x		
Clothing/uniforms		((x		
Diapers		((x	x	x))
Haircut		((x		
((Lunch	Same rate as established by OFM for state employees	x))		
Personal hygiene		((x	x	x))
Professional, trade, association, union, and bonds		((x		x))
Relocation related to employment or safety (can include rent, housing, and deposits)		((x	x))	
Short-term lodging and meals in connection with job interviews/tests	Same rate as established by OFM for state employees	((x		
Tools/equipment		((x	x	x))
Car repair needed to restore car to operable condition		((x	x	x))
License/fees		((x	x	x))
Mileage reimbursement	Same rate as established by OFM for state employees	((x	x	x))
Transportation allotment, including fuel support		((x	x	x))
Counseling		((x	x	x))
Educational expenses		((x	x	x))
Medical exams (not covered by medicaid)		((x	x	x))
Public transportation		((x	x	x))
Testing-diagnostic		((x	x	x))
Housing and utilities	Funding allocated for ((07/01/2022)) 07/01/2024 - ((06/30/2023)) 06/30/2025 only	((x	x	x))

**(4) What are the other requirements to receive support services?**

Other restrictions on receiving support services are determined by the department or its agents. They will consider whether:

- (a) It is within available funds; and
- (b) It does not assist, promote, or deter religious activity; and
- (c) There is no other way to meet the cost.

**(5) What happens to my support services if I do not participate as required?**

The department will give you 10 days notice, following the rules in WAC 388-310-1600, then discontinue your support services until you participate as required.

**WSR 24-15-066**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed July 17, 2024, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-10-042.

Title of Rule and Other Identifying Information: Rule making to implement SHB 1453 (chapter 79, Laws of 2024) which exempts qualifying patients or designated providers issued a recognition card, purchasing cannabis identified by the Washington state department of health (DOH) in chapter 246-70 WAC, from a cannabis retailer issued a medical cannabis endorsement, from the cannabis excise tax until June 30, 2029, and to make other technical changes to chapter 314-55 WAC as necessary for internal consistency.

The following existing sections of WAC are proposed: Amending WAC 314-55-083 Security and traceability requirements for cannabis licensees, 314-55-087 Recordkeeping requirements for cannabis licensees, and 314-55-089 Tax and reporting requirements for cannabis licensees; and new WAC 314-55-090 Medical cannabis patient excise tax exemption.

Hearing Location(s): On August 28, 2024, at 10:00 a.m. All public liquor and cannabis board (LCB) activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The boardroom at the headquarters building, 1025 Union Avenue, Olympia, WA 98504, will be open for in-person attendance. The public may also log in using a computer or device, or call in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the boardroom will be staffed during a meeting, board members and agency participants may continue to appear virtually. For more information about LCB meetings, please visit [https://lcb.wa.gov/Boardmeetings/Board\\_meetings](https://lcb.wa.gov/Boardmeetings/Board_meetings).

Date of Intended Adoption: No earlier than September 11, 2024.

Submit Written Comments to: Daniel Jacobs, Rules and Policy Coordinator, P.O. Box 48030, Olympia, WA 98504-3080, email [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov), fax 360-704-5027, beginning July 17, 2024, 12:00 p.m., by August 28, 2024, 12:00 p.m.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email [anita.bingham@lcb.wa.gov](mailto:anita.bingham@lcb.wa.gov), by August 21, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposed rules is to implement SHB 1453, chapter 79, Laws of 2024, and provide internal consistency to rules around recordkeeping and excise tax payment with other portions of chapter 314-55 WAC.

**PART 1: WAC 314-55-090 Medical Cannabis Patient Excise Tax Exemption**

Section 1: Prerequisites for Excise Tax Exemption: Consistent with section 1 (2) (a), chapter 79, Laws of 2024, the prerequisites for offering the excise tax exemption are identified. While the bill language says that a retailer must have a medical cannabis endorsement, because RCW 69.50.375 and WAC 314-55-080 identify the requirements for holding that endorsement, specific reference is made to them. Otherwise, the rule language closely mirrors the bill language.

Section 2: Record Requirements: Consistent with section 1 (2)(b), chapter 79, Laws of 2024, LCB has the authority to identify what information retailers need to preserve in the event of future audits to establish that each sale to which the excise tax is exempted qualifies for the excise tax exemption. As such, and identified in more detail in the tables below, the following data points are required to be preserved for each sale where the excise tax is exempted:

- Date of sale;
- From the patient recognition card, the unique patient identifier and the effective and expiration dates of the recognition card;
- Stock keeping unit (SKU) or unique product identifier of the cannabis product to which the excise tax is being exempted from; and
- Sales price of the item(s) to which the excise tax is being exempted from.

Each of these items is necessary to establish that the prerequisites identified in section 1 above are satisfied, except for the sales price, which is required to determine how much tax is being exempted.

Section 3: Taxability Presumption: RCW 69.50.535(1) identifies the collection of the 37 percent excise tax as the default. The very name and phrasing used in this legislation of an "exemption" indicates that this is the exception, not the rule. Therefore, it follows that the party claiming the exception should, in the event of a dispute, bear the burden of demonstrating that the exception applies, rather than LCB bear the burden of demonstrating that the general rule applies. As such, this section makes clear that the burden is on the retailer to preserve the required records demonstrating the propriety of every single excise tax exemption that is provided. In the event of a dispute, if a retailer is unable to produce the required documentation, the default presumption of RCW 69.50.535(1), that a 37 percent excise tax shall be collected, applies. Consistent with other instances where a retailer fails to properly pay its excise taxes, the same principles apply here, including any penalties.

Section 4: Definitions: The terms defined are mostly taken directly from chapter 69.51A RCW, and more specifically from the definitions identified in RCW 69.51A.010. The exceptions are for "department" which refers to DOH, "unique patient identifier" which refers to the randomly generated and unique identifying number placed on recognition cards as described in RCW 69.51A.230, and "unique product identifier", referring to the product identifier used consistent with LCB's traceability requirements identified in WAC 314-55-083(4).

Section 5: Statutory Expiration Date: As specified in section 1 (2)(a), chapter 79, Laws of 2024, this excise tax exemption is scheduled to expire on June 30, 2029.

**PART 2: Changes to Existing Parts of Chapter 314-55 WAC**

Other than cross-references to the new rule at WAC 314-55-090, and changing the acronym "WSLCB" to "LCB" consistent with WSR 24-11-037, the following additional changes were made:

WAC 314-55-087 (1)(r), adding a requirement to keep detailed sale records including, but not limited to, date of sale, sale price, item sold, and taxes assessed. This recordkeeping requirement is added to sales records regardless of whether excise taxes or [are] collected to provide a baseline to understand the records provided where excise taxes are exempted. To understand how the records provided reflect an exempted excise tax, records need to be provided that demonstrate where an excise tax is not exempted.

WAC 314-55-089 (1)(c), replacing "listing" with "summarizing." This reflects a relaxing of record requirements to ease some regulatory burden on licensees and is provided to reflect business records needed and preserved by licensees. Considering increasing record requirements issued as part of this rule making, this was viewed as a likely desirable reprieve.

WAC 314-55-089 (1)(e), changing three years to five years. This rule explicitly cites WAC 314-55-087, which requires all records to be preserved for five years, and the use of the word "three" was a typographical error that needed to be addressed.

WAC 314-55-089(5), removing the mailing address and the reference to paying online "through the traceability system." These changes are being done to provide greater flexibility for future potential payment system modernization. The P.O. Box mail address identified currently is out-of-date, and rather than replace it with another one that may become out-of-date at some point in the future, leaving the language to simply state that it should be mailed to LCB allows licensees to find LCB's mailing address and mail it themselves.

The reference to paying through the traceability system specifically is removed to allow for future potential modernization of the traceability system, and a future potential modernization of the tax payment system.

Reasons Supporting Proposal: The reasons supporting these proposed rules, in addition to that described above, are identified in the tables herein:

<b>WAC 314-55-090 Medical cannabis patient excise tax exemption</b>		
<b>Section</b>	<b>Proposed Rule Language</b>	<b>Rule Necessity</b>
(1)	Pursuant to RCW 69.50.535(2), the excise tax levied in RCW 69.50.535(1) does not apply to sales of cannabis that satisfy all the following conditions:	Consistent with section (1)(2)(a), chapter 79, Laws of 2024, proposed WAC 314-55-090(1) identifies the necessary criteria for eligibility to offer the excise tax exemption.
(1)(a)	The sale is made by a cannabis retailer holding a valid medical cannabis endorsement issued pursuant to RCW 69.50.375 and compliant with WAC 314-55-080;	Consistent with section (1)(2)(a), chapter 79, Laws of 2024, the retailer offering the excise tax exemption must have a medical cannabis endorsement, and to have a medical cannabis endorsement, a retailer needs to satisfy the statutory requirements at RCW 69.50.375 and regulatory requirements of WAC 314-55-080.
(1)(b)	The sale is made to a qualifying patient or designated provider who has a valid recognition card issued pursuant to RCW 69.51A.230, and is in the database;	Consistent with section (1)(2)(a), chapter 79, Laws of 2024, which specifically states that the qualifying patient or designated provider must have been issued a recognition card, a recognition card can only be issued after a patient is entered into the database per RCW 69.51A.230(2).
(1)(c)	The sale is of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;	Language is nearly identical with section (1)(2)(a), chapter 79, Laws of 2024.
(2)	Cannabis licensees must retain the following information for five years, consistent with WAC 314-55-087, for every sale where the excise tax is exempted per RCW 69.50.535(2):	Consistent with section 1 (2)(b), chapter 79, Laws of 2024, LCB has the authority to identify what information retailers need to preserve to establish eligibility for the excise tax exemption.
(2)(a)	Date of sale;	To ensure that, if audited, LCB can confirm that the retailer held a medical cannabis endorsement at the time the sale occurred.

WAC 314-55-090 Medical cannabis patient excise tax exemption		
Section	Proposed Rule Language	Rule Necessity
(2)(b)	From the recognition card:	To ensure that, if audited, LCB can confirm that the patient or the designated provider purchasing the cannabis satisfied the requirements of WAC 314-55-090 (1)(b) and section 1 (2)(a), chapter 79, Laws of 2024, at the time of purchase.
	(i) The unique patient identifier, and	
	(ii) The effective date and expiration date of the recognition card;	
(2)(c)	Stock keeping unit (SKU) or unique product identifier of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;	To ensure that, if audited, LCB can confirm that the cannabis product purchased meets the requirements of WAC 314-55-090 (1)(c) and section 1 (2)(a), chapter 79, Laws of 2024, at the time of purchase.
(2)(d)	Sales price of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC.	To enable LCB to determine how much excise tax would have been collected had it not been exempted.
(3)	For any sale where the excise tax was not collected, if a cannabis licensee cannot produce the documentation identified in subsection (2) of this section when requested by the LCB, such excise tax shall be presumed to have been incorrectly exempted, and the retailer shall be responsible for remitting to the LCB the amount of excise tax that should have been collected. Penalties may apply to any incorrectly exempted excise tax payments that need to be remitted as described in this subsection, consistent with WAC 314-55-092.	To clarify that the medical cannabis patient excise tax exemption is the exception to the general rule that the 37 percent excise tax shall be collected on all cannabis sales per RCW 69.50.535(1). In the event of a dispute, the burden shall be on the retailer to demonstrate that they correctly exempted the purchase from the excise tax, not on LCB to demonstrate that the retailer was incorrect in doing so.
(4)	Definitions:	Definitions of terms used are provided, all from terms used in chapter 69.51A RCW.
(4)(a)	"Database" means the medical cannabis authorization database as defined in RCW 69.51A.010.	
(4)(b)	"Department" means the Washington state department of health.	
(4)(c)	"Designated provider" has the same meaning provided in RCW 69.51A.010.	
(4)(d)	"Qualifying patient" has the same meaning provided in RCW 69.51A.010.	
(4)(e)	"Recognition card" has the same meaning provided in RCW 69.51A.010.	
(4)(f)	"Unique patient identifier" refers to the randomly generated and unique identifying number described in RCW 69.51A.230.	
(4)(g)	"Unique product identifier" refers to the unique identifier provided to the LCB consistent with the traceability requirements in WAC 314-55-083.	
(5)	The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).	Consistent with section 1 (2)(a), chapter 79, Laws of 2024, identifies the expiration date of the medical cannabis patient excise tax exemption.



Amendments to Existing Sections of Chapter 314-55 WAC			
WAC Section	Current Rule Language	Proposed New Language	Rule Necessity
314-55-083 Security and traceability requirements for cannabis licensees.	(4)(j) Cannabis excise tax records;	(4)(j) Cannabis excise tax records, <u>including records required for medical cannabis patient excise tax exemptions in WAC 314-55-090;</u>	Adding language to state that the records newly required for retention in WAC 314-55-090 must also be kept up to date in the traceability system.
	Replaced instances of "WSLCB" with "LCB"		Consistent with WSR 24-11-037
314-55-087 Recordkeeping requirements for cannabis licensees.	<b>New Rule Language</b> (1)(r) Detailed sale records including but not limited to, date of sale, sale price, item sold, and taxes assessed;		To understand the records for auditing the medical cannabis patient excise tax exemption, baseline records where the excise tax is collected must be preserved for use in comparison.
	<b>New Rule Language</b> (1)(s) Records for medical cannabis patient excise tax exemptions as required in WAC 314-55-090;		Adding language to state that the records required in WAC 314-55-090 must be kept for five years, along with all other required records in WAC 314-55-087
	Replaced instances of "WSLCB" with "LCB"		Consistent with WSR 24-11-037
314-55-089 Tax and reporting requirements for cannabis licensees.	(1) Cannabis retailer licensees must submit monthly report(s) and payments to the WSLCB. The required monthly reports must be: [...] (b) Filed every month, including months with no activity or payment due;	(1) Cannabis retailer licensees must submit monthly report(s) and payments to the LCB. The required monthly reports must be: [...] (b)(i) Filed every month, including months with no activity or payment due; (ii) <u>Each report will identify total product sales and total medical product sales where the excise tax was exempted pursuant to RCW 69.50.535(2) and WAC 314-55-090, in the form and manner required by the LCB;</u>	Consistent with section (1)(2)(b) and (c), chapter 79, Laws of 2024, requiring the monthly payment reports to include records of total product sales and total sales where the excise tax is exempted is consistent with the requirements identified in WAC 314-55-090.
	(1)(c) Submitted, with payment due, to the WSLCB on or before the 20th day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) ...	(1)(c) Submitted, with payment due, to the LCB on or before the 20th day of each month, for the previous month. (For example, a report <u>summarizing</u> transactions for the month of January is due by February 20th.) ...	Replacing "listing" with "summarizing" to lighten the regulatory burden on licensees.
	(1)(e) All records must be maintained and available for review for a three-year period on licensed premises. (See WAC 314-55-087)	(1)(e) All records must be maintained and available for review for a <u>five</u> -year period on licensed premises. (See WAC 314-55-087)	Technical change for internal consistency. WAC 314-55-087(1) required records to be kept for five years. The reference to three years was a typographical error.

Amendments to Existing Sections of Chapter 314-55 WAC			
WAC Section	Current Rule Language	Proposed New Language	Rule Necessity
	(4)(b) A cannabis retailer licensee must collect from the buyer and remit to the WSLCB a cannabis excise tax of 37 percent of the selling price on each retail sale of useable cannabis, cannabis concentrates, and cannabis-infused products.	(4)(b)(i) A cannabis retailer licensee must collect from the buyer and remit to the LCB a cannabis excise tax of 37 percent of the selling price on each retail sale of useable cannabis, cannabis concentrates, and cannabis-infused products, <u>except as identified in WAC 314-55-090 and RCW 69.50.535(2).</u> (ii) <u>Records of medical patient cannabis excise tax exemptions provided must be maintained as required in WAC 314-55-087 and WAC 314-55-090.</u>	Reference added to WAC 314-55-090 and RCW 69.50.535(2), where the medical cannabis patient excise tax exemption are referenced, as well as cross-reference added to reinforce record retention requirements.
	(5) ... Licensees must submit cannabis excise tax payments to the board by one of the following means: (a) By mail to WSLCB, Attention: Accounts Receivable, P.O. Box 43085, Olympia, WA 98504;	(5) ... Licensees must submit cannabis excise tax payments to the board by one of the following means: (a) By mail to LCB;	Fixing an incorrect address and replacing with generic mailing instructions in case of future move of physical mailing address or P.O. Box.
	(5)(b) By paying through online access through the WSLCB traceability system; or	(5)(b) By paying through online access; or	Removing specific reference to the traceability system to allow for potential future changes in online payment systems.
	Replaced instances of "WSLCB" with "LCB"		Consistent with WSR 24-11-037

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345, 69.50.535.

Statute Being Implemented: RCW 69.50.535; SHB 1453, chapter 79, Laws of 2024.

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

Name of Proponent: LCB, governmental.

Name of Agency Personnel Responsible for Drafting: Daniel Jacobs, Rules and Policy Coordinator, 1025 Union Avenue, Olympia, WA 98504, 360-480-1238; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98504, 360-664-1753; and Enforcement: Chandra Wax, Director of Enforcement and Education, 1025 Union Avenue, Olympia, WA 98504, 360-664-1726.

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 proposed amended rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). LCB is not a listed agency under RCW 34.05.328 (5) (a) (i), so the cost-benefit analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328 (5) (a) (ii).

Scope of exemption for rule proposal:

Is not exempt.

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. Agencies are required to consider costs imposed on business and costs associated with compliance with proposed rules. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance. Here, LCB considered potential administrative costs that a licensee may incur complying with the proposed rules.

LCB applied the North American Industry Classification System (NAICS) code 459991 for marijuana stores, recreational or medical. This is defined by the NAICS as follows: This United States industry comprises establishments primarily engaged in retailing cigarettes, electronic cigarettes, cigars, tobacco, pipes, and other smokers' supplies. The industry description for this code is presented in the table below, and can be accessed at <https://www.census.gov/naics/?input=marijuana&year=2022&details=459991>.

LCB applied a default estimated compliance cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This reflects a very generous estimate of \$2,000.00 for every cannabis retailer with an existing medical cannabis endorsement to familiarize themselves with the new recordkeeping requirements in WAC 314-55-090, and to take the extra time to preserve the records required for the required five years.

Per RCW 19.85.020(2), a minor cost means a cost per business that is less than three-tenths of one percent of annual revenue or income, or \$100, whichever is greater, or one percent of annual payroll. According to department of revenue data from 2023, the total gross business income for NAICS code 459991 was \$647,617,610 for 493 businesses. That produces an average annual gross business income of \$1,313,625.98. Three-tenths of one percent of \$1,313,625.98 is \$3,940.877, rounding up to \$3,940.88.

<u>2022 Industry NAICS Code</u>	<u>Estimated Cost of Compliance</u>	<u>Industry Description</u>	<u>NAICS Code Title</u>	<u>Minor Cost Estimate</u>	<u>1% of Avg Annual Payroll (Threshold)</u>	<u>0.3% of Avg Annual Gross Business Income (Threshold)</u>
459991	\$2,000.00	Marijuana stores, recreational or medical	Tobacco, Electronic Cigarette, and Other Smoking Supplies Retailers	\$3,940.88	Unavailable*	\$3,940.88 2023 Dataset pulled from DOR

As the table demonstrates, the estimated cost of compliance does not exceed the threshold for tobacco, electronic cigarette, and other smoking supplies retailers, which according to the NAICS website above, includes cannabis retailers with medical cannabis endorsements. Therefore, implementation of this amended rule is not anticipated to result in more-than-minor costs on businesses as defined in RCW 19.85.020(2).

Washington state department of revenue data available at <https://apps.dor.wa.gov/ResearchStats/Content/GrossBusinessIncome/Results.aspx?Year=2023Q4,2023Q3,2023Q2,2023Q1,&Code1=450000&Code2=460000&Sumb=n6&icNaics=2&Format=HTML>.

\* Average annual payroll data was unavailable due to confidentiality with other state agency data.

A copy of the detailed cost calculations may be obtained by contacting Daniel Jacobs, Rules and Policy Coordinator, P.O. Box 43080,

Olympia, WA 98504-3080, phone 360-480-1238, fax 360-704-5027, email rules@lcb.wa.gov.

July 17, 2024  
David Postman  
Chair

## OTS-5420.7

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

**WAC 314-55-083 Security and traceability requirements for cannabis licensees.** The security requirements for a cannabis licensee are as follows:

(1) **Display of identification badge.** All licensees and employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises and engaged in the transportation of cannabis. The identification badge must list the licensee's trade name and include the person's full and legal name and photograph. All licensees and employees must have their state issued identification available to verify the information on their badge is correct.

(a) All nonemployee visitors to the licensed premises, other than retail store customers, shall be required to hold and properly display an identification badge issued by the licensee at all times while on the licensed premises.

(b) A log must be kept and maintained showing the full name of each visitor entering the licensed premises, badge number issued, the time of arrival, time of departure, and the purpose of the visit.

(c) All log records must be maintained on the licensed premises for a period of three years and are subject to inspection by any ((WSLCB)) LCB employee or law enforcement officer, and must be copied and provided to the ((WSLCB)) LCB or law enforcement officer upon request.

(d) Employees, visitors, and other persons at a cannabis licensed premises, including persons engaged in the transportation of cannabis, must provide identification to a ((WSLCB)) LCB enforcement officer upon request.

(2) **Alarm systems.** At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be used.

(3) **Surveillance system.** At a minimum, a licensed premises must have a complete video surveillance system with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog. The surveillance system storage device and/or the cameras must be internet protocol (IP) compatible. All cameras must be fixed and placement must allow for the clear and certain identification of any person and activities in controlled areas of the licensed premises. All entrances and exits to an indoor facility must be recorded from both indoor and outdoor, or ingress and egress vantage points. All cameras must record continuously 24 hours per day and at a minimum of 10 frames per sec-

ond. The surveillance system storage device must be secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft. All surveillance recordings must be kept for a minimum of 45 days on the licensee's recording device. All videos are subject to inspection by any ((WSLCB)) LCB employee or law enforcement officer, and must be copied and provided to the ((WSLCB)) LCB or law enforcement officer upon request. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards. Controlled areas include:

(a) Any area within an indoor, greenhouse or outdoor room or area where cannabis is grown, or cannabis or cannabis waste is being moved within, processed, stored, or destroyed. Rooms or areas where cannabis or cannabis waste is never present are not considered control areas and do not require camera coverage.

(b) All point-of-sale (POS) areas.

(c) Twenty feet of the exterior of the perimeter of all required fencing and gates enclosing an outdoor grow operation. Any gate or other entry point that is part of the required enclosure for an outdoor growing operation must be lighted in low-light conditions. A motion detection lighting system may be employed to light the gate area in low-light conditions.

(d) Any room or area storing a surveillance system storage device.

(4) **Traceability:** To prevent diversion and to promote public safety, cannabis licensees must track cannabis from seed to sale. Licensees must provide the required information on a system specified by the ((WSLCB)) LCB. All costs related to the reporting requirements are borne by the licensee. Cannabis seedlings, clones, plants, lots of useable cannabis or trim, leaves, and other plant matter, batches of extracts, cannabis-infused products, samples, and cannabis waste must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely up-to-date in a system specified by the ((WSLCB)) LCB:

(a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);

(b) When plants are to be partially or fully harvested or destroyed;

(c) When a lot or batch of cannabis, cannabis extract, cannabis concentrates, cannabis-infused product, or cannabis waste is to be destroyed;

(d) When useable cannabis, cannabis concentrates, or cannabis-infused products are transported;

(e) Any theft of useable cannabis, cannabis seedlings, clones, plants, trim or other plant material, extract, infused product, seed, plant tissue or other item containing cannabis;

(f) All cannabis plants eight or more inches in height or width must be physically tagged and tracked individually;

(g) A complete inventory of all cannabis, seeds, plant tissue, seedlings, clones, all plants, lots of useable cannabis or trim, leaves, and other plant matter, batches of extract, cannabis concentrates, cannabis-infused products, and cannabis waste;

(h) All cannabis, useable cannabis, cannabis-infused products, cannabis concentrates, seeds, plant tissue, clone lots, and cannabis waste must be physically tagged with the unique identifier generated by the traceability system and tracked;

(i) All point-of-sale records;

(j) Cannabis excise tax records, including records required for medical cannabis patient excise tax exemptions in WAC 314-55-090;

(k) All samples sent to an independent testing lab, any sample of unused portion of a sample returned to a licensee, and the quality assurance test results;

(l) All vendor samples provided to another licensee for purposes of education or negotiating a sale;

(m) All samples used for testing for quality by the producer or processor;

(n) Samples containing useable cannabis provided to retailers;

(o) Samples provided to the ((WSLCB)) LCB or their designee for quality assurance compliance checks; and

(p) Other information specified by the board.

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

**WAC 314-55-087 Recordkeeping requirements for cannabis licensees.** (1) Cannabis licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the business. The following records must be kept and maintained on the licensed premises for a five-year period and must be made available for inspection if requested by an employee of the ((WSLCB)) LCB:

(a) Purchase invoices and supporting documents, to include the items and/or services purchased, from whom the items were purchased, and the date of purchase;

(b) Bank statements and canceled checks for any accounts relating to the licensed business;

(c) Accounting and tax records related to the licensed business and each true party of interest;

(d) Records of all financial transactions related to the licensed business, including contracts and/or agreements for services performed or received that relate to the licensed business;

(e) All employee records to include, but not limited to, training, payroll, and date of hire;

(f) Records of each daily application of pesticides applied to the cannabis plants or growing medium. For each application, the producer shall record the following information on the same day the application is made:

(i) Full name of each employee who applied the pesticide;

(ii) The date the pesticide was applied;

(iii) The name of the pesticide or product name listed on the registration label which was applied;

(iv) The concentration and total amount of pesticide per plant; and

(v) For outdoor production, the concentration of pesticide that was applied to the field. Liquid applications may be recorded as, but are not limited to, amount of product per 100 gallons of liquid spray, gallons per acre of output volume, ppm, percent product in tank mix

(e.g., one percent). For chemigation applications, record "inches of water applied" or other appropriate measure.

(g) Soil amendment, fertilizers, or other crop production aids applied to the growing medium or used in the process of growing cannabis;

(h) Production and processing records, including harvest and curing, weighing, destruction of cannabis, creating batches of cannabis-infused products and packaging into lots and units;

(i) Records of each batch of extracts or infused cannabis products made, including at a minimum, the lots of useable cannabis or trim, leaves, and other plant matter used (including the total weight of the base product used), any solvents or other compounds utilized, and the product type and the total weight of the end product produced, such as hash oil, shatter, tincture, infused dairy butter, etc.;

(j) Transportation records as described in WAC 314-55-085;

(k) Inventory records;

(l) All samples sent to an independent testing lab and the quality assurance test results;

(m) All free samples provided to another licensee for purposes of negotiating a sale;

(n) All samples used for testing for quality by the producer or processor;

(o) Sample jars containing useable cannabis provided to retailers; ~~(and)~~

(p) Records of any theft of cannabis seedlings, clones, plants, trim or other plant material, extract, cannabis-infused product, or other item containing cannabis ~~(-)~~;

(q) Records of any cannabis product provided free of charge to qualifying patients or designated providers;

(r) Detailed sale records including, but not limited to, date of sale, sale price, item sold, and taxes assessed;

(s) Records for medical cannabis patient excise tax exemptions as required in WAC 314-55-090.

(2) If the cannabis licensee keeps records within an automated data processing (ADP) and/or point-of-sale (POS) system, the system must include a method for producing legible records that will provide the same information required of that type of record within this section. The ADP and/or POS system is acceptable if it complies with the following guidelines:

(a) Provides an audit trail so that details (invoices and vouchers) underlying the summary accounting data may be identified and made available upon request.

(b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If printouts of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

(c) Has available a full description of the ADP and/or POS portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

(3) The provisions contained in subsections (1) and (2) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

**WAC 314-55-089 Tax and reporting requirements for cannabis licensees.** (1) Cannabis retailer licensees must submit monthly report(s) and payments to the ((WSLCB)) LCB. The required monthly reports must be:

(a) On a form or electronic system designated by the ((WSLCB)) LCB;

(b) (i) Filed every month, including months with no activity or payment due;

(ii) Each report will identify total product sales and total medical product sales where the excise tax was exempted pursuant to RCW 69.50.535(2) and WAC 314-55-090, in the form and manner required by the LCB;

(c) Submitted, with payment due, to the ((WSLCB)) LCB on or before the 20th day of each month, for the previous month. (For example, a report ((listing)) summarizing transactions for the month of January is due by February 20th.) When the 20th day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;

(d) Filed separately for each cannabis license held; and

(e) All records must be maintained and available for review for a ((three)) five-year period on licensed premises (see WAC 314-55-087).

(2) **Cannabis producer licensees:** On a monthly basis, cannabis producers must maintain records and report purchases from other licensed cannabis producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the ((WSLCB)) LCB. The act of keeping data completely up-to-date in the state traceability system fulfills the monthly reporting requirement.

(3) **Cannabis processor licensees:** On a monthly basis, cannabis processors must maintain records and report purchases from licensed cannabis producers, other cannabis processors, production of cannabis-infused products, sales by product type to cannabis retailers, and lost and/or destroyed product in a manner prescribed by the ((WSLCB)) LCB. The act of keeping data completely up-to-date in the state traceability system fulfills the monthly reporting requirement.

(4) **Cannabis retailer's licensees:**

(a) On a monthly basis, cannabis retailers must maintain records and report purchases from licensed cannabis processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the ((WSLCB)) LCB.

(b) (i) A cannabis retailer licensee must collect from the buyer and remit to the ((WSLCB)) LCB a cannabis excise tax of 37 percent of the selling price on each retail sale of useable cannabis, cannabis concentrates, and cannabis-infused products, except as identified in WAC 314-55-090 and RCW 69.50.535(2).

(ii) Records of medical cannabis patient excise tax exemptions provided must be maintained as required in WAC 314-55-087 and 314-55-090.

(c) Product inventory reductions that are not adequately documented will be deemed to be sales and will be assessed the excise tax.

(d) Excise tax collected in error must either be returned to the customer(s) or remitted to the ((WSLCB)) LCB if returning to the customer(s) is not possible.



(5) **Payment methods:** Cannabis excise tax payments are payable only by check, cashier's check, money order, or electronic payment or electronic funds transfer. Licensees must submit cannabis excise tax payments to the board by one of the following means:

(a) By mail to (~~WSLCB, Attention: Accounts Receivable, P.O. Box 43085, Olympia, WA 98504~~) LCB;

(b) By paying through online access (~~through the WSLCB traceability system~~); or

(c) By paying using a money transmitter licensed pursuant to chapter 19.230 RCW. If a licensee uses a money transmitter service, the licensee must remit payments in U.S. dollars.

(6) Payments transmitted to the board electronically under this section will be deemed received when received by the (~~WSLCB's~~) LCB's receiving account. All other payments transmitted to the (~~WSLCB~~) LCB under this section by United States mail will be deemed received on the date shown by the post office cancellation mark stamped on the envelope containing the payment.

(7) The (~~WSLCB~~) LCB may waive the means of payment requirements as provided in subsection (5) of this section for any licensee for good cause shown. For the purposes of this section, "good cause" means the inability of a licensee to comply with the payment requirements of this section because:

(a) The licensee demonstrates it does not have and cannot obtain a bank or credit union account or another means by which to comply with the requirements of subsection (5) of this section and cannot obtain a cashier's check or money order; or

(b) Some other circumstance or condition exists that, in the (~~WSLCB's~~) LCB's judgment, prevents the licensee from complying with the requirements of subsection (5) of this section.

(8) If a licensee tenders payment of the cannabis excise tax in cash without applying for and receiving a waiver or after denial of a waiver, the licensee may be assessed a 10 percent penalty.

(9) If a licensee is denied a waiver and requests an adjudicative proceeding to contest the denial, a brief adjudicative proceeding will be conducted as provided under RCW 34.05.482 through 34.05.494.

(10) For the purposes of this section, "electronic payment" or "electronic funds transfer" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit a checking or other deposit account. "Electronic funds transfer" includes payments made by electronic check (e-check).

#### NEW SECTION

##### **WAC 314-55-090 Medical cannabis patient excise tax exemption.**

(1) Pursuant to RCW 69.50.535(2), the excise tax levied in RCW 69.50.535(1) does not apply to sales of cannabis that satisfy all the following conditions:

(a) The sale is made by a cannabis retailer holding a valid medical cannabis endorsement issued pursuant to RCW 69.50.375 and compliant with WAC 314-55-080;

(b) The sale is made to a qualifying patient or designated provider who has a valid recognition card issued pursuant to RCW 69.51A.230, and is in the database;

(c) The sale is of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;

(2) Cannabis licensees must retain the following information for five years, consistent with WAC 314-55-087, for every sale where the excise tax is exempted per RCW 69.50.535(2):

(a) Date of sale;

(b) From the recognition card:

(i) The unique patient identifier; and

(ii) The effective date and expiration date of the recognition card;

(c) Stock keeping unit (SKU) or unique product identifier of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;

(d) Sales price of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC.

(3) For any sale where the excise tax was not collected, if a cannabis licensee cannot produce the documentation identified in subsection (2) of this section when requested by the LCB, such excise tax shall be presumed to have been incorrectly exempted, and the retailer shall be responsible for remitting to the LCB the amount of excise tax that should have been collected. Penalties may apply to any incorrectly exempted excise tax payments that need to be remitted as described in this subsection, consistent with WAC 314-55-092.

(4) Definitions.

(a) "Database" means the medical cannabis authorization database as defined in RCW 69.51A.010.

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

(c) "Designated provider" has the same meaning provided in RCW 69.51A.010.

(d) "Qualifying patient" has the same meaning provided in RCW 69.51A.010.

(e) "Recognition card" has the same meaning provided in RCW 69.51A.010.

(f) "Unique patient identifier" refers to the randomly generated and unique identifying number described in RCW 69.51A.230.

(g) "Unique product identifier" refers to the unique identifier provided to the LCB consistent with the traceability requirements in WAC 314-55-083.

(5) The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).

## WSR 24-15-070

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed July 17, 2024, 2:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-079.

Title of Rule and Other Identifying Information: WAC 182-546-4700  
Ambulance transportation—Ambulance transport fund—Purpose.

Hearing Location(s): On August 27, 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\\_Jx4tOCLyTByfJfI1Pj88Cg](https://us02web.zoom.us/webinar/register/WN_Jx4tOCLyTByfJfI1Pj88Cg). 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: August 28, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning July 18, 2024, 8:00 a.m., by August 27, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, TTY/TRS 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by August 9, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending this rule to extend the expiration date for the ambulance transport fund from July 1, 2024, to July 1, 2028, to align with RCW 74.70.901 (SB 5122, chapter 11, Laws of 2023).

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: SB 5122, chapter 11, Laws of 2023; 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: Stefanee Hale, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9528.

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(3) as the rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

July 17, 2024  
Wendy Barcus  
Rules Coordinator

OTS-5555.1

AMENDATORY SECTION (Amending WSR 21-15-010, filed 7/8/21, effective 8/8/21)

**WAC 182-546-4700 Ambulance transportation—Ambulance transport fund—Purpose.** Chapter 74.70 RCW establishes the quality assurance fee for specified providers of emergency ambulance services through July 1, ((2024)) 2028. The fee is added to base funding from all other sources to support additional medicaid payments. The fee applies to nonpublic and nonfederal providers of emergency ambulance services. This is a dedicated fund established within the state treasury, known as the ambulance transport fund. The ambulance transport fund is used to receive and distribute funds.

## WSR 24-15-073

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed July 17, 2024, 4:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-132.

Title of Rule and Other Identifying Information: WAC 182-550-3830 Adjustments to inpatient rates, and 182-550-7550 OPPS payment enhancements.

Hearing Location(s): On August 27, 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\\_Jx4tOCLyTByfJfI1Pj88Cg](https://us02web.zoom.us/webinar/register/WN_Jx4tOCLyTByfJfI1Pj88Cg). 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: Not sooner than August 28, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning July 18, 2024, 8:00 a.m., by August 27, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, TTY/TRS 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by August 9, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending these rules to reduce the sole community hospital rate multiplier to 1.25, effective July 1, 2024.

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: Melissa Craig, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0938.

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.

July 17, 2024

Wendy Barcus  
Rules Coordinator

OTS-5556.1

AMENDATORY SECTION (Amending WSR 23-20-048, filed 9/28/23, effective 10/29/23)

**WAC 182-550-3830 Adjustments to inpatient rates.** (1) The medic-aid agency updates all of the following components of a hospital's specific diagnosis-related group (DRG) factor and per diem rates at rebase:

- (a) Wage index adjustment;
- (b) Direct graduate medical education (DGME); and
- (c) Indirect medical education (IME).

(2) Effective January 1, 2015, the agency updates the sole community hospital adjustment.

(3) The agency does not update the statewide average DRG factor between rebasing periods, except:

- (a) To satisfy the budget neutrality conditions in WAC 182-550-3850; and
- (b) When directed by the legislature.

(4) The agency updates the wage index to reflect current labor costs in the core-based statistical area (CBSA) where a hospital is located. The agency:

(a) Determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(b) Multiplies the amount in (a) of this subsection by the most recent wage index information published by the Centers for Medicare and Medicaid Services (CMS) when the rates are set; then

(c) Adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(5) DGME. The agency obtains DGME information from the hospital's most recently filed medicare cost report that is available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of 12 consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) If a hospital has not submitted a CMS medicare cost report in more than 18 months from the end of the hospital's cost reporting period, the agency considers the current DGME costs to be zero.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(6) IME. The agency sets the IME adjustment equal to the "IME adjustment factor for Operating PPS" available in the most recent CMS final rule impact file on CMS's website as of May 1st of the rate-setting year.

(7) Sole community hospitals.

(a) For sole community hospitals' rate enhancements, the agency multiplies an in-state hospital's specific conversion factor and per diem rates by a multiplier if the hospital meets all the following criteria per RCW 74.09.5225:

(i) Be certified by CMS as a sole community hospital as of January 1, 2013;

(ii) Have a level III adult trauma service designation from the Washington state department of health (DOH) as of January 1, 2014;

(iii) Have less than 150 acute care licensed beds in fiscal year 2011;

(iv) Be owned and operated by the state or a political subdivision; and

(v) Not participate in the certified public expenditures (CPE) payment program defined in WAC 182-550-4650.

(b) ~~((As of July 1, 2021, through June 30, 2023, an additional increase is applied for hospitals that accept single bed certifications per RCW 71.05.745.))~~ Effective July 1, 2024, the enhancement multiplier equals 1.25. This may be adjusted in future years to account for legislatively approved increases. (See RCW 74.09.5225)

Enhancement Multiplier by Year							
Provider Category	Effective For the Dates						
	07/01/2015 - 06/30/2020	07/01/2020 - 06/30/2021	07/01/2021 - 06/30/2022	07/01/2022 - 06/30/2023	07/01/2023 - 12/31/2023	01/01/2024 - 06/30/2024	07/01/2024
Sole community hospital	1.25	1.5	((N/A)) 1.5	1.25	1.25	1.5	1.25
Sole community hospital accepting single bed certifications	N/A	N/A	1.5	1.5	N/A	N/A	N/A

AMENDATORY SECTION (Amending WSR 23-20-048, filed 9/28/23, effective 10/29/23)

**WAC 182-550-7550 OPSS payment enhancements.** (1) Pediatric adjustment.

(a) The medicaid agency establishes a policy adjustor to be applied to all enhanced ambulatory patient group (EAPG) services for clients under age 18 years.

(b) Effective July 1, 2014, this adjustor equals one point thirty-five (1.35).

(2) Chemotherapy and combined chemotherapy/pharmacotherapy adjustment.

(a) The agency establishes a policy adjustor to be applied to services grouped as chemotherapy drugs or combined chemotherapy and pharmacotherapy drugs.

(b) Effective July 1, 2014, this adjustor equals one point one (1.1).

(3) Sole community hospitals.

(a) For sole community hospital's rate enhancements, the agency multiplies the in-state hospital's specific EAPG conversion factor by a multiplier if the hospital meets all of the following criteria per RCW 74.09.5225:

(i) Be certified by CMS as a sole community hospital as of January 1, 2013;

(ii) Have a level III adult trauma service designation from the Washington state department of health (DOH) as of January 1, 2014;

(iii) Have less than 150 acute care licensed beds in fiscal year 2011; and

(iv) Be owned and operated by the state or a political subdivisions.

(b) ~~((As of July 1, 2021, through June 30, 2023, an additional increase may be applied for hospitals that accept single bed certifications per RCW 71.05.745.))~~ Effective July 1, 2024, the enhancement multiplier equals 1.25. This may be adjusted in future years to account for legislatively approved increases. (See RCW 74.09.5225)

Enhancement Multiplier by Year							
Provider Category	Effective For the Dates						
	07/01/2015 - 06/30/2020	07/01/2020 - 06/30/2021	07/01/2021 - 06/30/2022	07/01/2022 - 06/30/2023	07/01/2023 - 12/31/2023	01/01/2024 - 06/30/2024	<u>07/01/2024</u>
Sole community hospital	1.25	1.5	((N/A)) <u>1.5</u>	1.25	1.25	1.50	<u>1.25</u>
Sole community hospital accepting single bed certifications	N/A	N/A	1.5	1.5	N/A	N/A	<u>N/A</u>



## WSR 24-15-074

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed July 17, 2024, 4:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-11-110.

Title of Rule and Other Identifying Information: WAC 182-550-4400 Services—Exempt from DRG payment.

Hearing Location(s): On August 27, 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\\_Jx4tOCLyTByfJfI1Pj88Cg](https://us02web.zoom.us/webinar/register/WN_Jx4tOCLyTByfJfI1Pj88Cg). 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: Not sooner than August 28, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning July 18, 2024, 8:00 a.m., by August 27, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, TTY/TRS 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by August 9, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending this rule to add gender affirming surgery services to being exempt from diagnosis-related group 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, P.O. Box 42716, Olympia, WA 98504-2716, 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.

July 17, 2024  
Wendy Barcus  
Rules Coordinator

OTS-5557.1

AMENDATORY SECTION (Amending WSR 23-08-085, filed 4/5/23, effective 5/6/23)

**WAC 182-550-4400 Services—Exempt from DRG payment.** (1) Inpatient services are exempt from the diagnosis-related group (DRG) payment method only if they qualify for payment methods specifically mentioned in other sections of this chapter or in this section.

(2) Subject to the restrictions and limitations in this section, the agency exempts the following services for medicaid and CHIP clients from the DRG payment method. This policy also applies to covered services paid through medical care services (MCS) and any other state-administered program, except when otherwise indicated in this section. The exempt services are:

(a) Withdrawal management services when provided in a hospital having a withdrawal management provider agreement with the agency to perform these services.

(b) Hospital-based intensive inpatient withdrawal management, medical stabilization, and drug treatment services provided to substance-using pregnant people (SUPP) clients by an agency-approved hospital. These are medicaid program services and are not covered or funded by the agency through MCS or any other state-administered program.

(c) Acute physical medicine and rehabilitation (acute PM&R) services.

(d) Psychiatric services. An agency designee that arranges to pay a hospital directly for psychiatric services may use the agency's payment methods or contract with the hospital to pay using different methods.

(e) Chronic pain management treatment provided in a hospital approved by the agency to provide that service.

(f) Administrative day services. The agency pays administrative days for one or more days of a hospital stay in which an acute inpatient or observation level of care is not medically necessary, and a lower level of care is appropriate. The administrative day rate is based on the statewide average daily medicaid nursing facility rate, which is adjusted annually. The agency may designate part of a client's stay to be paid an administrative day rate upon review of the claim or the client's medical record, or both.

(g) Inpatient services recorded on a claim grouped by the agency to a DRG for which the agency has not published an all-patient DRG (AP-DRG) or all-patient refined DRG (APR-DRG) relative weight. The agency will deny payment for claims grouped to APR DRG 955 or APR DRG 956.

(h) Organ transplants that involve heart, intestine, kidney, liver, lung, allogeneic bone marrow, autologous bone marrow, pancreas, or simultaneous kidney/pancreas. The agency pays hospitals for these organ transplants using the ratio of costs-to-charges (RCC) payment method. The agency maintains a list of DRGs which qualify as transplants on the agency's website.

(i) Gender affirming surgery.

**WSR 24-15-079**  
**PROPOSED RULES**  
**COLUMBIA RIVER**  
**GORGE COMMISSION**

[Filed July 18, 2024, 9:42 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Repeal former land use ordinance; add omitted requirements to new land use ordinance.

Hearing Location(s): On September 10, 2024, at 8:30 a.m., via Zoom. The registration link for the Columbia River Gorge Commission's (commission) meeting is <https://us02web.zoom.us/j/86488011558?pwd=RGdaBxInbgzn9xqyRdCP89ko0AFPdI.1>. Interested persons may contact the commission directly at 509-493-3323 if they need assistance registering for the meeting. The start time is for the commission meeting. The precise time of the hearing will be set approximately one week prior to the meeting.

Date of Intended Adoption: September 10, 2024.

Submit Written Comments to: Krystyna Wolniakowskii, 57 N.E. Wauna Avenue, P.O. Box 730, White Salmon, WA 98672, email [info@gorgecommission.org](mailto:info@gorgecommission.org), beginning August 1, 2024, 8:00 a.m., by September 2, 2024, 5:00 p.m. The commission will accept oral and written comments at the hearing. Written comments provided by the date above will be provided to the members of the commission in advance of the hearing.

Assistance for Persons with Disabilities: Contact Connie Acker, finance and administration manager, phone 509-493-3323, email [info@gorgecommission.org](mailto:info@gorgecommission.org), by September 3, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The first purpose of this proposal is to repeal Commission Rule 350-81 in its entirety. Commission Rule 350-81 was the commission's land use ordinance that implemented the first revised management plan for the Columbia River Gorge National Scenic Area, which was in effect between 2004 and 2020. In 2020, the commission enacted the second revised management plan, and in 2022, the commission adopted a new land use ordinance (Commission Rule 350-082) to implement the second revised plan. The commission maintained Commission Rule 350-81 for approximately one year after adopting the new land use ordinance to use for the land use applications that were in process when the commission adopted the new land use ordinance. At this time, there are no more pending land use applications and all appeal periods have passed, so Commission Rule 350-81 is not needed. There is no effect to repealing the ordinance. The second purpose of this proposal is to add the management plan requirements for grading plans for certain new structural development to Commission Rule 350-082. The commission's initial adoption of Commission Rule 350-082 in April 2022 inadvertently omitted these requirements. The commission staff has been applying the requirements using the management plan directly, so there is no anticipated effect of this correction.

Reasons Supporting Proposal: Commission Rule 350-81 must be repealed because it is no longer consistent with the management plan for the Columbia River Gorge National Scenic Area and the commission has adopted a new land use ordinance. Commission Rule 350-81 is out-of-date and by the terms of the Columbia River Gorge National Scenic Area Act, cannot be used. This addition to Commission Rule 350-082 is nec-

essary to make the new land use ordinance consistent with the management plan as required by the National Scenic Area Act.

Statutory Authority for Adoption: RCW 43.97.015; Or. Rev. Stat. § 196.150; 16 U.S.C. § 544e(c); 16 U.S.C. § 544f(1).

Statute Being Implemented: RCW 43.97.015; Or. Rev. Stat. § 196.150; 16 U.S.C. § 544e(c); 16 U.S.C. § 544f(1).

Rule is necessary because of federal law, 16 U.S.C. § 544e(c); 16 U.S.C. § 544f(1).

Name of Proponent: Columbia River Gorge Commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Krystyna Wolniakowski, White Salmon, Washington, 509-493-3323.

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 proposal only repeals rules and incorporates requirements already adopted by the commission in the management plan; this proposal does not add new substantive regulations.

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 of the state if the rule is not adopted: RCW 43.97.015; Or. Rev. Stat. § 196.150; 16 U.S.C. § 544e(c); 16 U.S.C. § 544f(1). If the commission does not repeal this rule, then it will be out of compliance with the requirement in the Columbia River Gorge National Scenic Area Act to maintain a land use ordinance that is consistent with the management plan for the Columbia River Gorge National Scenic Area. Although the commission has already adopted a new land use ordinance, it cannot maintain a second inconsistent ordinance.

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: 16 U.S.C. §§ 544e and 544f dictate that the land use ordinance must be consistent with the previously adopted management plan. This proposal is to repeal the former land use ordinance that is not consistent with current second revised management plan.

Scope of exemption for rule proposal:

Is fully exempt.

July 18, 2024

C. L. Acker

Finance and Administration Manager

#### AMENDATORY SECTION

#### **350-082-0080. Application for Review and Approval Required**

(1) The application form required for National Scenic Area review is available at the Gorge Commission Office and on the Gorge Commission's website.

(2) All proposed developments and land uses shall be reviewed according to the standards in effect on the date the applicant submits a complete application for National Scenic Area review.

(3) A complete application is one that the Executive Director determines meets the requirements in this land use ordinance for a complete application form, a complete site plan showing the proposed site (site plans with alternative sites or building envelopes are not sufficient), all applicable information specified in the various sections of this land use ordinance, and other information that the Executive Director requires to make findings based on substantial evidence in the whole record and conclusions for compliance with the guidelines in this land use ordinance.

(4) The Executive Director will not accept an incomplete application for review.

(5) Prior to accepting an application or at any time during review of an application, the Executive Director may require the applicant to amend an application or withdraw an application and file a new application to resolve violations of applicable National Scenic Area standards or a prior Executive Director decision at the same time as the current application.

(6) The Executive Director shall accept and review the application pursuant to the procedures and requirements in 350-082-0080 through 350-082-0170 for consistency with the appropriate guidelines of this land use ordinance.

(7) The Executive Director may charge a fee for review of applications. The Gorge Commission shall set the fee after a public hearing.

(8) Applications for National Scenic Area review of a proposed use or development shall provide the following information.

(a) The applicant's name, mailing address, telephone number, and email address;

(b) The name, mailing address, telephone number, and email address of the landowner and all other persons or entities that hold easements or other partial interests that give a right to use or refuse use of land, as determined by the Executive Director;

(c) The county in which the proposed use or development would be located;

(d) The section, quarter section, township and range in which the proposed development would be located;

(e) The street address of the proposed use or development;

(f) The tax lot number(s) and size in acres of the parcel(s) involved;

(g) A description of the current land use for the parcel(s) involved and adjoining lands;

(h) A written description of the proposed use or development, including details on the height, exterior color(s), and construction materials of the proposed structures;

(i) A list of Key Viewing Areas from which the proposed use would be visible;

(j) A map of the project area. The map shall be drawn to scale. The scale of the map shall be large enough to allow the Executive Director to determine the location and extent of the proposed use or development and evaluate its effects on scenic, cultural, natural, and recreation resources. The map shall be prepared at a scale of one inch equals 200 feet (1:2,400), or a scale providing greater detail. If a parcel is very large, the map does not need to show the entire parcel; rather, it can show only those portions of the parcel affected by the proposed use. The map shall include the following elements:

(A) North arrow;

(B) Map scale;

- (C) Boundaries, dimensions, and size of the subject parcel;
- (D) Significant terrain features or landforms (e.g., cliffs, rock faces, slopes, stands of trees);
- (E) Groupings and species of trees or other vegetation on the parcel;
- (F) Location and species of vegetation that would be removed or planted;
- (G) Bodies of water and watercourses, including intermittent and ephemeral streams;
- (H) Location and width of existing and proposed roads, driveways, and trails;
- (I) Location, dimensions, height, and size (in square feet) of existing and proposed structures;
- (J) Location of existing and proposed services including wells or other water supplies, sewage disposal systems, power and telephone poles and lines, and outdoor lighting; and
- (K) Location and depth of all proposed grading and ditching
- (k) Elevation drawings, which shall show the appearance of proposed structures and shall include natural grade, finished grade, and the geometrical exterior of at least the length and width of structures as seen from a horizontal view. Elevation drawings shall be drawn to scale and include sizes and dimensions of windows, doors, and covered openings;
- (l) The following applications for structural development shall include a grading plan:
  - (A) Applications involving more than 100 cubic yards of grading with slopes greater than 10 percent, except applications for trails in the SMAs.
  - (B) Applications involving more than 200 cubic yards of grading on sites visible from key viewing areas.
  - (C) Grading plans shall include the following:
    - (i) A map of the site, prepared at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with contour intervals of at least 5 feet, including:
      - (I) Existing and proposed final grades;
      - (II) Location of all areas to be graded, with cut banks and fill slopes delineated; and
      - (III) Estimated dimensions of graded areas.
    - (ii) A narrative description (may be submitted on the grading plan site map and accompanying drawings) of the proposed grading activity, including:
      - (I) Its purpose;
      - (II) An estimate of the total volume of material to be moved;
      - (III) The height of all cut banks and fill slopes;
      - (IV) Provisions to be used for compactions, drainage, and stabilization of graded areas. (Preparation of this information by a licensed engineer or engineering geologist is recommended);
      - (V) A description of all plant materials used to revegetate exposed slopes and banks, including the species, number, size, and location of plants, and a description of irrigation provisions or other measures necessary to ensure the survival of plantings; and
      - (VI) A description of any other interim or permanent erosion control measures to be used.
  - (lm) A list of names and addresses of the adjacent property owners within a distance of the subject parcel as determined in 350-082-0110 Table 1 - Notice Requirements;

(mn) Any additional information that the applicant feels will assist in the evaluation of the proposal, including but not limited to, maps, drawings, and development plans; and

(no) The signature of the applicant, and the signature or other statement of the landowner and other persons or entities that hold easements or other partial interests that give a right to use or refuse use of land, as determined by the Executive Director indicating that they are aware of the application and that authorizes the Executive Director or the Executive Director's designee reasonable access to the site in order to evaluate the application and to conduct inspections during construction of an approved development or land use, and a final inspection when construction is completed.

(9) The Executive Director may require additional information necessary to demonstrate compliance with this land use ordinance, including but not limited to, a professional land survey and staking of proposed structure and building locations that are close to a property or buffer boundary, a professionally drawn site and landscaping plan, and copies of or other proof of prior building permits and land use permits.

(10) The Executive Director shall provide Firewise information to applicants with application forms and encourage and assist applicants to incorporate Firewise standards in their proposals as appropriate and as consistent with the resource protection provisions in the Management Plan.

(11) Requirements for applications for Emergency/Disaster Response Actions are contained in 350-082-0230.

(12) Completed application forms shall be submitted directly to the Gorge Commission office.

#### REPEALER

The following sections of the Columbia River Gorge Commission's rules are repealed:

350-81-010.	Purposes and Applicability
350-81-012.	Affected Area
350-81-014.	Maps
350-81-016.	Review and Approval Required
350-81-018.	Uniform Application of Management Plan
350-81-020.	Definitions
350-81-030.	Standards for Applications
350-81-032.	Application for Review and Approval
350-81-034.	Pre-Application Conference
350-81-036.	Acceptance of Application
350-81-038.	Notice of Development Review
350-81-040.	Comment Period
350-81-042.	Decision of the Executive Director
350-81-044.	Expiration of Approvals
350-81-046.	Changes or Alterations to an Approved Action
350-81-050.	Development Eligible for Expedited Review
350-81-052.	Resource and Treaty Rights Protections Guidelines
350-81-054.	Procedures for Expedited Review Process
350-81-060.	Emergency/Disaster Response Actions
350-81-070.	Exempt Land Uses and Activities
350-81-072.	Prohibited Land Uses and Activities

- 350-81-074. Uses Allowed Outright
- 350-81-076. Agricultural Buffer Zones in the General Management Area
- 350-81-078. Variances
- 350-81-080. Applying New Less-Stringent Regulations to Development Approved Under Prior Scenic Area Regulations
- 350-81-082. Existing Uses and Discontinued Uses
- 350-81-084. Indian Tribal Treaty Rights and Consultation
- 350-81-086. Buffers from Existing Recreation Sites
- 350-81-090. Agricultural Buildings
- 350-81-092. Temporary Use—Hardship Dwelling
- 350-81-094. Sewer and Water Services
- 350-81-096. Docks and Boathouses
- 350-81-098. Home Occupations and Cottage Industries
- 350-81-100. Bed and Breakfast Inns
- 350-81-102. Small-Scale Fishing Support and Fish Processing Operations
- 350-81-104. Resource Enhancement Projects
- 350-81-106. Disposal Sites for Spoil Materials from Public Road Maintenance Activities
- 350-81-108. Commercial Events
- 350-81-110. Columbia River Bridge Replacement
- 350-81-112. Signs
- 350-81-114. Special Uses in Historic Buildings
- 350-81-120. Consolidation of Lots
- 350-81-124. Land Divisions and Cluster Development
- 350-81-126. Lot Line Adjustments
- 350-81-170. Agricultural Land Designations
- 350-81-180. Uses Allowed Outright—Agricultural Land
- 350-81-182. Uses Allowed through the Expedited Development Review Process—Agricultural Land
- 350-81-190. Review Uses—Agricultural Land
- 350-81-200. Review Uses with Additional Approval Criteria—Large-Scale or Small-Scale Agriculture
- 350-81-210. Approval Criteria for Life Estates—Large-Scale or Small-Scale Agriculture Designations
- 350-81-220. Approval Criteria for Specified Review Uses on Lands Designated Large-Scale or Small-Scale Agriculture
- 350-81-230. Uses Allowed Outright for Lands Designated Agriculture—Special
- 350-81-231. Uses Allowed through the Expedited Development Review Process—Agriculture—Special
- 350-81-232. Review Uses for Lands Designated Agriculture—Special
- 350-81-234. Approval Criteria for Review Uses on Lands Designated Agriculture—Special
- 350-81-236. Uses Prohibited on Lands Designated Agriculture—Special
- 350-81-240. Range Conservation Plans
- 350-81-250. Forest Land Designations
- 350-81-260. Uses Allowed Outright—Forest Land
- 350-81-262. Uses Allowed through the Expedited Development Review Process—Forest Land
- 350-81-270. Review Uses—Forest Land
- 350-81-280. Review Uses with Additional Approval Criteria—Commercial Forest Land, or Large or Small Woodland Designations
- 350-81-290. Approval Criteria for Specified Review Uses on Lands Designated Commercial Forest Land or Large or Small Woodland
- 350-81-300. Approval Criteria for Fire Protection in GMA Forest Designations
- 350-81-310. Approval Criteria for Siting of Dwellings on Forest Land in the GMA
- 350-81-320. Approval Criteria for Life Estates in Commercial Forest Land or Small or Large Woodland
- 350-81-330. Open Space Designations



- 350-81-335. Uses Allowed Outright—Open Space
- 350-81-338. Uses Allowed through the Expedited Development Review Process—Open Space
- 350-81-340. Review Uses—Open Space
- 350-81-350. Residential Land Designations
- 350-81-360. Uses Allowed Outright—Residential Land
- 350-81-365. Uses Allowed through the Expedited Development Review Process— Residential Land
- 350-81-370. Review Uses—Residential Land
- 350-81-380. Review Uses with Additional Approval Criteria—Residential Land
- 350-81-390. Approval Criteria for Specified Review Uses on Lands Designated Residential
- 350-81-400. Rural Center
- 350-81-410. Uses Allowed Outright—Rural Center
- 350-81-415. Uses Allowed through the Expedited Development Review Process—Rural Center
- 350-81-420. Review Uses—Rural Center
- 350-81-430. Commercial Land
- 350-81-440. Uses Allowed Outright—Commercial Designations
- 350-81-445. Uses Allowed through the Expedited Development Review Process—Commercial Designations
- 350-81-450. Review Uses—Commercial Designations
- 350-81-460. Approval Criteria for Review Uses on Lands Designated on Lands Designated Commercial
- 350-81-470. Recreation
- 350-81-480. Uses Allowed Outright—Public Recreation and Commercial Recreation
- 350-81-485. Uses Allowed through the Expedited Development Review Process—Public Recreation and Commercial Recreation
- 350-81-490. Review Uses—Public Recreation and Commercial Recreation
- 350-81-500. Approval Criteria for Non-Recreation Uses in GMA-Public Recreation Designations
- 350-81-510. Approval Criteria for Non-Recreation Uses in GMA-Commercial Recreation Designations.
- 350-81-520. General Management Area Scenic Review Criteria
- 350-81-530. Special Management Area Scenic Review Criteria
- 350-81-540. General Management Area Cultural Resource Review Criteria
- 350-81-550. Special Management Area Cultural Resource Review Criteria.
- 350-81-560. General Management Area Wetland Review Criteria
- 350-81-570. General Management Area Stream, Pond, Lake and Riparian Area Review Criteria
- 350-81-580. General Management Area Sensitive Wildlife Review Criteria
- 350-81-590. General Management Areas Rare Plant Review Criteria
- 350-81-600. Special Management Areas Natural Resource Review Criteria
- 350-81-610. General Management Areas Recreation Resource Review Criteria
- 350-81-620. Special Management Area Recreation Resource Review Criteria
- 350-81-630. Notice of Application Requirements

**WSR 24-15-091**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**

[Filed July 19, 2024, 2:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-074.

Title of Rule and Other Identifying Information: WAC 110-50-0420  
Definitions for foster care rate assessment (FCRA), 110-80-0030 What definitions apply to the department's adoption support program?, 110-145-1305 What definitions do I need to know to understand this chapter?, 110-148-1305 What definitions do I need to know to understand this chapter?, 110-148-1365 What are the personal requirements for foster parents?, 110-148-1366 What are the qualifications to provide PTFC services?, 110-148-1367 What happens if I am applying to provide PTFC services and I do not have sufficient income?, 110-148-1368 What happens if I stop providing PTFC services?, and 110-148-1370 What kinds of assessments are included in the licensing process?

Hearing Location(s): On August 26, 2024, telephonic. Comments can be made by calling 360-972-5385 and leaving a voicemail that includes the comment, emailing the rules coordinator, or mailing comments to the department of children, youth, and families' (DCYF) physical mailing address. All comments must be received by the date and time listed below.

Date of Intended Adoption: August 27, 2024.

Submit Written Comments to: DCYF rules coordinator, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, beginning July 25, 2024, 8:00 a.m., by August 27, 2024, 11:59 p.m.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-522-3691, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), by August 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DCYF is required to develop a contract and a new type of foster home for professional therapeutic foster care according to the D.S. Settlement Agreement. The intent of the agreement is to remove this barrier in licensing rules and add new language describing eligibility and licensing requirements for professional therapeutic foster parents. In addition, revisions are being made to allow foster care payments to be the sole income of a licensed foster family home. The licensing division must update sections and add new sections to chapter 110-148 WAC to satisfy this legal requirement as well as to chapters 110-50, 110-80, and 110-145 WAC for definition revisions.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 34.05.220, 43.216.020, and 43.216.065.

Statute Being Implemented: RCW 34.05.220, 43.216.020, and 43.216.065.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Joelle Leisure, 1949 South State Street, Tacoma, WA 98405, 253-533-0045; Implementation and Enforcement: DCYF, statewide.

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. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5) [(a)] (i).

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.

July 19, 2024  
Brenda Villarreal  
Rules Coordinator

## OTS-5625.1

AMENDATORY SECTION (Amending WSR 23-24-040, filed 11/30/23, effective 12/31/23)

**WAC 110-50-0420 Definitions for foster care rate assessment (FCRA).** The following definitions apply to foster care rate assessments (FCRA):

**"Behavior rehabilitation services"** or **"BRS"** means a temporary wrap around support and treatment program for youth with extreme, high level service needs, used to safely stabilize them and assist them in achieving a permanent plan or less intensive service.

**"Child placing agency (~~"or"CPA~~) (CPA)"** means an agency or tribe licensed to place children (~~(or youth)~~) for foster care or adoption and may be contracted by the department to provide professional therapeutic foster care services.

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

**"Foster care"** means the placement of children or youth by DCYF or licensed child placing agencies in homes or facilities licensed or certified pursuant to chapter 74.15 RCW or in homes or facilities that are not required to be licensed pursuant to chapter 74.15 RCW.

**"Foster home"** or **"foster family home"** means individuals licensed to regularly provide a 24-hour care in their home to children or youth.

**"Licensed health care provider"** means a medical doctor (MD), doctor of osteopathy (DO), doctor of naturopathy (ND), physician's assistant (PA), or an advanced registered nurse practitioner (ARNP).

**"Licensing division"** or **"LD"** means the division of the department of children, youth, and families that licenses and monitors foster homes, child placing agencies, and licensed group care facilities under the authority of chapter 74.15 RCW.

**"Relatives"** means the same as defined in RCW 13.36.020(5), described in RCW 74.15.020(2), or caregivers of Indian children or youth who are defined by tribal code or custom as relatives or extended family.

**"Suitable persons"** means nonrelatives with whom the child or youth, or the child's or youth's family, has a preexisting relation-

ship; who has completed all required criminal history background checks and otherwise appears to be suitable and competent to provide care for the child or youth, and with whom they have been placed pursuant to RCW 13.34.130.

## OTS-5626.1

AMENDATORY SECTION (Amending WSR 20-04-019, filed 1/27/20, effective 2/27/20)

**WAC 110-80-0030 What definitions apply to the adoption support program?** The following definitions apply to this chapter:

**"Adoption"** means the granting of an adoption decree consistent with chapter 26.33 RCW.

**"Adoption support agreement"** means a written contract between the adoptive parents and the department that identifies the specific benefits available to the adoptive parents and other terms and conditions of the agreement.

**"Adoption support cash payment"** means negotiated monthly cash payments paid pursuant to an adoption support agreement between the adoptive parents and the department.

**"Applicant"** means a person or couple applying for adoption support on behalf of a child the person or couple plans to adopt.

**"Child placing agency (CPA)"** means ~~((a private nonprofit))~~ an agency or tribe licensed ((by the department under chapter 74.15 RCW)) to place children for ((adoption or)) foster care or adoption and may be contracted by the department to provide professional therapeutic foster care services.

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

**"Extenuating circumstances"** means a finding by an administrative law judge or a review judge that one or more qualifying conditions or events occurred that erroneously prevented an otherwise eligible child from being placed on the adoption support program prior to adoption.

**"Medical services"** means services covered by medicaid and administered by the health care authority.

**"Negotiation"** means the process of working toward an agreement between the department and the adoptive parent on the terms of the adoption support agreement.

**"Nonrecurring costs"** means reasonable, necessary, and direct expenses related to the cost of finalizing the adoption of a special needs child.

**"Placing agency"** means the public or private nonprofit agency that has the legal authority to place the child for adoption.

**"Program"** means the department's adoption support program.

**"Reconsideration"** means the limited state-funded support that may be available to an eligible child whose adoption was finalized without a valid adoption support agreement in place.

**"Resident state"** (for purposes of the child's medicaid eligibility) means the state in which the child physically resides. In some cases this may be different from the state of the parent's legal residence.

## OTS-5627.1

AMENDATORY SECTION (Amending WSR 22-11-091, filed 5/18/22, effective 6/18/22)

**WAC 110-145-1305 What definitions do I need to know to understand this chapter?** The following words and terms are for the purpose of this chapter and are important to understand these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person 18 years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Asexual" means the lack of a sexual attraction or desire for other individuals.

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and emotional condition.

"Bisexual" means individuals who have an emotional or physical attraction to individuals of the same and different genders.

"Business hours" means hours during the day in which state business is commonly conducted. Typically, the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard hours of operation.

"Capacity" means the age range and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means a facility employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Case plan" means a written document adhered to and followed by a foster child's parents, foster parents, the department, and all other caregivers. A case plan may include, but is not limited to:

(a) A description of the type of home or facility in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the department plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child;

(b) A plan for assuring that the child receives safe and proper care and that services are provided to the child, parents or guardians, and foster parents in order to improve the conditions in the parents' home, facilitate returning the child to their own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan;

(c) The health and education records of the child, including the most recent information available regarding:

(i) The names and addresses of the child's health and educational providers;

(ii) The child's grade level performance;

(iii) The child's school records;

(iv) A record of the child's immunizations;

(v) The child's known medical conditions;

(vi) The child's medications; and

(vii) Any other relevant health and education information concerning the child determined to be appropriate by the department;

(d) Relevant professional assessments of the child;  
(e) Court orders concerning the child; and  
(f) Any other relevant plan, assessment, knowledge, material, or information concerning the child determined to be appropriate by the department.

"Chapter" means chapter 110-145 WAC.

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

(a) Under 18 years old;

(b) Up to 21 years of age and enrolled in services through the department of social and health services developmental disabilities administration (DDA) the day prior to their 18th birthday and pursuing either a high school or equivalency course of study, such as a GED or HSEC, or vocational program;

(c) Up to 21 years of age and participates in the extended foster care program;

(d) Up to 21 years of age with intellectual and developmental disabilities;

(e) Up to 25 years of age and under the custody of juvenile rehabilitation.

"Child placing agency (CPA)" means an agency or tribe licensed to place children for ((temporary care, continued care,)) foster care or adoption and may be contracted by the department to provide professional therapeutic foster care services.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"CW" means the division of child welfare within DCYF. CW provides case management to children and families involved in the child welfare system.

"Day treatment" is a specialized service that provides educational and therapeutic group experiences for emotionally disturbed children.

"DDA" means the developmental disabilities administration in the department of social and health services. DDA provides services and case management to children and adults who meet the eligibility criteria.

"Deescalation" means strategies used to defuse a volatile situation, to assist a child to regain behavior control, and to avoid a physical restraint or other behavioral intervention.

"Department" means the department of children, youth, and families (DCYF).

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"Direct care" means direct, hands-on personal care and supervision to group care children.

"DOH" means the department of health.

"Electronic monitoring" means video or audio monitoring or recording used to watch or listen to children as a way to monitor their behavior.

"Emergency respite center (ERC)" means a licensed facility that may be commonly known as a crisis nursery, which provides emergency or crisis care for nondependent children birth through 17 years for up to 72 hours to prevent child abuse or neglect per RCW 74.15.020(d). ERCs may choose to be open up to 24 hours a day, seven days a week. Facilities may also provide family assessment, family support services, and referrals to community services.

"FBI" means the Federal Bureau of Investigation.

"Full-time" as used throughout this chapter when describing work experience means a minimum of 1,664 work hours in a calendar year or the equivalent of 32 work hours per week.

"Gay" means a sexual orientation to describe individuals who are emotionally or physically attracted to someone of the same gender. Gay is sometimes an umbrella term for the LGBTQIA+ community.

"Gender" or "gender identity" means an individual's inner sense of being a female, male, a blend of both or neither, or another gender. This may or may not correspond with an individual's sex assigned at birth.

"Gender expression" means individuals' outward communication of their gender through behavior or appearance. This may or may not conform to their sex assigned at birth or socially defined behaviors and characteristics typically associated with being either masculine or feminine.

"Gender fluid" means individuals whose gender identities are flexible, not permanent.

"Group care" is a general term for a licensed facility that is maintained and operated for a group of children on a 24-hour basis to provide a safe and healthy living environment that meets the developmental needs of the children in care, per RCW 74.15.020 (1)(f).

"Group home" is a specific license for residential care that provides care and supervision for children.

"Group receiving center" means a licensed facility that provides the basic needs of food, shelter, and supervision for children placed by the department, generally for 30 or fewer days.

"Guardian" has the same meaning in this chapter as defined in RCW 26.33.020(11).

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include, but are not limited to, BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns, and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than 12 months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"Interim facility" means an overnight youth shelter, emergency respite center or a resource and assessment center.

"Intersex" is an umbrella term used to describe a wide range of natural bodily variations when the body is born with a combination of chromosomes, internal organs, or external genitalia that do not develop as expected.

"Lesbian" means females or women who have an emotional or physical attraction for other females or women.

"LGBTQIA+" means lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual. The "+" represents identities not specifically named in the LGBTQIA acronym, e.g., pansexual, gender nonbinary, and Two-Spirit.

"License" means a permit issued by us that your facility meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Licensing division (LD)" means the division within DCYF that licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"Licensing provider portal" means the internet connected provider application system used by the department and agencies to securely store digital employment and licensing documents and data.

"Local fire authority" means your local fire inspection authority having jurisdiction in the area where your facility is located.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of 24-hour skilled care from a health care professional or specially trained staff or volunteers in a group care setting. These conditions may be present all the time or frequently occurring. If the technology, support, and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than 18 years of age in licensed care or under the care, custody, and authority of DCYF and the child's whereabouts are unknown, the child has left care without the permission of the child's caregiver or DCYF, or both. This does not include children in a dependency guardianship.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at-risk children in need of services, and their parents.

"Negative action" means a court order, court judgment, or adverse action taken by an agency, in any state, federal, local, tribal, or foreign jurisdiction, that results in a finding against the applicant reasonably related to the individual's suitability, and competence to care for or have unsupervised access to children in out-of-home care. This may include, but is not limited to:

- (a) A decision issued by an administrative law judge;
- (b) A final determination, decision, or finding made by an agency following an investigation;
- (c) An adverse licensing action, including termination, revocation, or denial of a license or certification, or if there is a pending adverse action, the voluntary surrender of a license, certification, or contract in lieu of an adverse action;
- (d) A revocation, denial, or restriction placed on any professional license; or
- (e) A final decision of a disciplinary board.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Nonbinary" is a term of self-identification for individuals who do not identify within the limited and binary terms that have described gender identity, e.g., female and male. Nonbinary is also an umbrella term for many identities such as gender expansive, gender fluid, and genderqueer.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Overnight youth shelter" means a licensed nonprofit agency that provides overnight shelter to homeless or runaway youth in need of emergency sleeping arrangements.



"Parent" has the same meaning in this chapter as defined in RCW 26.26A.010(15).

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include antipsychotic, antidepressant, and anti-anxiety medications.

"Queer" is a term used to express LGBTQIA+ identities and orientations. The term is sometimes used as an umbrella term for all LGBTQIA+ individuals.

"Questioning" means individuals who are exploring their sexual orientation, gender identity, or gender expression at any age.

"Relative" means a person who is related to a child under RCW 74.15.020.

"Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to 72 hours, (excluding Saturdays, Sundays, and holidays) to children who have been removed from their parent's or guardian's care by child protective services or law enforcement.

"Secure crisis residential center" means a licensed facility open 24 hours a day, seven days a week that provides temporary residential placement, assessment and services in a secure facility to prevent youth from leaving the facility without permission, per RCW 13.32A.030(15).

"Semi-secure crisis residential center" means a licensed facility open 24 hours a day, seven days a week that provides temporary residential placement, assessment and services for runaway youth and youth in conflict with their family or in need of emergency placement.

"Sexual orientation" means an individual's emotional or physical attraction to other individuals.

"SOGIE" is an acronym for sexual orientation, gender identity, and expression which are distinct identifiers everyone has. LGBTQIA+ is a subdistinction within SOGIE self-identifiers. SOGIE includes LGBTQIA+ as well as heterosexual, cisgender, and nonquestioning individuals.

"Staff" or "staff member" means a person who provides services for your facility and is paid by your facility. The definition of staff member includes paid interns.

"Staffed residential home" means a licensed facility that provides 24-hour care to six or fewer children who require more supervision than can be provided in a foster home.

"Transgender" is an umbrella term for individuals whose gender identity or expression is different from cultural expectations based on the sex they were assigned at birth. Gender-affirming medical care is not a prerequisite to identify as transgender. Being transgender does not imply any specific sexual orientation.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Two-Spirit" means a modern, pan-indigenous, umbrella term used by some indigenous North Americans to describe Native people in their communities who fulfill a traditional third-gender or other gender-variant, ceremonial, and social role in their cultures. Being Two-Spirit does not imply any specific sexual orientation.

"Volunteer" means a person who provides services for your facility without compensation.

"Washington state patrol fire protection bureau (WSP/FPB)" means the state fire marshal.

"We, our, and us" refers to DCYF and its staff.

"Young child" refers to a child age 12 months through eight years old.

## OTS-5628.2

AMENDATORY SECTION (Amending WSR 22-11-091, filed 5/18/22, effective 6/18/22)

**WAC 110-148-1305 What definitions do I need to know to understand this chapter?** The following definitions are for the purpose of this chapter and are important to understanding these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person 18 years of age and older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Asexual" means the lack of a sexual attraction or desire for other individuals.

"Bisexual" means individuals who have an emotional or physical attraction to individuals of the same and different genders.

"Capacity" means the age range and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children, and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Case plan" means a written document adhered to and followed by a foster child's parent or parents, foster parent or parents, the department, and all other caregivers. A case plan may include, but is not limited to:

(a) A description of the type of home or facility in which a child is to be placed, including a discussion of the safety and appropriateness of the placement and how the department plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child;

(b) A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to their own safe home or the permanent placement of the child, and address the needs of the child while in

foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan;

(c) The health and education records of the child, including the most recent information available regarding:

(i) The names and addresses of the child's health and educational providers;

(ii) The child's grade level performance;

(iii) The child's school record;

(iv) A record of the child's immunizations;

(v) The child's known medical conditions;

(vi) The child's medications; and

(vii) Any other relevant health and education information concerning the child determined to be appropriate by the department;

(d) Relevant professional assessments of the child;

(e) Court orders concerning the child; and

(f) Any other relevant plan, assessment, knowledge, material, or information concerning the child determined to be appropriate by the department.

"Caseworker" means the primary agency worker assigned to the child through DCYF or another government agency.

"Certification" means either:

(a) Our review of whether you meet the licensing requirements, even though you do not need to be licensed; or

(b) A licensed child placing agency (CPA) representing that a foster home being supervised by that CPA meets licensing requirements. The final decision for licensing is the responsibility of DCYF.

"Chapter" means chapter 110-148 WAC.

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

(a) Under 18 years of age;

(b) Up to 21 years of age and enrolled in services through department of social and health services, developmental disabilities administration (DDA) the day prior to his or her 18th birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;

(c) Up to 21 years of age and participates in the extended foster care program;

(d) Up to 21 years of age with intellectual and developmental disabilities;

(e) Up to 25 years of age and under the custody of juvenile rehabilitation.

"Child placing agency (CPA)" means an agency or tribe licensed to place children for foster care or adoption and may be contracted by the department to provide professional therapeutic foster care (PTFC) services.

"Child welfare" or "CW" means the division of child welfare within DCYF. CW provides case management to children and families involved in the child welfare system.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

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

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

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"FBI" means the Federal Bureau of Investigation.

"Foster home or foster family home" means a person(s) licensed to regularly provide 24-hour care in their home to children.

"Gay" means a sexual orientation to describe individuals who are emotionally or physically attracted to someone of the same gender. Gay is sometimes an umbrella term for the LGBTQIA+ community.

"Gender" or "gender identity" means an individual's inner sense of being a female, male, a blend of both or neither, or another gender. This may or may not correspond with an individual's sex assigned at birth.

"Gender expression" means individuals' outward communication of their gender through behavior or appearance. This may or may not conform to their sex assigned at birth or socially defined behaviors and characteristics typically associated with being either masculine or feminine.

"Gender fluid" means individuals whose gender identities are flexible, not permanent.

"Guardian" has the same meaning in this chapter as defined in RCW 26.33.020(11).

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than 12 months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"Intersex" is an umbrella term used to describe a wide range of natural bodily variations when the body is born with a combination of chromosomes, internal organs, or external genitalia that do not develop as expected.

"Lesbian" means females or women who have an emotional or physical attraction for other females or women.

"LGBTQIA+" means lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual. The "+" represents identities not specifically named in the LGBTQIA acronym, e.g., pansexual, gender nonbinary, and Two-Spirit.

"License" means a permit issued by us confirming that you and your home meet the licensing standards established in this chapter.

"Licensed health care provider" means a medical doctor (MD), doctor of osteopathy (DO), doctor of naturopathy (ND), physician's assistant (PA), or an advanced registered nurse practitioner (ARNP).

"Licensing division (LD)" means the division within DCYF that licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"Licensor" means either:

(a) A LD employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

(b) An employee of a CPA who certifies or monitors foster homes supervised by the CPA.

"Maternity services" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of 24-hour skilled care from a health care professional or specially trained family or foster family member. These conditions may be present all the time or frequently occurring. If the technology, support, and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than 18 years of age in licensed care or under the care, custody, and authority of DCYF and the child's whereabouts are unknown or the child has left care without the permission of the child's caregiver or DCYF. This does not include children in dependency guardianship.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Nonbinary" is a term of self-identification for individuals who do not identify within the limited and binary terms that have described gender identity, e.g., female and male. Nonbinary is also an umbrella term for many identities such as gender expansive, gender fluid, and genderqueer.

"Out-of-home placement" means a child's placement in a home or facility other than the home of a child's parent, guardian, or legal custodian.

"Parent" has the same meaning in this chapter as defined in RCW 26.26A.010(15).

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Professional therapeutic foster care (PTFC)" means a foster home that is certified by a CPA to provide PTFC services.

"Property or premises" means your buildings and grounds adjacent to your residential property that are owned or managed by you.

"Psychotropic medication" means a type of medicine prescribed to affect or alter thought processes, mood, sleep, or behavior. These include anti-psychotic, anti-depressant, and anti-anxiety medications.

"Queer" is a term used to express LGBTQIA+ identities and orientations. The term is sometimes used as an umbrella term for all LGBTQIA+ individuals.

"Questioning" means individuals who are exploring their sexual orientation, gender identity, or gender expression at any age.

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an in-home or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

"Sexual orientation" means an individual's emotional or physical attraction to other individuals.

"SOGIE" is an acronym for sexual orientation, gender identity, and expression which are distinct identifiers everyone has. LGBTQIA+ is a subdistinction within SOGIE self-identifiers. SOGIE includes LGBTQIA+ as well as heterosexual, cisgender, and nonquestioning individuals.

"Transgender" is an umbrella term for individuals whose gender identity or expression is different from cultural expectations based on the sex they were assigned at birth. Gender-affirming medical care is not a prerequisite to identify as transgender. Being transgender does not imply any specific sexual orientation.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Two-Spirit" means a modern, pan-indigenous umbrella term used by some indigenous North Americans to describe Native people in their communities who fulfill a traditional third-gender or other gender-variant, ceremonial, and social role in their cultures. Being Two-Spirit does not imply any specific sexual orientation.

"Washington state patrol fire protection bureau or WSP/FPB" means the state fire marshal.

"We, our, and us" refers to the department of children, youth, and families, including LD and CW staff.

"Young child" refers to a child age 12 months through eight years old.

AMENDATORY SECTION (Amending WSR 22-11-091, filed 5/18/22, effective 6/18/22)

**WAC 110-148-1365 What are the personal requirements for foster parents?** (1) You must be at least 21 years old to apply for a license.

(2) You must demonstrate you have:

(a) The understanding, ability, physical health, emotional stability, and personality suited to meet the physical, mental, emotional, cultural, and social needs of children under your care;

(b) Sufficient regular income to maintain your own family, without ~~((the))~~ foster care reimbursement ~~((made for the children in your care))~~ unless you are an approved PTFC home as outlined in WAC 110-148-1366; and

(c) ~~((To be able))~~ The ability to communicate with the child, the department, health care providers, and other service providers.

(3) You must ~~((adhere to, follow, and))~~ comply with the case plan for the children in your care.

(4) You ~~((may))~~ must not use drugs or alcohol, whether legal or illegal, in a manner that affects your ability to provide safe care to children.

(5) You and everyone residing on your premises or who you allow to have unsupervised access to children must demonstrate they ~~((have the ability to furnish))~~ can provide children with a nurturing, respectful, and supportive environment.

NEW SECTION

**WAC 110-148-1366 What are the qualifications to provide PTFC services?** (1) You must be a licensed foster parent through a CPA; and

(2) You must meet the requirements specified in the PTFC contract.

NEW SECTION

**WAC 110-148-1367 What happens if I am applying to provide PTFC services and I do not have sufficient income?** The department may issue you a license if you meet all other PTFC requirements but lack sufficient income to provide general foster care.

NEW SECTION

**WAC 110-148-1368 What happens if I stop providing PTFC services?** If you are approved as a PTFC home and stop providing PTFC services within the contracted time frame:

- (1) You must inform the CPA and the department; and
- (2) The department must:
  - (a) Place you in no referral status; and
  - (b) Not place any additional children in the home until you provide income verification that meets the requirements for general foster care in WAC 110-148-1365 (2) (b).

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

**WAC 110-148-1370 What kinds of assessments are included in the licensing process?** (1) The department or (~~child placing agency~~) CPA will assess you for a foster family license. This will include, but is not (~~necessarily~~) limited to:

- (a) Your ability to comply with the licensing requirements;
- (b) The physical condition of your home and property;
- (c) The physical and mental health of all members of the household; and
- (d) Your ability to provide sufficient income to meet the financial needs of your family without the foster care reimbursements for foster children in your care, unless you are an approved PTFC home.

(2) At any time, we may require:

- (a) You or someone in your house to give additional information (~~(. We may also require)~~); or
- (b) An evaluation of your home or property, or of a person in your home, by an evaluator (~~(/)~~) or provider approved by the department.

(3) (~~(Any)~~) Evaluations requested by the department will be at your expense.

(4) You must give the evaluator written permission to share information with us throughout the evaluation process.

## WSR 24-15-097

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed July 21, 2024, 1:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-03-145.

Title of Rule and Other Identifying Information: Radioactive materials licensing fees in chapter 246-254 WAC. The department of health (department) is proposing to increase radioactive material licensing fees to cover operating costs for the following: WAC 246-254-030 Small business discount provision and optional fee payment schedule applicable to radioactive materials licensees, 246-254-070 Fees for specialized radioactive material licenses, 246-254-080 Fees for medical and veterinary radioactive material use, 246-254-090 Fees for industrial radioactive material licenses, 246-254-100 Fees for laboratory radioactive material licenses, and 246-254-120 Fees for licensing and compliance actions.

The department is proposing a 31 percent fee increase across the board to all of the licenses but not proposing any new license categories. The department is proposing to remove the 50 percent discount for additional sites and the 25 percent small business discount because they are unfunded.

Hearing Location(s): On September 3, 2024, at 3:00 p.m., at the Department of Health, Town Center 2, Room 166, 111 Israel Road S.E., Tumwater, WA 98501; or virtual. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_U-FZoZdUR5ylwaHX2jpF4A](https://us02web.zoom.us/webinar/register/WN_U-FZoZdUR5ylwaHX2jpF4A). After registering, you will receive a confirmation email containing information about joining the webinar. Individuals may attend the rules hearing either in person or virtually.

Date of Intended Adoption: September 10, 2024.

Submit Written Comments to: Peter Beaton, Department of Health, P.O. Box 47820 Olympia, WA 98504-7820, email [peter.beaton@doh.wa.gov](mailto:peter.beaton@doh.wa.gov), <https://fortress.wa.gov/doh/policyreview>, beginning date and time of filing, by September 3, 2024, at midnight.

Assistance for Persons with Disabilities: Contact Samantha Mendez, phone 360-236-3215, TTY 711, email [samantha.mendez@doh.wa.gov](mailto:samantha.mendez@doh.wa.gov), by August 27, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is required to charge a fee for each operating license issued to radioactive material license holders regulated by the department. The fees must cover the cost of administering a license and enforcing the program. The department completed an initial assessment of the radioactive materials program and determined the fees are not generating sufficient revenue to cover the costs of the program.

Reasons Supporting Proposal: RCW 43.70.250 requires the department to charge a fee for each operating license issued to owners of radioactive material licenses regulated by the department. Rule making is the only available approach for setting or changing fees that are enforceable. The department anticipates costs for the program to increase by four percent in biennium 2027 and then three percent each year thereafter. Cost increases are primarily due to inflation in personnel-related costs. A one-time higher than normal cost increase on salaries is expected to occur due to statewide class and compensation review. The department also anticipates a one-time database replacement cost increase of \$600,000. This data system is 15 years old and



cannot perform the duties and functions required for an efficient workflow process.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250, and 70A.388.050.

Statute Being Implemented: RCW 43.70.110, 43.70.250, and 70A.388.050.

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: Peter Beaton, Department of Health, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4031; Implementation and Enforcement: Earl Fordham, Department of Health, 309 Bradley Boulevard, Suite 201, Richland, WA 99352, 509-628-7628.

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 is exempt per 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.

Explanation of exemptions: The proposed rule changes amend fees.

Scope of exemption for rule proposal:

Is fully exempt.

July 21, 2024  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

## OTS-5366.1

AMENDATORY SECTION (Amending WSR 91-22-027, filed 10/29/91, effective 11/29/91)

**WAC 246-254-030 ((Small business discount provision and)) Optional fee payment schedule applicable to radioactive materials licensees.** (1) ((Small business may receive a twenty-five percent discount on radioactive materials license fees specified in WAC 246-254-070, 246-254-080, 246-254-090, and 246-254-100.

(2) To qualify for the discount, the business shall:

- (a) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;
- (b) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company); and
- (c) Have fifty or fewer employees.

(3) To receive the discount, the license applicant at the time of initial license request, or the licensee at the time of annual billing shall:

~~(a) Certify, on the business' letterhead or appropriate departmental form, the business meets the conditions in subsection (2) of this section;~~

~~(b) Sign the certification as the chief executive officer of the business or as an official designee;~~

~~(c) Have the certification notarized;~~

~~(d) Enclose the payment with the certification; and~~

~~(e) Submit the certification and payment in accordance with instructions provided by the department.~~

~~(4))~~ The department may verify certifications and will suspend any radioactive materials license if the applicant/licensee:

(a) Failed to pay the required fee; or

(b) Made an invalid or false certification.

~~((5))~~ (2) Upon request of any radioactive materials licensee or license applicant, the department may accept semiannual or quarterly payments in lieu of the required annual license fee, provided:

(a) A written payment schedule setting specific due dates and payment amounts is submitted; and

(b) The total payments per the schedule equal the fee in effect at the time such fee payment schedule is accepted by the department.

AMENDATORY SECTION (Amending WSR 17-01-084, filed 12/16/16, effective 1/16/17)

**WAC 246-254-070 Fees for specialized radioactive material licenses.** (1) Persons licensed or authorized to possess or use radioactive material in the following special categories shall forward annual fees to the department as follows:

(a) ~~((\$10,721))~~ \$14,054 for operation of a single nuclear pharmacy.

(b) ~~((\$18,284))~~ \$23,952 for operation of a single nuclear laundry.

(c) ~~((\$18,284))~~ \$23,952 for a license authorizing a single facility to use more than one curie of unsealed radioactive material in the manufacture and distribution of radioactive products or devices containing radioactive material.

(d) ~~((\$6,406))~~ \$8,392 for a license authorizing a single facility to use less than or equal to one curie of unsealed radioactive material or any quantity of previously sealed sources in the manufacture and distribution of products or devices containing radioactive material.

(e) ~~((\$1,647))~~ \$2,158 for a license authorizing the receipt and redistribution from a single facility of manufactured products or devices containing radioactive material.

(f) ~~((\$12,266))~~ \$16,068 for a license authorizing decontamination services operating from a single facility.

(g) ~~((\$5,798))~~ \$7,595 for a license authorizing waste brokerage including the possession, temporary storage at a single facility, and over-packing only of radioactive waste.

(h) ~~((\$2,583))~~ \$3,384 for a license authorizing health physics services, leak testing, calibration services, equipment servicing, or possession of sealed sources for purpose of sales demonstration only.

(i) ~~((\$3,032))~~ \$3,972 for a civil defense license.

(j) ~~((\$912))~~ \$1,195 for a license authorizing possession of special nuclear material as pacemakers or depleted uranium as shielding.

(2) Persons licensed or authorized to possess and use radioactive material in the following broad scope categories shall forward annual fees to the department as follows:

(a) (~~(\$36,288)~~) \$47,537 for a license authorizing possession of atomic numbers three through (~~(eighty-three)~~) 83 with maximum authorized possession of any single isotope greater than one curie.

(b) (~~(\$16,773)~~) \$21,973 for a license authorizing possession of atomic numbers three through (~~(eighty-three)~~) 83 with maximum authorized possession of any single isotope greater than 0.1 curie but less than or equal to one curie.

(c) (~~(\$13,478)~~) \$17,656 for a license authorizing possession of atomic numbers three through (~~(eighty-three)~~) 83 with maximum authorized possession less than or equal to 0.1 curie.

(3) Persons licensed or authorized to possess or use radioactive material which are not covered by any of the annual license fees described in WAC 246-254-070 through 246-254-100, shall pay fees as follows:

(a) An initial application fee of (~~(\$1,170)~~) \$1,533;

(b) Billing at the rate of (~~(\$189)~~) \$248 for each hour of direct staff time associated with issuing and maintaining the license and for the inspection of the license; and

(c) Any fees for additional services as described in WAC 246-254-120.

(d) The initial application fee will be considered a credit against billings for direct staff charges but is otherwise nonrefundable.

(4) Persons licensed or authorized to possess or use radioactive material in a facility for radioactive waste processing, including resource recovery, volume reduction, decontamination activities, or other waste treatment, but not permitting commercial on-site disposal, shall pay fees as follows:

(a) A nonrefundable initial application fee for a new license of (~~(\$18,720)~~) \$24,523 which shall be credited to the applicant's quarterly billing described in (b) of this subsection; and

(b) Quarterly billings for actual direct and indirect costs incurred by the department including, but not limited to, license renewal, license amendments, compliance inspections, a resident inspector for time spent on the licensee's premises as deemed necessary by the department, laboratory and other support services, and travel costs associated with staff involved in the foregoing.

AMENDATORY SECTION (Amending WSR 17-01-084, filed 12/16/16, effective 1/16/17)

**WAC 246-254-080 Fees for medical and veterinary radioactive material use.** (~~((+1))~~) Licensees authorized possession or use of radioactive material in the following medical or veterinary categories shall forward annual fees to the department as follows:

(~~((a) \$9,065)~~) (1) \$11,875 for operation of a mobile nuclear medicine program from a single base of operation;

(~~((b) \$6,608)~~) (2) \$8,656 for the use of unsealed radioactive material for imaging and localization studies for which a written directive is not required as defined in WAC 246-240-157, at a single facility (diagnostic imaging and localization nuclear medicine);

~~((e) \$5,723))~~ (3) \$7,497 for the use of unsealed radioactive material for which a written directive is required as defined in WAC 246-240-201 at a single facility (radiopharmaceutical therapy);

~~((d) \$9,126))~~ (4) \$11,955 for the use of unsealed radioactive material for imaging and localization studies for which a written directive is not required as defined in WAC 246-240-157, the use of unsealed radioactive material for which a written directive is required as defined in WAC 246-240-201, and/or the use of sealed sources for manual brachytherapy as defined in WAC 246-240-251 at a single facility (combination diagnostic nuclear medicine and/or radiopharmaceutical therapy), and/or sealed source (manual or machine) therapy;

~~((e) \$4,904))~~ (5) \$6,424 for the use of sealed sources for manual brachytherapy as defined in WAC 246-240-251 at a single facility (manual brachytherapy);

~~((f) \$3,032))~~ (6) \$3,972 for the use of sealed sources in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit, as defined in WAC 246-240-351, at a single facility (machine brachytherapy);

~~((g) \$4,605))~~ (7) \$6,033 for a license authorizing medical or veterinary possession of greater than ~~((two hundred))~~ 200 millicuries total possession of radioactive material at a single facility;

~~((h) \$3,664))~~ (8) \$4,800 for a license authorizing medical or veterinary possession of greater than ~~((thirty))~~ 30 millicuries but less than or equal to ~~((two hundred))~~ 200 millicuries total possession of radioactive material at a single facility;

~~((i) \$2,681))~~ (9) \$3,512 for a license authorizing medical or veterinary possession of less than or equal to ~~((thirty))~~ 30 millicuries total possession of radioactive material at a single facility;

~~((j) \$2,363))~~ (10) \$3,096 for the use of unsealed radioactive material for uptake, dilution and/or excretion studies for which a written directive is not required, as defined in WAC 246-240-151, at a single facility (diagnostic uptake, dilution, and excretion nuclear medicine);

~~((k) \$1,474))~~ (11) \$1,931 for a license authorizing medical or veterinary possession of a sealed source for diagnostic use at a single facility.

~~((2) The fee for a license authorizing multiple locations shall be increased by fifty percent of the annual fee for each additional location.))~~

AMENDATORY SECTION (Amending WSR 17-01-084, filed 12/16/16, effective 1/16/17)

**WAC 246-254-090 Fees for industrial radioactive material licenses.** (1) Persons licensed or authorized to possess or use radioactive material in the following industrial categories shall forward annual fees to the department as follows:

(a) ~~(( \$10,675))~~ \$13,984 for a license authorizing the use of radiographic exposure devices in one or more permanent radiographic vaults in a single facility.

(b) ~~(( \$14,311))~~ \$18,747 for a license authorizing the use of radiographic exposure devices at temporary job sites but operating from a single storage facility.

(c) (~~(\$7,010)~~) \$9,183 for a license authorizing well-logging activities including the use of radioactive tracers operating from a single storage facility.

(d) (~~(\$1,511)~~) \$1,979 for a license authorizing possession of portable sealed sources including moisture/density gauges and excluding radiographic exposure devices operating from a single storage facility.

(e) (~~(\$1,647)~~) \$2,158 for a license authorizing possession of any nonportable sealed source, including special nuclear material and excluding radioactive material used in a gas chromatograph at a single facility.

(f) (~~(\$1,038)~~) \$1,360 for a license authorizing possession of gas chromatograph units containing radioactive material at a single facility.

(g) (~~(\$2,878)~~) \$3,770 for a license authorizing possession of any self-shielded or pool type irradiator with sealed source total quantity greater than (~~(one hundred)~~) 100 curies at a single facility.

(h) (~~(\$15,298)~~) \$20,040 for a license authorizing possession of sealed sources for a walk-in type irradiator at a single facility.

(i) (~~(\$13,323)~~) \$17,453 for a license authorizing possession of greater than one gram of unsealed special nuclear material or greater than (~~(five hundred)~~) 500 kilograms of source material at a single facility.

(j) (~~(\$4,263)~~) \$5,585 for a license authorizing possession of less than or equal to one gram of unsealed special nuclear material or (~~(five hundred)~~) 500 kilograms of source material at a single facility.

(k) (~~(\$673)~~) \$882 for a license authorizing possession of static elimination devices not covered by a general license.

(2) Persons with licenses authorizing multiple locations of permanent storage shall increase the annual fee by (~~(fifty)~~) 100 percent for each additional location.

(3) Depleted uranium registrants required to file Form RHF-20 shall forward an annual fee of (~~(\$135)~~) \$177 to the department.

(4) General licensees required to register in accordance with WAC 246-233-020 (3)(k) shall forward an annual fee of (~~(\$402)~~) \$527 to the department.

AMENDATORY SECTION (Amending WSR 17-01-084, filed 12/16/16, effective 1/16/17)

**WAC 246-254-100 Fees for laboratory radioactive material licenses.** (1) Persons licensed or authorized to possess or use unsealed radioactive material in the following laboratory categories shall forward annual fees to the department as follows:

(a) (~~(\$7,300)~~) \$9,563 for a license authorizing possession at a single facility of unsealed sources in amounts greater than:

- (i) One millicurie of I-125 or I-131; or
- (ii) One hundred millicuries of H-3 or C-14; or
- (iii) Ten millicuries of any single isotope.

(b) (~~(\$3,603)~~) \$4,720 for a license authorizing possession at a single facility of unsealed sources in amounts:

(i) Greater than 0.1 millicurie and less than or equal to one millicurie of I-125 or I-131; or

(ii) Greater than (~~ten~~) 10 millicuries and less than or equal to (~~one hundred~~) 100 millicuries of H-3 or C-14; or

(iii) Greater than one millicurie and less than or equal to (~~ten~~) 10 millicuries of any single isotope.

(c) (~~(\$3,032)~~) \$3,972 for a license authorizing possession at a single facility of unsealed sources in amounts:

(i) Greater than 0.01 millicurie and less than or equal to 0.1 millicurie of I-125 or I-131; or

(ii) Greater than one millicurie and less than or equal to (~~ten~~) 10 millicuries of H-3 or C-14; or

(iii) Greater than 0.1 millicurie and less than or equal to one millicurie of any other single isotope.

(d) (~~(\$1,038)~~) \$1,360 for a license authorizing possession at a single facility of unsealed or sealed sources in amounts:

(i) Less than or equal to 0.01 millicurie of I-125 or I-131; or

(ii) Less than or equal to one millicurie of H-3 or C-14; or

(iii) Less than or equal to 0.1 millicurie of any other single isotope.

(e) (~~(\$1,399)~~) \$1,833 for a license authorizing possession at a single facility of large quantities of naturally occurring radioactive material in total concentration not exceeding 0.002 microcurie per gram.

(2) Persons with licenses authorizing multiple locations of use shall increase the annual fee by (~~fifty~~) 100 percent for each additional location.

(3) Persons registered to perform in vitro testing pursuant to Form RHF-15 shall forward an annual fee of (~~(\$135)~~) \$177 to the department.

AMENDATORY SECTION (Amending WSR 17-01-084, filed 12/16/16, effective 1/16/17)

**WAC 246-254-120 Fees for licensing and compliance actions.** (1)

In addition to the fee for each radioactive material license as described under WAC 246-254-070, 246-254-080, 246-254-090, and 246-254-100, a licensee shall pay a service fee for each additional licensing and compliance action as follows:

(a) For a second follow-up inspection, and each follow-up inspection thereafter, a fee of (~~(\$189)~~) \$248 per hour of direct staff time associated with the follow-up inspection, not to exceed (~~(\$1,901)~~) \$2,480 per follow-up inspection. Hours are calculated in half-hour increments.

(b) For each environmental cleanup monitoring visit, a fee of (~~(\$189)~~) \$248 per hour of direct staff time associated with the environmental cleanup monitoring visit, not to exceed (~~(\$4,753)~~) \$6,226 per visit. Hours are calculated in half-hour increments.

(c) For each new license application, the fee of (~~(\$304)~~) \$398 in addition to the required annual fee.

(d) For each sealed source and device evaluation, a fee of (~~(\$189)~~) \$248 per hour of direct staff time associated with each sealed source and device evaluation, not to exceed (~~(\$5,703)~~) \$7,471 per evaluation.

(e) For review of air emission and environmental programs and data collection and analysis of samples, and review of decommissioning activities by qualified staff in those work units, a fee of (~~(\$189)~~)

\$248 per hour of direct staff time associated with the review. The fee does not apply to reviews conducted by the radioactive materials section staff and does not apply unless the review time would result in a special service charge exceeding (~~ten~~) 10 percent of the licensee's annual fee.

(f) For expedited licensing review, a fee of (~~\$189~~) \$248 per hour of direct staff time associated with the review. This fee only applies when, by the mutual consent of licensee and affected staff, a licensing request is taken out of date order and processed by staff during nonwork hours and for which staff is paid overtime.

(2) The licensee or applicant shall pay any additional service fees at the time of application for a new license or within (~~thirty~~) 30 days of the date of the billing for all other licensing and compliance actions.

(3) The department shall process an application only upon receipt of the new application fee and the annual fee.

(4) The department may take action to modify, suspend, or terminate the license or sealed source and device registration if the licensee fails to pay the fee for additional licensing and compliance actions billed by the department.

## WSR 24-15-098

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed July 22, 2024, 7:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-12-052.

Title of Rule and Other Identifying Information: WAC 182-512-0600 SSI-related medical—Definition of income, 182-512-0650 SSI-related medical—Available income, and 182-512-0800 SSI-related medical—General income exclusions.

Hearing Location(s): On August 27, 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\\_Jx4tOCLyTByfJfI1Pj88Cg](https://us02web.zoom.us/webinar/register/WN_Jx4tOCLyTByfJfI1Pj88Cg). 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: Not sooner than August 28, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning July 23, 2024, 8:00 a.m., by August 27, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunications relay service 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by August 16, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-512-0600, 182-512-0650, and 182-512-0800 to remove food assistance from the calculation of income when determining a person's eligibility for Washington apple health supplemental security income (SSI)-related medical programs. These amendments are consistent with changes to federal rules regarding the treatment of food assistance within the SSI program, effective September 30, 2024.

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: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Heather Chrzan, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-1513.

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).

Explanation of exemptions: The proposed rules pertain to client program eligibility and do not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.



July 22, 2024  
 Wendy Barcus  
 Rules Coordinator

**OTS-5566.1**

AMENDATORY SECTION (Amending WSR 19-11-050, filed 5/10/19, effective 6/10/19)

**WAC 182-512-0600 SSI-related medical—Definition of income.** (1)

Income is anything a client receives in cash or in-kind that can be used to meet ((his/her)) the client's needs for ((~~food or~~)) shelter. Income can be earned or unearned.

(2) Some receipts are not income because they do not meet the definition of income above. Some types of receipts that are not income are:

- (a) Cash or in-kind assistance from federal, state, or local government programs whose purpose is to provide medical care or services;
  - (b) Some in-kind payments that are not ((~~food or~~)) shelter coming from nongovernmental programs whose purposes are to provide medical care or medical services;
  - (c) Payments for repair or replacement of an exempt resource;
  - (d) Refunds or rebates for money already paid;
  - (e) Receipts from sale of a resource;
  - (f) Replacement of income already received (see 20 C.F.R. 416.1103 for a more complete list of receipts that are not income);
- and

(g) Receipts from extraction of exempt resources for a member of a federally recognized tribe.

(3) Earned income includes the following types of payments:

- (a) Gross wages and salaries, including garnished amounts;
  - (b) Commissions and bonuses;
  - (c) Severance pay;
  - (d) Other special payments received because of employment;
  - (e) Net earnings from self-employment (WAC 182-512-0840 describes earnings exclusions);
  - (f) Self-employment income of tribal members unless the income is specifically exempted by treaty;
  - (g) Payments for services performed in a sheltered workshop or work activities center;
  - (h) Royalties earned by a client in connection with any publication of their work and any honoraria received for services rendered;
- and

(i) In-kind payments made in lieu of cash wages, including the value of ((~~food or~~)) shelter.

(4) Unearned income is all income that is not earned income. Some types of unearned income are:

- (a) Annuities, pensions, and other periodic payments;
- (b) Alimony and support payments;
- (c) Voluntary or court-ordered child support payments, including arrears, received from a noncustodial parent for the benefit of a child are the income of the child;

- (d) Dividends and interest;
  - (e) Royalties (except for royalties earned by a client in connection with any publication of their work and any honoraria received for services rendered which would be earned income);
  - (f) Capital gains;
  - (g) Rents;
  - (h) Benefits received as the result of another's death to the extent that the total amount exceeds the expenses of the deceased person's last illness and burial paid by the recipient;
  - (i) Gifts;
  - (j) Inheritances;
  - (k) Prizes and awards; and
  - (l) Amounts received by tribal members from gaming revenues with the exceptions cited in WAC 182-512-0770(3).
- (5) Some items which may be withheld from income, but which the agency considers as received income are:
- (a) Federal, state, or local income taxes;
  - (b) Health or life insurance premiums;
  - (c) SMI premiums;
  - (d) Union dues;
  - (e) Penalty deductions for failure to report changes;
  - (f) Loan payments;
  - (g) Garnishments;
  - (h) Child support payments, court ordered or voluntary (WAC 182-512-0900 has an exception for deemors);
  - (i) Service fees charged on interest-bearing checking accounts;
  - (j) Inheritance taxes; and
  - (k) Guardianship fees if presence of a guardian is not a requirement for receiving the income.
- (6) Countable income, for the purposes of this chapter, means all income that is available to the client:
- (a) If it cannot be excluded; and
  - (b) After deducting all allowable disregards and deductions.

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

- WAC 182-512-0650 SSI-related medical—Available income.** (1) Income is considered available to a person at the earliest of when it is:
- (a) Received; or
  - (b) Credited to a person's account; or
  - (c) Set aside for ~~((his or her))~~ the person's use; or
  - (d) Used or can be used to meet the person's needs for ~~((food or))~~ shelter.
- (2) Anticipated nonrecurring lump sum payments are treated as income in the month received, with the exception of those listed in WAC 182-512-0700(5), and any remainder is considered a resource in the following month.
- (3) Reoccurring income is considered available in the month of normal receipt, even if the financial institution posts it before or after the month of normal receipt.

(4) In-kind income received from anyone other than a legally responsible relative is considered available income only if it is earned income.

AMENDATORY SECTION (Amending WSR 21-08-085, filed 4/7/21, effective 5/8/21)

**WAC 182-512-0800 SSI-related medical—General income exclusions.**

The agency excludes, or does not consider, the following when determining a person's eligibility for Washington apple health SSI-related medical programs:

- (1) The first (~~(twenty dollars)~~) \$20 per month of unearned income. If there is less than (~~(twenty dollars)~~) \$20 of unearned income in a month, the remainder is excluded from earned income in that month.
  - (a) The (~~(twenty dollar)~~) \$20 limit is the same, whether applying it for a couple or for a single person.
  - (b) The disregard does not apply to income paid totally or partially by the federal government or a nongovernmental agency on the basis of an eligible person's needs.
  - (c) The (~~(twenty dollars)~~) \$20 disregard is applied after all exclusions have been taken from income.
- (2) Income that is not reasonably anticipated or is received infrequently or irregularly, whether for a single person or each person in a couple when it is:
  - (a) Earned and does not exceed a total of (~~(thirty dollars)~~) \$30 per calendar quarter; or
  - (b) Unearned and does not exceed a total of (~~(sixty dollars)~~) \$60 per calendar quarter;
  - (c) An increase in a person's burial funds that were established on or after November 1, 1982, if the increase is the result of:
    - (i) Interest earned on excluded burial funds; or
    - (ii) Appreciation in the value of an excluded burial arrangement that was left to accumulate and become part of separately identified burial funds.
- (3) Essential expenses necessary for a person to receive compensation (e.g., necessary legal fees in order to get a settlement).
- (4) Receipts, which are not considered income, when they are for:
  - (a) Replacement or repair of an exempt resource;
  - (b) Prepayment or repayment of medical care paid by a health insurance policy or medical service program; or
  - (c) Payments made under a credit life or credit disability policy.
- (5) The fee a guardian or representative payee charges as reimbursement for providing services, when such services are a requirement for the person to receive payment of the income.
- (6) Funds representing shared household costs.
- (7) Crime victim's compensation.
- (8) The value of a common transportation ticket, given as a gift, that is used for transportation and not converted to cash.
- (9) Gifts that are not for (~~(food)~~) clothing or shelter (~~(, and gifts of home produce used for personal consumption)~~).
- (10) In-kind payments. The agency does not consider in-kind income received from someone other than a person legally responsible for

the person unless it is earned. Therefore, the following in-kind payments are not counted when determining eligibility for apple health SSI-related medical programs:

(a) In-kind payments for services paid by a person's employer if:

- (i) The service is not provided in the course of an employer's trade or business; or
- (ii) The service is in the form of food that is on the employer's business premises and for the employer's convenience; or
- (iii) The service is in the form of shelter that is on the employer's business premises, for the employer's convenience, and required to be accepted by the employee as a condition of employment.

(b) In-kind payments made to people in the following categories:

- (i) Agricultural employees;
- (ii) Domestic employees;
- (iii) Members of the uniformed services; and
- (iv) Persons who work from home to produce specific products for the employer from materials supplied by the employer.

(11) Unearned income withheld, before receipt by the person, for mandatory income tax purposes.

## WSR 24-15-114

## PROPOSED RULES

## COLUMBIA BASIN COLLEGE

[Filed July 22, 2024, 7:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-12-031.

Title of Rule and Other Identifying Information: Amend WAC 132S-400-115 for clarification on areas for gathering under the facility use for first amendment activities.

Hearing Location(s): On August 28, 2024, at 3:30 p.m., at 2600 North 20th Avenue, Pasco, WA 99301 (Human Resources Conference Room); or join Zoom meeting <https://columbiabasin.zoom.us/j/85038124971>, Meeting ID 850 3812 4971; or One-tap mobile +12532158782,,85038124971# US (Tacoma), +12532050468,,85038124971# US. Find your local number <https://columbiabasin.zoom.us/j/85038124971> or <https://columbiabasin.zoom.us/j/85038124971>.

Date of Intended Adoption: August 28, 2024.

Submit Written Comments to: Lindsey Carpenter, 2600 North 20th Avenue, Pasco, WA 99301, email [LCarpenter@columbiabasin.edu](mailto:LCarpenter@columbiabasin.edu), fax 509-544-2029, beginning August 1, 2024, by August 21, 2024.

Assistance for Persons with Disabilities: Contact Lindsey Carpenter, 2600 North 20th Avenue, Pasco, WA 99301, fax 509-544-2026, email [LCarpenter@columbiabasin.edu](mailto:LCarpenter@columbiabasin.edu), by August 21, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Columbia Basin College needs to amend WAC 132S-400-115 for clarity. WAC 132S-400-115 (12)(a)(iv) states the "Community bulletin board (located at the west entrance to the Thornton Building) is a public area for use." This bulletin board may be used for public publications and postings only. The area in which the bulletin board stands would create an obstruction of normal business if a gathering were to take place there.

Reasons Supporting Proposal: WAC 132S-400-115 (12)(a)(iv) must reflect the accurate purpose for the community bulletin board for first amendment rights.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.10.900, chapter 42.30 RCW; First Amendment of the United States Constitution.

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

Name of Proponent: Columbia Basin College, public.

Name of Agency Personnel Responsible for Drafting: Lindsey Carpenter, 2600 North 20th Avenue, Pasco, WA 99301, 509-542-4740; Implementation and Enforcement: Corey Osborn, 2600 North 20th Avenue, Pasco, WA 99301, 509-542-4740.

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 for this proposed change because it constitutes a clarification of existing rules regarding the designation and use of first amendment public meeting areas on campus. This change does not introduce new regulatory requirements or significantly alter existing practices, and therefore, does not have a significant economic impact on the university, students, or the public. Additionally, under the Administrative Procedure Act, this type of interpretive rule is exempt from the requirement to conduct a cost-benefit analysis. The proposed clarification ensures that Columbia Basin Col-

lege's policies are clear and consistent with existing legal standards without imposing new costs.

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.

Scope of exemption for rule proposal:

Is fully exempt.

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. This change is not anticipated to impose any additional cost on business.

July 20, 2024

Corey Osborn, Vice President  
Human Resources and Legal Affairs

## OTS-5651.1

AMENDATORY SECTION (Amending WSR 20-03-046, filed 1/9/20, effective 2/9/20)

**WAC 132S-400-115 Use of facilities.** (1) Subject to the regulations and requirements of this policy, noncollege groups may use the college's designated public areas, as identified in subsection (12) of this section for first amendment activities between the hours of 7:00 a.m. and 10:00 p.m.

(2) Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.

(3) Any sound amplification device may only be used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.

(4) All sites used for first amendment activities should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean-up or for the repair of damaged property.

(5) All fire, safety, sanitation or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this policy.

(6) The event must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events. The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.

(7) The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of pro-

viding an education to its students. The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.

(8) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(9) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department of office or officially chartered student club.

(10) The event must also be conducted in accordance with any other applicable college policies and regulations, local ordinances and state or federal laws.

(11) College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the college's facilities use policy.

(12) The college designates the following area(s) as the designated public areas for use by noncollege groups for first amendment activities on campus:

(a) With respect to the Pasco campus:

(i) Mural gathering area (concrete pad north of the A building);

(ii) A building gathering area (southeast corner near the arbor and seating area);

(iii) Gjerde Center gathering area (northeast concrete portion in front of the main entrance to the H building); and

(iv) Community bulletin board posting printed materials only (located at the west entrance to the Thornton Building).

(b) With respect to the Richland campuses:

(i) Public sidewalks for all campuses;

(ii) Richland Health Science Center located at 891 Northgate Drive, limited to the east or west side of the entrance concrete pad; and

(iii) Richland Original Campus located at 901 Northgate Drive, limited to the walkway space between buildings RB and RC, not to exceed the width of where the building ends immediately adjacent to the walkway.

(13) Noncollege groups that seek to use the designated public fora to engage in first amendment activities shall provide notice to the campus security office no later than (~~twenty-four~~) 24 hours prior to the event along with the following information, which shall be used for notification purposes only:

(a) The name, address and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization");

(b) The name, address and telephone number of a contact person for the sponsoring organization;

(c) The date, time and requested location of the event;

(d) The type of sound amplification devices to be used in connection with the event, if any; and

(e) The estimated number of people expected to participate in the event.

(14) Noncollege group events shall not last longer than five hours from beginning to end.

**WSR 24-15-124**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)  
[Filed July 23, 2024, 9:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-019.

Title of Rule and Other Identifying Information: WAC 388-829-0010 What definitions apply to this chapter?, 388-829-0015 What training is required for individuals hired or contracted to work in DDA community residential settings as a direct support professional or ISS staff on or after January 1, 2016?, 388-829-0020 What is the 75-hour certificate?, 388-829-0035 Who is exempt from the DDA community residential 75-hour training requirement?, 388-829-0040 What are the training requirements for exempt individuals?, 388-829-0050 What is basic training?, 388-829-0055 How are training entities and instructors for DDA community residential settings approved?, 388-829-0060 What are the qualifications for on-the-job training, including client-specific training?, 388-829-0065 What are the requirements for DDA community residential instructors to teach the DDA 40-hour residential training?, 388-829-0075 What is nurse delegation core training?, and 388-101D-0105 Staff training within six months of employment.

Hearing Location(s): On August 27, 2024, at 10:00 a.m., virtually via Teams or call in. See the department of social and health services (DSHS) website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: No earlier than August 28, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, beginning noon on July 24, 2024, by 5:00 p.m. on August 27, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, Rules Consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov), by 5:00 p.m. on August 13, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is amending these rules primarily to ensure providers complete the skills-demonstration portion of CPR in accordance with the Occupational Safety and Health Administration's guidelines. Other changes clarify the content of various training components, use terminology more consistently, and remove unused definitions and update others.

Reasons Supporting Proposal: These amendments are necessary to clarify that any exemptions made in the past allowing providers to complete CPR training virtually are ending and that skills demonstration portions must occur in person.

Statutory Authority for Adoption: RCW 18.88B.041, 71A.12.030, 74.39A.074, and 74.39A.341.

Statute Being Implemented: RCW 74.39A.074.

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

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementa-



tion and Enforcement: Ashley Beckley, P.O. Box 45310, Olympia, WA 98504-5310, 360-791-0644.

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 Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-790-4732, email chantelle.diaz@dshs.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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. DDA analyzed these proposed rules and concludes that the proposed changes may impose a cost to small businesses. Some provider employees may have completed CPR training virtually without completing a skills demonstration component in person. For those employees, DDA will reimburse the provider for a repeat training necessary to comply with the amended rules. DDA has also given providers extended deadlines to complete the retraining in order to comply with the in-person component.

A copy of the detailed cost calculations may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-790-4732, email chantelle.diaz@dshs.wa.gov.

July 18, 2024  
Katherine I. Vasquez  
Rules Coordinator

## SHS-5018.7

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

**WAC 388-829-0010 What definitions apply to this chapter?** The following definitions apply to this chapter:

~~("Agency orientation" is training provided to introduce a new employee to the agency.)~~

"**AL TSA**" ~~((refers to))~~ means the aging and long-term support administration.

"**Approved training**" is training submitted to and approved by DSHS as evidenced by a curriculum number.

"**Basic training**" is ~~((seventy))~~ 70 hours of required training that includes ~~((forty))~~ 40 hours of DDA residential services curriculum and ~~((thirty))~~ 30 hours of additional topics outlined in this chapter.

"**Client-specific training**" prepares ~~((the LTCW))~~ a person to provide individual support services to the client served by the community residential service business (CRSB).

"**Community residential service business**" or "**CRSB**" has the same meaning as defined in RCW 74.39A.009.

"**Competency**" or "**core competency**" means the integrated knowledge, skills, or behavior expected of a ~~((LTCW))~~ person after completing the

training in a required topic area. Learning objectives are associated with each competency.

"DDA" (~~((refers to))~~) means the developmental disabilities administration.

"DDA community residential setting" within the scope of this chapter (~~((refers to))~~) means any setting where supported living, DDA group home, group training home, licensed staffed residential, companion home, or alternative living services occur.

"DSHS-approved trainer" means an individual approved by DSHS to sign the (~~((seventy-five))~~) 75-hour certificate.

"Direct support professional" or "DSP" means any person who supports an individual with a developmental disability to implement the individual's individual support plan/person-centered service plan (ISP/PCSP). This includes staff who provide instruction and support services (ISS).

"DOH" (~~((refers to))~~) means the department of health.

"DSHS" or "department" (~~((refers to))~~) means the department of social and health services.

"Habilitation" means services defined to assist participants in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.

"Home care aide-certified" or "HCA-C" means a person who has been certified by the department of health as a home care aide.

"Letter of exemption" means a letter from a provider that exempts DDA community residential staff from the (~~((seventy-five))~~) 75 hours of training as required under chapter 74.39A RCW for staff hired prior to January 1, 2016.

~~("Long term care worker" or "LTCW" has the same meaning as defined in RCW 74.39A.009.)~~

"Peer coach" means a person who has been trained in (~~((twelve))~~) 12 hours of coaching skills and who works with new employees to coach them on working with individuals and their support needs.

"Population-specific" (~~((refers to))~~) means topics applicable to the unique needs of the population served.

"Training entity" means a DSHS-contracted organization or independent entity that provides training using DSHS-approved curriculum.

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

**WAC 388-829-0015 What training is required for individuals hired or contracted to work in DDA community residential settings as a direct support professional (DSP) or ISS staff on or after January 1, 2016?** (1) Required training for individuals hired or contracted to work in DDA community residential settings as a direct support professional or ISS staff on or after January 1, 2016, consists of (~~((seventy-five hours of training as follows))~~):

~~((1))~~ (a) Five hours of orientation and safety training as described in WAC 388-829-0045 prior to providing client care or support; (~~(and)~~)

~~((2))~~ (b) Seventy hours of basic training as described in WAC 388-829-0050 must be completed within (~~((one hundred twenty))~~) 120 days of date of hire(~~((-))~~);

(c) First aid training, which must be completed no more than 60 days after date of hire and kept current;

(d) Cardiopulmonary resuscitation (CPR), which must be completed no more than 60 days after the date of hire and kept current;

(d) Bloodborne pathogen training, which must be completed in accordance WAC 296-823-120 and renewed annually; and

(e) Continuing education under WAC 388-829-0085.

(2) Beginning February 1, 2024, direct support professionals and ISS staff must complete CPR training that meets occupational safety and health administration (OSHA) guidelines for hands-on skills development. For an employee hired before February 1, 2024, who is CPR-certified but did not participate in hands-on skills development, the employee must complete CPR training in accordance with OSHA guidelines no later than December 1, 2024, regardless of when the certification expires.

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

**WAC 388-829-0020 What is the ((seventy-five)) 75-hour certificate?** The ((seventy-five)) 75-hour certificate is a combination of orientation, safety, and basic training that when completed adds up to ((seventy-five)) 75 hours. The certificate covers:

(1) Five hours of orientation and safety training as described in WAC 388-829-0045; and

(2) Seventy hours of basic training as described in WAC 388-829-0050, which includes:

(a) Forty hours of DDA-developed residential services curriculum; and

(b) Thirty hours of ((additional)) population-specific training as described in WAC 388-829-0050.

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

**WAC 388-829-0035 Who is exempt from the DDA community residential ((seventy-five)) 75-hour training requirement?** Beginning January 1, 2016, the following individuals are exempt from the DDA community residential ((seventy-five)) 75-hour training requirement:

(1) DDA community residential staff who have:

(a) Been continuously employed since December 31, 2015;

(b) Completed training requirements that were in place when ((he or she was)) hired;

(c) Completed the training requirements by February 29, 2016; and

(d) Proof that ((twelve)) 12 hours of continuing education were completed during the previous year;

(2) Under RCW 18.88B.041, an individual with special education training and an endorsement granted by the superintendent of public instruction; and

(3) Registered nurses, licensed practical nurses, nurse technicians, advanced registered nurse practitioners as defined in chapter 18.79 RCW, and nursing assistants-certified ((CAN)) as defined in chapter 18.88A RCW.

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

**WAC 388-829-0040 What are the training requirements for exempt individuals (~~hired on or after January 1, 2016~~)?** (~~Exempt individuals hired on or after January 1, 2016,~~) An individual exempt under WAC 388-829-0035 must meet the following (~~the~~) training requirements:

- (1) Staff hired with a (~~seventy-five~~) 75-hour certificate or letter of exemption must take:
  - (a) (~~Agency~~) Five-hour orientation and safety training; and
  - (b) (~~Client~~) Thirty-hour population-specific training.
- (2) The hiring or contracting entity must verify that staff hired with an HCA-C from areas outside of DDA have completed the training required in subsection (1) of this section and:
  - (a) DDA-developed specialty training; or
  - (b) Forty hours of DDA residential services curriculum.
- (3) (~~All~~) Exempt community residential staff must maintain current CPR and first aid training certificates as required under WAC 388-829-0050. (~~This training must be completed in person and within sixty days of hire.~~)
- (4) (~~All~~) Exempt community residential staff must complete (~~twelve~~) 12 hours of continuing education per year.

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

**WAC 388-829-0050 What is basic training?** (1) Basic training is (~~seventy~~) 70 hours of required training that must include:

- (~~(1)~~) (a) Forty hours of DDA residential services curriculum (~~which includes~~); and
- (b) Thirty hours of population-specific training.
- (2) The 40-hour DDA residential services curriculum includes
  - (~~(a) Blood borne pathogen requirements under WAC 296-823-12005;~~
  - ~~and~~
  - (~~b~~) DDA specialty training requirements (~~and~~).
  - (~~(2) Thirty hours of additional topics related to~~) (3) The 30-hour population-specific training includes one or more of the following:
    - (a) (~~Population-specific training;~~
    - (~~b) Capable caregiver~~) Specialty training under (~~chapter 388-112~~) WAC 388-112A-0450 related to mental health or WAC 388-112A-0440 dementia (~~and~~).
    - (~~(c) CPR and~~) (b) First aid training and certification (~~as described in WAC 388-829-0040; or~~).
    - (~~(d)~~) (c) Cardiopulmonary resuscitation (CPR) training and certification.
    - (d) On-the-job training hours, including client-specific training, when the instructor is a trained peer coach as described in WAC 388-829-0060.
    - (e) Other curriculum approved by DDA.

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

**WAC 388-829-0055 How are training entities and instructors for DDA community residential settings approved?** The training entities and instructors for DDA community residential settings are approved as follows:

(1) Supported living and group home providers are approved as training entities through a contract exhibit.

(2) Supported living and group home providers must ensure their employed or contracted instructors meet the instructor criteria described in this chapter and in:

(a) (~~Chapter 388-112~~) WAC 388-112A-1240 for DDA community residential instructors to teach the DDA (~~(forty-hour)~~) 40-hour residential training; and

(b) (~~(RCW 74.39A.112)~~) Chapter 74.39A RCW for five-hour orientation and safety training and (~~(thirty)~~) 30 hours of (~~(client)~~) population-specific training.

(3) Other training entities must be approved by DDA or ALTSA and entities must ensure their instructors meet the criteria described in chapter (~~(388-112)~~) 388-112A WAC.

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

**WAC 388-829-0060 What are the qualifications for on-the-job training, including client-specific training?** Instructors who provide on-the-job training, including client-specific training, must:

(1) Meet the instructor qualifications for basic training described in (~~chapter 388-112~~) WAC 388-112A-1240; and

(2) Complete at least (~~(twelve)~~) 12 hours of department approved peer coaching.

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

**WAC 388-829-0065 What are the requirements for DDA community residential instructors to teach the DDA (~~(forty-hour)~~) 40-hour residential training?** DDA community residential instructors who want to instruct staff on the DDA (~~(forty-hour)~~) 40-hour residential training curriculum must:

(1) Meet the instructor qualifications described in (~~chapter 388-112~~) WAC 388-112A-1240;

(2) Complete the train the trainer course using DDA-developed curriculum;

(3) Be approved as an instructor and receive an instructor code through DDA; and

(4) Use the (~~(forty-hour)~~) 40-hour DDA residential services curriculum to teach the course.

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

**WAC 388-829-0075 What is nurse delegation core training?** Nurse delegation core training is described in ((~~chapter 388-112~~)) WAC 388-112A-0500 through 388-112A-0590.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-101D-0105 Staff training within six months of employment.

## WSR 24-15-131

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed July 23, 2024, 3:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-113.

Title of Rule and Other Identifying Information: Behavioral health support specialist (BHSS); establishing certification standards in chapter 246-821 WAC.

The department of health (department) is proposing the establishment of certification standards for the new BHSS profession created by SSB 5189 (chapter 270, Laws of 2023). The department proposes establishing requirements including the: Application process; education and curriculum; supervised experience; continuing education; professional standards; educational program approval process; and fees.

Hearing Location(s): On September 3, 2024, at 1:00 p.m., at the Department of Health, Town Center 2, Room 166 and 167, 111 Israel Road S.E., Tumwater, WA 98501; or virtual. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_OIgz05AiSneLfzU6Ct87CA](https://us02web.zoom.us/webinar/register/WN_OIgz05AiSneLfzU6Ct87CA). After registering, you will receive a confirmation email containing information about joining the webinar. The rule hearing will be hybrid. Individuals may attend either virtually or in person.

Date of Intended Adoption: September 10, 2024.

Submit Written Comments to: Claire Wilson, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, [claire.wilson@doh.wa.gov](mailto:claire.wilson@doh.wa.gov), [bhss@doh.wa.gov](mailto:bhss@doh.wa.gov), beginning the date and time of this filing, by September 3, 2024, at midnight.

Assistance for Persons with Disabilities: Contact Claire Wilson, phone 564-669-0392, TTY 711, email [bhss@doh.wa.gov](mailto:bhss@doh.wa.gov), [claire.wilson@doh.wa.gov](mailto:claire.wilson@doh.wa.gov), by August 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2023 legislative session, the legislature passed SSB 5189 to create the new BHSS profession, establish its scope of practice, and direct the department to collaborate with the University of Washington on rules implementing the new profession by January 1, 2025. SSB 5189 also authorized the secretary of health to adopt any rules necessary to implement the new profession, fees, forms and procedures, certifications, examinations, continuing education, and appeal procedures. The proposed rules establish the new profession, and necessary regulatory processes, and set clear professional standards.

Reasons Supporting Proposal: In addition to fulfilling the intent of SSB 5189, the proposed rules for this profession will allow the department to consistently uphold standards that protect patient safety.

Statutory Authority for Adoption: RCW 18.227.020.

Statute Being Implemented: Chapter 18.227 RCW; SSB 5189 (chapter 270, Laws of 2023).

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: Claire Wilson, 111 Israel Road S.E., Tumwater, WA 98501, 564-669-0392.

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 Claire Wilson, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, phone 564-669-0392, TTY 711, email bhss@doh.wa.gov, claire.wilson@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: Most elements of the proposed rules impact only individual behavioral health providers or applicants, not businesses. The few elements that impact businesses only impact large educational institutions, such as colleges, universities, or community and technical colleges.

Scope of exemption for rule proposal:

Is fully exempt.

July 23, 2024  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

**OTS-5375.4**

**Chapter 246-821 WAC  
 BEHAVIORAL HEALTH SUPPORT SPECIALIST**

**GENERAL**

NEW SECTION

**WAC 246-821-010 Definitions.** The definitions in RCW 18.227.010 and in this section apply throughout this chapter unless the context clearly states otherwise.

(1) "Approved educational program" means a program that has been fully approved, provisionally approved, or legacy approved by the department under WAC 246-821-810 and 246-821-811 and, if applicable, registered with the department of labor and industries.

(2) "Behavioral health" is a term that encompasses mental health, substance use, and co-occurring disorders.

(3) "Behavioral health support specialist" or "BHSS" means a person certified under chapter 18.227 RCW to deliver brief, evidence-



based interventions with a scope of practice that includes behavioral health under the supervision of a Washington state credentialed provider who has the ability to assess, diagnose, and treat identifiable mental and behavioral health conditions as part of their scope of practice. A behavioral health support specialist does not have within their scope of practice the ability to make diagnoses, but does track and monitor treatment response and outcomes using measurement-based care.

(4) "Brief, evidence-based intervention" means strategies focused on the reduction of symptom severity within a time frame congruent with the needs of the patient, provider, and treatment setting.

(5) "Client" means a recipient of behavioral health services. This term may be used interchangeably with "patient."

(6) "Clinical supervisor" means a provider who meets the requirements of WAC 246-821-410 and provides oversight, supervision, and consultation to a certified BHSS working within their scope of practice.

(7) "Measurement-based care" means the application of valid assessments to monitor and measure patient symptoms, evaluate how a patient responds to treatment, and systematically adjust treatment based on patient needs.

(8) "Practicum" means supervised experience that meets the requirements of WAC 246-821-200, completed for the purpose of becoming a certified BHSS. A practicum may be completed as part of a bachelor degree, post-baccalaureate education, or registered apprenticeship program and may be referenced in documentation as a practicum, internship, on-the-job training, or other similar term. Within this chapter, the terms "practicum" and "supervised experience" are used interchangeably.

(9) "Practicum supervisor" means a provider that meets the requirements of WAC 246-821-215, who provides oversight to a student completing a practicum.

(10) "Registered apprenticeship" means an apprenticeship program approved by the Washington state apprenticeship and training council according to chapter 49.04 RCW.

(11) "Student" means an individual working toward completing BHSS education and practicum requirements, whether part of a bachelor degree program, post-baccalaureate education, or registered apprenticeship program.

#### NEW SECTION

##### **WAC 246-821-020 Administrative procedures and requirements. (1)**

The department uses the procedural rules in chapter 246-10 WAC to govern adjudicative proceedings.

(2) A certified BHSS must follow requirements for credentialed health care providers in chapter 246-12 WAC.

#### NEW SECTION

**WAC 246-821-025 Behavioral health support specialist application requirements. (1)** An applicant for a behavioral health support specialist (BHSS) certificate shall submit to the department:

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

- (b) Official transcripts to verify completion of a bachelor degree;
  - (c) Documentation to verify completion of an approved BHSS educational program and practicum under subsection (2) or (3) of this section; and
  - (d) Applicable fee(s) required under WAC 246-821-990.
- (2) An applicant who completes BHSS education and experience requirements through an approved educational program that is not a registered BHSS apprenticeship shall submit to the department:
- (a) Official transcripts verifying completion of education requirements under WAC 246-821-100; and
  - (b) Documentation on forms provided by the department of any supervised experience completed under WAC 246-821-200. If an applicant completed supervised experience through multiple practicums or at multiple practicum sites, documentation should be submitted for each one.
- (3) An applicant who completes BHSS education and experience requirements through an approved and registered BHSS apprenticeship shall submit to the department an apprenticeship certificate of completion.
- (4) Before issuance of a BHSS certificate, an applicant shall take and pass the jurisprudence examination under WAC 246-821-300.

## EDUCATION

### NEW SECTION

**WAC 246-821-100 BHSS required education.** To be eligible for certification as a behavioral health support specialist, an applicant shall:

- (1) Graduate from a bachelor's degree program.
- (2) Successfully complete a BHSS educational program approved by the department, which must be included as part of a:
  - (a) Bachelor degree program;
  - (b) Post-baccalaureate continuing education program; or
  - (c) Registered apprenticeship program.
- (3) Successfully complete at least the following amount of instruction in a behavioral health curriculum:
  - (a) Forty-five quarter college credits;
  - (b) Thirty semester college credits; or
  - (c) Four hundred fifty hours of apprenticeship related/supplemental instruction.

### NEW SECTION

**WAC 246-821-110 BHSS competencies and clinical skills.** (1) Consistent with University of Washington behavioral health support specialist clinical training program guidelines, behavioral health sup-

port specialist competencies and clinical skills include, but are not limited to:

- (a) Health equity, including:
  - (i) Recognizing the impact of health disparities on patient engagement; and
  - (ii) Practicing use of inclusive communication that supports health care equity;
- (b) The helping relationship, including:
  - (i) Developing a supportive and effective working alliance with patients and their support networks;
  - (ii) Engaging patients to enhance participation in care;
  - (iii) Facilitating group psychoeducation; and
  - (iv) Utilizing a trauma-informed care framework in all aspects of helping relationships;
- (c) Cultural responsiveness, including:
  - (i) Developing knowledge of patient's identity(ies);
  - (ii) Providing services responsive to patient's identity(ies);
  - (iii) Practicing cultural humility in relationships; and
  - (iv) Striving to address own biases in work with patients;
- (d) Team-based care and collaboration, including:
  - (i) Integrating professional identity and scope of practice within a health care team;
  - (ii) Practicing interprofessional communication; and
  - (iii) Contributing to teams and teamwork;
- (e) Screening and assessment, including:
  - (i) Utilizing appropriate standardized screening tools to identify common behavioral health conditions;
  - (ii) Conducting a suicide risk assessment and providing appropriate intervention under supervision;
  - (iii) Conducting a patient-centered biopsychosocial assessment; and
  - (iv) Using measurement-based care to support stepped care approaches and adjusting the type and intensity of services to the needs of the patient;
- (f) Care planning and care coordination, including:
  - (i) Contributing to the development of a whole health care plan and stay well plan with the patient, the patient's support network, and health care team members;
  - (ii) Maintaining a registry to systematically track patient treatment response to interventions;
  - (iii) Ensuring the flow and exchange of information among patients, patients' support networks, and linked providers;
  - (iv) Facilitating external referrals to social and community-based services (housing assistance, food banks, vocational rehabilitation, substance use disorder treatment, etc.);
  - (v) Demonstrating accurate documentation of services provided and summaries of contact with linked providers in the patient record; and
  - (vi) Recognizing the interaction between behavioral health conditions, chronic health conditions, and their associated symptoms;
- (g) Intervention, including:
  - (i) Integrating motivational interviewing strategies into practice;
  - (ii) Providing psychoeducation to patients and their support network about behavioral health conditions and treatment options consistent with recommendations from the health care team;

(iii) Employing distress tolerance strategies including problem-solving and relaxation techniques to reduce the impact of acute stress on patient mental and behavioral health;

(iv) Applying brief, evidence-based treatment for common mental health presentations including depression, based on behavioral activation principles;

(v) Applying brief, evidence-based treatment for common mental health presentations including anxiety, based on cognitive behavioral therapy (CBT) principles;

(vi) Using harm reduction strategies for substance use concerns including the delivery of screening, brief intervention and referral to treatment (SBIRT); and

(vii) Demonstrating a clear understanding of the evidence base for brief treatment that focuses on symptom reduction; and

(h) Law and ethics, including:

(i) Identifying and applying federal and state laws to practice;

(ii) Integrating foundations of interprofessional ethics into practice;

(iii) Utilizing supervision and consultation to guide practice; and

(iv) Engaging in ongoing reflective practice.

(2) The behavioral health support specialist competencies and clinical skills described in subsection (1) of this section shall not be construed to permit a BHSS to practice beyond the scope of their practice as defined in RCW 18.227.010(4) and WAC 246-821-400.

## EXPERIENCE REQUIREMENTS

### NEW SECTION

**WAC 246-821-200 Supervised experience requirements.** (1) To be eligible for certification as a behavioral health support specialist, a student shall complete a BHSS practicum or BHSS apprenticeship on-the-job training that:

(a) Provides practical instruction that reinforces BHSS competencies and clinical skills listed in WAC 246-821-110;

(b) Allows the student to participate in a clinical environment, observe providers treating clients, and provide direct client care under supervision; and

(c) Is supervised by a practicum supervisor, consistent with WAC 246-821-210 and 246-821-215.

(2) A clinical environment is a practice setting where a student is supervised by a provider eligible under WAC 246-821-215. A clinical environment is not limited to a traditional clinic setting and may include outreach, co-response, crisis response, or other settings in which a clinical provider is providing behavioral health services.

(3) The minimum amount of practicum or on-the-job experience for a BHSS credential is at least 240 hours, completed over a period of at least five months.

NEW SECTION

**WAC 246-821-210 Practicum supervision requirements.** (1) All supervised experience required for behavioral health support specialist certification must be completed under a practicum supervisor as defined in WAC 246-821-215.

(2) Before the practicum begins or within the first month of the practicum, the student shall meet with the supervisor to:

- (a) Develop a written plan for developing clinical skills, including graduated participation in facilitating clinical encounters;
- (b) Set goals and expectations for the duration of the practicum;
- (c) Establish a schedule for supervision, which may include group supervision in addition to required individual supervision; and
- (d) Identify an alternate supervisor, if possible, in case the primary supervisor is unavailable.

(3) A practicum supervisor shall provide supervision regularly, with at least biweekly individual supervision, and at least one in-person supervision session per quarter.

(4) Under the supervision of the practicum supervisor, a BHSS student shall:

- (a) Complete at least 240 practicum hours;
- (b) Complete at least 12 hours of individual supervision;
- (c) Complete at least 60 hours of direct client contact, including co-delivery of services with a supervisor or other certified or licensed behavioral health provider or substance use disorder professional; and
- (d) Demonstrate at least one clinical skill in each competency listed in WAC 246-821-110.

(5) On forms provided by the department, the practicum supervisor shall attest to the student's completion of practicum requirements listed in subsection (4) of this section.

NEW SECTION

**WAC 246-821-215 BHSS practicum supervisor requirements.** (1) A behavioral health support specialist practicum supervisor must be licensed in the state of Washington, with no restrictions, as one of the following provider types:

- (a) Independent clinical social worker or associate licensed under chapter 18.225 RCW;
  - (b) Marriage and family therapist or associate licensed under chapter 18.225 RCW;
  - (c) Mental health counselor or associate licensed under chapter 18.225 RCW;
  - (d) Psychiatric advanced practice registered nurse licensed under chapter 18.79 RCW;
  - (e) Psychologist or associate licensed under chapter 18.83 RCW;
- or
- (f) Other credentialed provider listed in WAC 246-821-410 who is competent to assess, diagnose, and treat behavioral health conditions and support a student BHSS appropriately.

(2) A practicum supervisor may not be a blood or legal relative, significant other, cohabitant of the student, or someone who has provided behavioral health counseling to a student in the past two years.

(3) A practicum supervisor or, if unavailable, an alternative designated provider shall review and sign all BHSS student clinical practicum documentation. Any alternative designated provider signing on behalf of the practicum supervisor shall also meet the supervisor requirements of this section.

(4) A practicum supervisor is responsible for all clients treated by a BHSS student they supervise.

## EXAMINATION

### NEW SECTION

**WAC 246-821-300 Examination requirements.** (1) A behavioral health support specialist applicant shall take and pass a jurisprudence examination administered by the department that covers professional judgment, knowledge of state laws, and ethics pertaining to the BHSS profession.

(2) An applicant who fails the test is eligible to retake it immediately.

## PROFESSIONAL REQUIREMENTS FOR CERTIFIED BEHAVIORAL HEALTH SUPPORT SPECIALIST

### NEW SECTION

**WAC 246-821-400 Professional standards for certified BHSS.** (1) A behavioral health support specialist provides treatment for a behavioral health condition which is impacting a client's quality of life by:

(a) Delivering brief, evidence-based interventions to treat individuals with behavioral health conditions, including mental health or substance use disorders, consistent with subsection (3) of this section;

(b) Tracking and monitoring treatment response and outcomes using measurement-based care. Interventions should be adjusted based on patient response to find the most effective treatment;

(c) Regularly conferring with their clinical supervisor;

(d) Consulting with their clinical supervisor about a client whose symptoms fail to improve; and

(e) Referring a client to alternate health care providers or other resources when the client's needs exceed the BHSS's scope of practice or competence.

(2) A BHSS may not make diagnoses, but may provide symptom-based treatment within their scope of practice. Treatment may be based on the diagnosis of another provider or may occur prior to a diagnosis from another provider, based on screening and assessment. A BHSS adjusts interventions to the intensity of the client's symptoms, whether mild to moderate or acute.

(3) Brief, evidence-based interventions are strategies focused on the reduction of symptom severity within a time frame congruent with the needs of the patient, provider, and treatment setting. The strategies are often informed by principles associated with cognitive behavioral, problem-solving, strategic, or solution-focused psychotherapies.

(4) When the duration of treatment involving a single intervention exceeds six months, the BHSS must confer with their supervisor to determine appropriate next steps, which should include whether a new intervention or a referral to a setting and provider with a scope of practice matching the complexity of patient problems is appropriate.

(5) If the BHSS' supervisor elects to continue the intervention after six months, the BHSS must confer with their supervisor every six months to determine appropriate next steps consistent with subsection (4) of this section.

#### NEW SECTION

**WAC 246-821-405 Ethical standards.** (1) The definitions and prohibitions on sexual misconduct described in chapter 246-16 WAC apply to behavioral health support specialists, except WAC 246-16-100 (4) and (5).

(2) A BHSS shall never engage, or attempt to engage in:

(a) The activities listed in WAC 246-16-100 (1) and (2) with a former client or former key party; or

(b) A nontreatment relationship with a former client or former key party that could be perceived to create a conflict of interest or imbalance of power.

(3) A BHSS shall follow all federal and state laws and regulations about confidentiality and privacy including, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA) and 42 C.F.R., Part 2, as well as chapter 70.02 RCW.

(4) When providing care or treatment to a client, a BHSS shall limit self-disclosure to maintain a professional, neutral environment, in order to keep treatment sessions focused on client needs.

#### NEW SECTION

**WAC 246-821-410 Clinical supervisors.** (1) To supervise a certified behavioral health support specialist, a provider shall hold one of the following Washington state credentials:

(a) Advanced social worker or associate license under chapter 18.225 RCW;

- (b) Independent clinical social worker or associate license under chapter 18.225 RCW;
  - (c) Marriage and family therapist or associate license under chapter 18.225 RCW;
  - (d) Mental health counselor or associate license under chapter 18.225 RCW;
  - (e) Osteopathic physician license under chapter 18.57 RCW;
  - (f) Physician license under chapter 18.71 RCW;
  - (g) Physician assistant license under chapter 18.71A RCW;
  - (h) Psychiatric advanced practice registered nurse license under chapter 18.79 RCW; or
  - (i) Psychologist or associate license under chapter 18.83 RCW.
- (2) Other providers may also be eligible to provide BHSS supervision if they:
- (a) Hold a Washington state credential issued by another state agency; and
  - (b) Have the ability to assess, diagnose, and treat identifiable mental and behavioral health conditions as part of their scope of practice.
- (3) A clinical supervisor is responsible for:
- (a) Supervising a BHSS's treatment of clients and ensuring the BHSS does not exceed their scope of practice;
  - (b) Providing regular, outcome-focused supervision appropriate for the BHSS's training, education, and experience;
  - (c) Providing competent supervision based on the supervisor's own level of training, education, and experience; and
  - (d) Ensuring that behavioral health consultation is available to the BHSS if necessary.

#### NEW SECTION

- WAC 246-821-420 Required client disclosure information.** (1) A behavioral health support specialist shall provide disclosure information to each client prior to the delivery of services. Disclosure information may be printed in a format of the provider's choosing or in a general format used by a state-approved treatment facility.
- (2) The following information must be printed on all disclosure statements provided to counseling clients in a language that can be easily understood by the client, and in a format accessible to the client:
- (a) Name of firm, agency, business, or other practice location;
  - (b) Employment address, telephone number, and email address;
  - (c) Name, credential, and credential number;
  - (d) Clinical supervisor's name, credential, and credential number;
  - (e) Clinical supervisor's employment address, telephone number, and email address, if different from the BHSS's;
  - (f) Billing information, including:
    - (i) Client's cost per each counseling session;
    - (ii) Billing practices, including any advance payments and refunds;
  - (g) A list of the acts of unprofessional conduct in RCW 18.130.180 including the name, address, and contact telephone number within the department of health of the health systems quality assurance complaint intake unit.



(3) The BHSS and the client must sign and date a statement indicating that the client has been given a copy of the required disclosure information, and the client has read and understands the information provided. If a client is in acute crisis or is otherwise unable to read, understand, and sign the disclosure statement, it can be completed at a later session.

### CONTINUING EDUCATION REQUIREMENTS

#### NEW SECTION

**WAC 246-821-500 Continuing education requirements.** A certified behavioral health support specialist shall complete 20 hours of continuing education every two years, either in person or through distance learning, including:

(1) At least two hours of health equity education every four years that comply with requirements in WAC 246-12-800 through 246-12-830;

(2) Completion of at least a three-hour training on suicide assessment, including screening and referral, listed on the department's model list. A BHSS must complete this training during their first continuing education cycle after certification, then every six years afterwards;

(3) At least three hours of law and ethics every two years; and

(4) The remaining hours in qualifying continuing education under WAC 246-821-510.

#### NEW SECTION

**WAC 246-821-505 Additional training requirements.** A certified behavioral health support specialist who provides clinical services through telemedicine as defined in RCW 70.41.020 shall complete a one-time telemedicine training that complies with RCW 43.70.495.

#### NEW SECTION

**WAC 246-821-510 Qualifying continuing education and other professional development activities.** (1) Qualifying continuing education (CE) for a behavioral health support specialist must:

(a) Be relevant to the profession; and

(b) Contribute to the advancement and enhancement of their professional competence.

(2) Activities primarily designed to increase practice income or office efficiency are not eligible for CE credit.

(3) Acceptable CE must be approved by an industry-recognized local, state, national, or international organization or institution of higher learning under WAC 246-821-520.

(4) Distance learning must require tests of comprehension upon completion to qualify as CE.

(5) Qualifying activities that count toward CE requirements include programs, courses, seminars, and workshops.

(6) All documentation must include the dates the continuing education activity took place, the number of hours of CE credit, and, if appropriate, the title of the course, the location of the course, and the name of the instructor. If the activity's relevance to the profession is not apparent based on the title, the BHSS shall submit documentation describing the content.

(7) A BHSS shall maintain CE documentation for at least six years.

#### NEW SECTION

**WAC 246-821-520 Industry-recognized organizations or institutions of higher learning.** Local, state, national, and international organizations that are recognized in the behavioral health industry and institutions of higher learning include, but are not limited to, the following:

(1) American Association for Marriage and Family Therapy (AAMFT) and Washington Association for Marriage and Family Therapy;

(2) American Counseling Association and Washington Counseling Association;

(3) American Mental Health Counselors Association (AMHCA) and Washington Mental Health Counselors Association;

(4) American Psychological Association (APA);

(5) Association of Social Work Boards (ASWB);

(6) Clinical Social Work Association (CSWA);

(7) Collaborative Family Healthcare Association;

(8) Association for Addiction Professionals (NAADAC) and the Voice for Washington State Addiction Professionals (WAADAC);

(9) National Association of Social Workers (NASW) and Washington chapter (NASW-WA);

(10) National Board for Certified Counselors (NBCC);

(11) Society for Social Work Leadership in Health Care;

(12) Substance Abuse and Mental Health Services Administration (SAMHSA);

(13) Washington State Society for Clinical Social Work; and

(14) Institutions of higher learning that are recognized as accredited Postsecondary Education Institutions by the U.S. Department of Education.

**EDUCATIONAL PROGRAM REQUIREMENTS**NEW SECTION

**WAC 246-821-800 Standards for educational programs.** (1) A behavioral health support specialist educational program must be approved by the department and, if applicable, registered with the department of labor and industries before its graduates are eligible for BHSS certification.

(2) The minimum amount of behavioral health instruction required for a BHSS curriculum is at least:

- (a) Forty-five quarter college credits;
- (b) Thirty semester college credits; or

(c) Four hundred fifty hours of apprenticeship related/supplemental instruction.

(3) Education must include instruction in all competencies and clinical skills listed in WAC 246-821-110, consistent with University of Washington behavioral health support specialist clinical training program guidelines.

(4) An educational program may grant a student credit for previously completed, relevant course instruction, up to 15 quarter or 10 semester credits.

NEW SECTION

**WAC 246-821-810 Approval process for educational programs.** (1) Program application process. A behavioral health support specialist educational program must be approved by the department and, if applicable, registered with the department of labor and industries before its graduates are eligible for BHSS certification.

(a) To apply for approval, a college, university, technical school, apprenticeship program, or other entity shall submit on forms provided by the department:

(i) Documentation of how its curriculum meets the requirements of WAC 246-821-100, 246-821-110, and 246-821-800, along with any supporting documentation;

(ii) Attestation by an educational program representative that the educational program has confirmed any clinical or counseling environment approved as a practicum site meets the requirements of WAC 246-821-200 through 246-821-215; and

(iii) Additional information as requested by the department.

(b) After the receipt of the completed application, the department shall consider the application, determine whether the educational program fulfills the requirements of this subsection, and notify the applicant of the department's decision. The department's decision may result in the educational program being fully approved, provisionally approved, legacy approved, or denied.

(c) If the department decides the educational program cannot be approved, the notice shall include the reasons for denial.

(2) Provisional approval.

(a) The department provisionally approves an educational program if:

(i) The educational program has BHSS curriculum categorized as "most aligned" with 29 out of 34 competencies listed in WAC 246-821-110, using the current gap analysis tool provided by the department and the University of Washington, made available on the department website for the BHSS profession; and

(ii) Submits an attestation under subsection (1)(a)(ii) of this section.

(b) During the three-year provisional approval period:

(i) The educational program must continue working to achieve full compliance with these requirements; and

(ii) Graduates from the program will be considered eligible for certification as a BHSS.

(c) The educational program must apply for, and be granted, full program approval under subsection (1)(a) of this section before the expiration of the provisional approval in order to ensure graduates from the program remain eligible for certification as a BHSS beyond the provisional approval period.

(3) Full approval. When an educational program complies with the requirements of WAC 246-821-100, 246-821-110, and 246-821-800, the department fully approves the educational program. A fully approved educational program must:

(a) Continue to comply with the standards of this chapter; and

(b) Reapply for approval every seven years after initial approval following the application process in subsection (1)(a) of this section.

(4) Required updates. An educational program approved under subsection (2) or (3) of this section shall report to the department within 60 days substantial changes to the educational program's curriculum, practicum sites, accreditation status if applicable, and financial solvency.

(5) Program audits. The department may conduct audits to ensure an educational program continues to meet educational standards in this chapter.

(6) Enforcement. If the department receives evidence the educational program is not meeting the criteria for approval under chapter 18.225 RCW and this chapter, then the department will provide the program with a written statement of deficiencies that will include instructions and time frames for submission of a plan of correction. The educational program shall submit a plan of correction within the stated time frame. The department may accept or reject the proposed plan of correction. If the plan of correction is rejected, the program will be provided an opportunity to submit a revised plan of correction within a time period identified by the department. The department may accept or reject the revised proposed plan of correction.

(a) The educational program shall correct the deficiencies listed on the plan of correction:

(i) By the time frame agreed upon by the educational program and the department representative; or

(ii) Immediately if the department determines health and safety concerns require immediate corrective action.

(b) Should the program not make required changes, or should further deficiencies develop after the statement of deficiencies is issued, then the department may revoke the approval of the educational

institution. The program's students are ineligible for BHSS certification from the date that the program's approval is revoked.

(7) Appeal. An educational program whose approval is denied or revoked may request a brief adjudicative proceeding under chapter 34.05 RCW and chapter 246-10 WAC. A request for a brief adjudicative proceeding must be filed with the department within 28 days of receipt of the department's notice.

#### NEW SECTION

**WAC 246-821-811 Legacy clause for programs operating prior to 2025.** (1) The department recognizes that multiple colleges, universities, and technical colleges began implementing behavioral health support specialist educational programs prior to the establishment of chapter 18.227 RCW in 2023. In recognition of the educational programs and the achievements of their students, the department may approve BHSS educational programs for academic years prior to January 1, 2025. To apply for legacy status and to permit a program's pre-2025 graduates to apply for certification, the educational program must apply for program approval using the process established under WAC 246-821-810.

(2) If the program did not require 240-hour practicums during the pre-2025 time period, an individual BHSS applicant may supplement their application with documentation of additional supervised experience to make up the deficit.

#### **FEES**

#### NEW SECTION

**WAC 246-821-900 Expired credential.** If a behavioral health support specialist certification is expired, the individual shall meet the requirements of WAC 246-12-040 in order to return to active status.

#### NEW SECTION

**WAC 246-821-990 Behavioral health support specialist—Fees and renewal cycle.** (1) A behavioral health support specialist certificate must be renewed every year on the provider's birthday as provided in chapter 246-12 WAC.

(2) The following nonrefundable fees will be charged for a certified BHSS:

<b>Title of Fee</b>	<b>Fee</b>
Application and initial certification	\$285.00
Active renewal	\$285.00
Active late renewal penalty	\$145.00
Expired certification reissuance	\$145.00
Duplicate certification	\$10.00
Verification of certificate	\$25.00

**WSR 24-15-133**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Board of Nursing)  
[Filed July 23, 2024, 3:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-011.

Title of Rule and Other Identifying Information: Nursing education simulation rule. The Washington state board of nursing (board) is proposing new WAC 246-840-5341 and amendments to WAC 246-840-534 to implement E2SSB 5582 (chapter 126, Laws of 2023).

Hearing Location(s): On August 27, 2024, at 12:00 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 <https://us02web.zoom.us/join/9122289045>. After registering you will receive a confirmation email containing information about joining the webinar. The public hearing will be hybrid. Participants can attend at the physical location or virtually by registering on Zoom.

Date of Intended Adoption: August 27, 2024.

Submit Written Comments to: Jessilyn Dagum, P.O. Box 47864, Olympia, WA 98504-7864, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-4738, beginning the date and time of this filing, by August 12, 2024, at midnight.

Assistance for Persons with Disabilities: Contact Jessilyn Dagum, phone 360-236-3538, fax 360-236-4738, TTY 711, email [WABONRules@doh.wa.gov](mailto:WABONRules@doh.wa.gov), by August 12, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to establish the requirements for use of simulation-based learning experiences as a substitute for required clinical and direct patient care experiences at a 1:2 ratio in licensed practical nurse (LPN), registered nurse (RN), or RN to Bachelor of Science in nursing (BSN) nursing education programs and amends the current simulation rule, WAC 246-840-534, to clarify that it only applies to the use of simulation at a 1:1 ratio.

Through the introduction of a new section, WAC 246-840-5341, the proposed rule establishes requirements for the use of simulation at a 1:2 ratio, where one hour of simulation counts for two hours of clinical placement learning. This section provides detailed definitions, requirements, and standards for simulation-based learning experiences, ensuring consistency and quality in their implementation across nursing programs.

Additionally, the proposed amendments to the existing section WAC 246-840-534 clarify that this rule applies to the use of simulation at a 1:1 ratio. The proposal is needed to provide clear and comprehensive regulations that align with legislative directives of E2SSB 5582 to adopt rules that allow for simulation at a 1:2 ratio.

Reasons Supporting Proposal: The proposed rule implements E2SSB 5582 by establishing a new section, WAC 246-840-5341, which allows for one hour of simulation to count for two hours of required clinical and direct patient care experience (1:2 ratio) in LPN, RN, or RN to BSN nursing education programs located in Washington state, as well as

amends current section of rule, WAC 246-840-534, to clarify that particular section applies only to the use of simulation at a 1:1 ratio.

The proposed rule emphasizes the importance of maintaining high quality and high fidelity in simulation-based learning experiences while allowing for comprehensive and immersive clinical training and effective preparation for students' future roles as nurses. Overall, the proposed rule supports the advancement of nursing education in Washington state, promoting innovation, flexibility, and excellence in student training and preparation.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110; E2SSB 5582.

Statute Being Implemented: E2SSB 5582.

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 and Implementation: Jessilyn Dagum, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-3538; Enforcement: Gerianne Babbo, 111 Israel Road S.E., Tumwater, WA 98504, 360-791-4607.

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 Jessilyn Dagum, P.O. Box 47864, Olympia, WA 98504-7864, phone 360-236-3538, 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 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.

Explanation of exemptions: WAC 246-840-534 and 246-840-5341(2) are exempt under RCW 34.05.310 (4) (d), as the proposed changes include updating the term "commission" to "board" and other cleanup. WAC 246-840-5341(1) is exempt under RCW 34.05.310 (4) (e) as the proposed changes are dictated by statute regarding learning methods and use of simulations.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: WAC 246-840-5341(1) explains who the rule applies to and under what circumstances and is exempt under RCW 34.05.310 (4) (e), as the proposed changes are dictated by statute. WAC 246-840-5341(2) is the definition section of the rule. The defined terms clarify usage throughout the section of rules. WAC 246-840-5341(2) is exempt under RCW 34.05.310 (4) (d), as the proposed changes clarify language.

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. The Washington state legislature passed E2SSB 5582 (chapter 126, Laws of 2023), Nurses—Educational opportunities, and became effective July 23, 2023.

**Current Situation/Rule:** Currently, WAC 246-840-534 allows for simulation-based learning experience at a 1:1 ratio where one hour of



simulation can count for one hour of required clinical and direct patient care experience.

**History of the Issue:** In 2023, the Washington state legislature passed E2SSB 5582, titled Nurses—Educational opportunities. This bill directed the board to adopt rules allowing for one hour of simulated learning to be counted as equivalent to two hours of clinical placement learning, with simulated learning accounting for up to 50 percent of the required clinical hours. As a result, the board is proposing amendments to WAC 246-840-534 and creation of a new rule section, WAC 246-840-5341, to align with the legislative mandate.

**Proposed Rule:** Throughout the process of developing the proposed rule, the board reviewed the best available evidence-based research related to clinical simulation and data around high-quality and high-fidelity simulation. The proposed rule clarifies various definitions and requirements related to simulation-based learning experiences, faculty qualifications, program management, and evaluation. The proposed new WAC 246-840-5341 outlines the use of simulation for clinical experiences at a 1:2 ratio in LPN, RN, or RN to BSN nursing education programs in Washington state. This means that one hour of simulation would count for two hours of required clinical and direct patient care experiences. Amendments to WAC 246-840-534 clarify that rule section applies to the use of simulation at a 1:1 ratio.

**Need for the Proposed Rule:** To clearly state the requirements for nursing education programs to utilize simulation at a 1:2 ratio, rule making is necessary. The proposed rule is needed to align with the legislative mandates of E2SSB 5582 which directs and authorizes the board to adopt rules which allow for one hour of simulated learning to be counted as equivalent to two hours of clinical placement learning, with simulated learning accounting for up to a maximum of 50 percent of the required clinical hours. The proposed rule allows for greater flexibility in utilizing simulation as a substitute for clinical experiences in nursing education programs. By adopting a 1:2 ratio, nursing programs can better meet their clinical hour requirements while potentially alleviating challenges associated with securing clinical placements, particularly in light of factors such as limited clinical sites and the limitations to in-person training experienced caused by the coronavirus disease 2019 (COVID-19) pandemic. The proposed rule aims to ensure that simulation-based learning experiences maintain quality standards, faculty qualifications, and program management protocols while also enhancing nursing education and better preparing students for clinical practice in a dynamic health care environment.

**Probable Compliance Requirements:** The probable compliance requirements for nursing education programs to adhere to the proposed rule include adjusting their curriculum to incorporate the new 1:2 ratio for simulation-based learning experiences, ensuring faculty receive appropriate training and certification in simulation pedagogy, obtaining endorsement or accreditation from approved simulation organizations, and implementing robust evaluation and quality improvement processes for simulation programs.

Small businesses, such as nursing education programs, are likely to require various professional services to comply with the proposed rule. These may include:

**1. Board approved endorsement or accreditation from a health care simulation organization, WAC 246-840-5341(8):**

- The current board-approved accreditation and endorsement programs are:

- INACSL Endorsement: <https://www.inacsl.org/endorsement-program>.
- SSIH Full Accreditation: <https://www.ssih.org/Credentialing/Accreditation/Full-Accreditation>.
- SSIH Provisional Accreditation: <https://www.ssih.org/Credentialing/Accreditation/Provisional-Accreditation>.
- Nursing education programs offering simulation at a 1:2 ratio must obtain board-approved certification or endorsement by June 30, 2029.
- As of July 1, 2029, a nursing education program must obtain board-approved endorsement or accreditation prior to offering simulation-based learning experiences to students at a 1:2 ratio.
- New nursing education programs receiving full board approval must obtain board-approved endorsement or accreditation within four years of receiving full board approval.

**Simulation Program Manager Initial CHSE Certification, WAC 246-840-5341 (10) :**

- The simulation program manager must also hold a certified health-care simulation educator (CHSE) certification, certified health-care simulation educator-advanced certification (CHSE-A), or other board-approved certification in simulation by June 30, 2029.
- As of July 1, 2029, the simulation program manager must have and maintain board-approved health care simulation educator certification prior to initiating simulation program management duties.

**Simulation Program Faculty Individual Initial CHSE Certification, WAC 246-840-5341 (11) :**

- As of July 1, 2029, at least 10 percent of nursing faculty who facilitate simulation-based learning experiences must hold a CHSE or CHSE-A certification or other board-approved certification in simulation.

**Professional Development, WAC 246-840-5341 (15) (c) :**

- For nursing faculty who facilitate simulation-based learning experiences and do not hold current CHSE, CHSE-A, or other board-approved certification, the nursing education program shall provide a means for faculty participation in simulation-related professional development that includes:
  - C. At least eight hours of simulation-related professional development per year. Professional development includes activities that reasonably contribute to the professional knowledge and development of faculty for purposes of providing simulation-based learning experiences to students.

Identification and summary of which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS).

**SBEIS Table 1. Summary of Businesses Required to Comply to the Proposed Rule**

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold
611210	Community Colleges (Junior Colleges) with Nursing Programs	32	\$1,330.76
611310	Colleges, Universities and Professional with Nursing Programs	9	\$24,053.97

**Analysis of probable costs of businesses in the industry to comply to the proposed rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue.**

**New WAC 246-840-5341 Use of simulation for clinical experiences at a 1:2 ratio in LPN, RN, or RN to BSN nursing education programs located in Washington state.**

**Description:** This rule introduces regulations governing the use of simulation for clinical experiences in LPN, RN, or RN to BSN nursing education programs in Washington state. The rule establishes a 1:2 ratio, allowing one hour of simulation to count as two hours of required clinical and direct patient care experiences. WAC 246-840-5341(1) explains who the rule applies to and under what circumstances and is exempt under RCW 34.05.310 (4)(e) as the proposed changes are dictated by statute. WAC 246-840-5341(2) is the definition section of the rule. The defined terms clarify usage throughout the section of rules. WAC 246-840-5341(2) is exempt under RCW 34.05.310 (4)(d), as the proposed changes clarify language. The requirement associated with these terms are established and analyzed below.

**2. WAC 246-840-5341(3):** Limitation on simulation hours - mirrors the standard set in statute of a max limit of 50 percent of clinical hours for a particular course that can be replaced by simulation-based learning experiences. It also outlines conditions under which exceptions may be granted.

**3. WAC 246-840-5341(4):** Exclusion of screen-based simulation - specifies that hours spent on screen-based simulation cannot be counted for clinical hours at the 1:2 ratio.

**4. WAC 246-840-5341(5):** Use of immersive technology - allows for the use of immersive augmented reality or virtual reality in simulation-based learning experiences, provided they are synchronously facilitated.

**5. WAC 246-840-5341(6):** Group size and engagement - sets limits on group size to ensure effective learning and engagement, specifies the roles of students in simulation scenarios, and mandates a plan for ensuring active engagement of all students.

**6. WAC 246-840-5341(7):** Faculty responsibilities - states that nursing faculty facilitating simulation-based learning experiences must not have operational responsibilities.

**7. WAC 246-840-5341(8):** Certification or accreditation requirement - mandates that nursing education programs must obtain and maintain endorsement or accreditation from an organization approved by the board, with specific deadlines for compliance.

**8. WAC 246-840-5341(9):** Program requirements - requires nursing education programs to have a strategic plan, resource management plan, policies and procedures, and defined qualifications for simulation operation support personnel.

**9. WAC 246-840-5341(10):** Simulation program manager certification - specifies certification requirements for the individual managing the simulation program, with deadlines for compliance.

**10. WAC 246-840-5341(11):** Faculty certification requirement - sets a deadline for a percentage of nursing faculty facilitating simulation-based learning experiences to hold specific certifications.

**11. WAC 246-840-5341(12):** Exceptions - outlines conditions under which exceptions may be granted for certification requirements, including the submission of a written plan and evidence of professional development.

**12. WAC 246-840-5341(13):** Faculty qualifications and competency - requires documentation of faculty qualifications, knowledge in simulation pedagogy, appropriate facilitation approaches, and ongoing competency in simulation-based teaching.

**13. WAC 246-840-5341(14):** Faculty development and evaluation - mandates a written plan for orienting, mentoring, and evaluating simulation program faculty.

**14. WAC 246-840-5341(15):** Faculty professional development - specifies requirements for professional development for faculty who do not hold specific certifications, including educational needs assessment and annual development plans.

**15. WAC 246-840-5341(16):** Learning experience criteria - sets criteria for simulation-based learning experiences to be student-centered, evidence-based, aligned with learning objectives, and supportive of psychological safety.

**16. WAC 246-840-5341(17):** Evaluation plan - requires a written plan for evaluation of students, simulation experiences, and facilitation, with data used for continuous quality improvement.

**17. WAC 246-840-5341(18):** Documentation - specifies that documentation required by the rule may serve as proof of compliance with endorsement or accreditation requirements.

**18. WAC 246-840-5341(19):** Prohibitions - lists circumstances under which nursing education programs may not use a 1:2 simulation ratio.

**19. WAC 246-840-5341(20):** Enforcement - specifies actions the board may take against programs not complying with certification or accreditation requirements.

**Cost(s):** Undertaking the costs to provide simulation at a 1:2 ratio is optional. Nursing educational programs could choose not to offer simulation-based learning experiences at this ratio and therefore not be subject to these costs. However, if a nursing education program does choose to offer simulation-based learning experiences at a 1:2 ratio, the probable costs associated would include training and certification expenses for faculty and simulation program managers. This encompasses the cost of certification exams, training materials, and potential fees linked with certification programs. Ongoing professional development for faculty, simulation program managers, and support personnel also incurs costs, covering training workshops, conferences, and educational resources aimed at enhancing simulation pedagogy skills. Additionally, there are fees associated with obtaining accreditation or endorsement from approved organizations.

In determining cost of compliance with the proposed rules, the board sent a survey to 43 Washington state deans and directors of nursing programs and 22 programs responded. The board asked the programs to provide an estimate of the funds their nursing program would require to implement the rule regarding simulation professional development (CHSE certification, yearly simulation professional development), open source materials, simulation endorsement or accreditation, and evaluation of 1:2 simulation for the first year and recurrent year.

The 22 nursing education programs responding reported the following associated costs: The cost reported in the survey ranged from \$2,000-\$100,000 for simulation professional development (CHSE certification, yearly simulation professional development). For simulation endorsement or accreditation, the cost reported ranged from \$2,000-\$150,000. In terms of evaluation of 1:2 simulation for the first year and recurrent year, programs responses ranged from \$0-\$150,000. Last-

ly, programs reported the estimated amount of funds needed for open-source materials for simulation (training modules, case studies, etc.) ranged between \$0-\$60,000. The total reported estimated amount of funds programs would need to implement the proposed rule ranged between \$4,000-\$460,000 (SA Table 2).

**SBEIS Table 2. Estimate of Cost for Nursing Education Programs from Cost Survey\***

Estimate of the Funds the Nursing Program Would Require:	Average**	Median	Range
Simulation Professional Development (CHSE certification, yearly simulation professional development)	\$20,069	\$13,500	\$2,000 - \$100,000
Simulation Endorsement or Accreditation	\$18,175	\$5,000	\$2,000 - \$150,000
Evaluation of 1:2 Simulation for first year and recurrent year	\$26,712	\$6,000	0 - \$150,000
Open-Source Materials for Simulation (training modules, case studies, etc.)	\$9,919	\$3,000	0 - \$60,000
<b>TOTAL</b>	<b>\$74,875</b>	<b>\$35,000</b>	<b>\$4,000 - \$460,000</b>

\*\*Calculations are not summed by row or by column and represent stand alone figures.

\*Costs are rounded up to nearest dollar.

The board and department do not anticipate a loss of revenue. Obtaining the required accreditation, CHSE certification, and open source materials may make a school more attractive to prospective students and thus may increase revenue.

**Summary of All Cost(s):** The probable costs of implementing WAC 246-840-5341, including training, equipment, administrative expenses, professional development, and accreditation fees.

**SBEIS Table 3. Summary of Probable Cost(s)**

WAC Section and Title	Probable Cost(s) Description	Probable Cost(s) Estimate
WAC 246-840-5341(8)	Simulation Endorsement or Accreditation	\$2,000 - \$150,000
WAC 246-840-5341(10) WAC 246-840-5341(11) WAC 246-840-5341(15)	Simulation Professional Development (CHSE certification, yearly simulation professional development)	\$2,000 - \$100,000
WAC 246-840-5341(14) WAC 246-840-5341(17)	Evaluation of 1:2 Simulation for first year and recurrent year	0 - \$150,000
WAC 246-840-5341(9) WAC 246-840-5341(13)	Open-Source Materials for Simulation (training modules, case studies, etc.)	0 - \$60,000

**Analysis on if the proposed rule may impose more-than-minor costs for businesses in the industry. Includes a summary of how the costs were calculated:** Yes, the costs of the proposed rule is \$4,000 - \$460,000 which is **more than** the minor cost threshold (\$1,330.76 and \$24,053.97).

**Summary of how the costs were calculated:** The board calculated the costs associated with each section of WAC 246-840-5341 by conducting a comprehensive analysis of the requirements outlined in the proposed rule. This analysis involved consulting with interested parties, such as nursing education programs, simulation experts, and accreditation bodies, to gather information on potential costs. Additionally, the board reviewed existing data on simulation program expenditures, faculty training costs, accreditation fees, and other relevant expenses.

ses to estimate the financial impact of compliance. By considering these factors and estimating the resources needed to meet the requirements of each section, the board developed a comprehensive understanding of the probable costs associated with implementing the proposed rule.

**Determination on if the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule:** No, the board believes the proposed rule does not have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

**Explanation of the determination:** The board believes the proposed rule, WAC 246-840-5341, does not have a disproportionate impact on small businesses compared to the largest 10 percent of businesses required to comply. The rule requirements, such as faculty certification, simulation equipment, and professional development, apply uniformly across all nursing education programs, regardless of size. The cost and administrative efforts needed to comply are anticipated to be proportionate to the resources available to both small and large institutions, ensuring an equitable implementation process.

A copy of the detailed cost calculations may be obtained by contacting Jessilyn Dagum, P.O. Box 47864, Olympia, WA 98504-7864, phone 360-236-3538, fax 360-236-4738, TTY 711, email WABONRules@doh.wa.gov.

July 23, 2024  
Alison Bradywood DNP, MN/MPH, RN, NEA-BC  
Executive Director  
Washington State Board of Nursing

## OTS-5217.9

AMENDATORY SECTION (Amending WSR 16-17-082, filed 8/17/16, effective 9/17/16)

**WAC 246-840-534 Use of simulation for clinical experiences at a 1:1 ratio in LPN, RN, or RN to BSN nursing education programs located in Washington state.** (1) An LPN, RN, or RN to BSN nursing education program may use simulation as a substitute for traditional clinical experiences (~~(, after approval by the commission)~~) in WAC 246-840-531 at a 1:1 ratio, where one hour of simulation counts for one hour of required clinical experience, not to exceed ((fifty)) 50 percent of its clinical hours for a particular course.

(a) Simulation as used in this section means a technique to replace or amplify real experiences with guided experiences evoking or replicating substantial aspects of the real world in a fully interactive manner.

(b) The nursing education program shall have an organizing framework providing adequate fiscal, human, technological, and material resources to support the simulation activities.

(c) Simulation activities must be managed by an individual who is academically and experientially qualified and who demonstrates curren-

cy and competency in the use of simulation while managing the simulation program.

(d) The nursing education program shall have a budget sustaining simulation activities and training of the faculty.

(e) The nursing education program shall have appropriate facilities, educational and technological resources and equipment to meet the intended objectives of the simulation.

(f) All faculty involved in simulations, both didactic and clinical, shall have training in the use of simulation and shall engage in ongoing professional development in the use of simulation.

(g) Faculty to student ratios in the simulation lab must be in the same ratio as identified in WAC 246-840-532 for clinical learning experiences.

(2) Faculty shall organize clinical and practice experiences based on the educational preparation and skill level of the student.

(3) Qualified simulation faculty must supervise and evaluate student clinical and practice experiences.

(a) The nursing education program shall demonstrate that simulation activities are linked to programmatic outcomes.

(b) The nursing education program shall have written policies and procedures on the following:

(i) Short-term and long-term plans for integrating simulation into the curriculum;

(ii) An identified method of debriefing each simulated activity; and

(iii) A plan for orienting faculty to simulation.

(c) Debriefing as used in this section means an activity following a simulation experience that is led by a facilitator, encourages reflective thinking, and provides feedback regarding the participant's performance.

(d) The nursing education program shall develop criteria to evaluate simulation activities.

(e) Students shall evaluate the simulation experience on an ongoing basis.

(f) The program shall include information about use of simulation in its annual report to the ~~((commission))~~ board.

#### NEW SECTION

**WAC 246-840-5341 Use of simulation for clinical experiences at a 1:2 ratio in LPN, RN, or RN to BSN nursing education programs located in Washington state.** (1) This section applies to LPN, RN, or RN to BSN nursing education programs providing simulation-based learning experiences as a substitute for clinical and direct patient care experience hours required in WAC 246-840-531 at a 1:2 ratio, where one hour of simulation counts for two hours of required clinical and direct patient care experiences.

(2) The definitions in this section apply throughout this section unless the context clearly requires otherwise:

(a) **"Active engagement"** means each student maintains a level of engagement that is conducive to the students' achievement of learning objectives.

(b) **"Active observer"** means a student that is engaged in the clinical scenario by observing the active participants and providing

feedback that contributes to the students' achievement of learning objectives.

(c) **"Active participant"** means a student that is directly engaged in the clinical scenario by way of a role assignment that contributes to the students' achievement of learning objectives.

(d) **"Context"** means a simulation-based learning experience should be contextualized within a situation or backstory to provide a realistic starting point from which the structured activity begins. The complete picture of this context may be given verbally to the learners, found in the patient's file, or be revealed if requested through adequate inquiry.

(e) **"Fidelity"** means the level of realism associated with a particular simulation-based learning experience; fidelity can involve a variety of dimensions, including:

(i) Physical factors such as environment, equipment, and related tools;

(ii) Psychological factors such as emotions, beliefs, and self-awareness of participants;

(iii) Social factors such as participant and instructor motivation and goals;

(iv) Culture of the group; and

(v) Degree of openness and trust, as well as participants' modes of thinking.

(f) **"High stakes evaluation"** means an evaluation that has major implications or consequences based on the result or the outcome, such as merit pay, progression, or grades.

(g) **"Screen-based simulation"** means a simulation presented on a computer screen using graphical images and text, similar to the popular gaming format, where the learner interacts with the interface using keyboard, mouse, joystick, or other input device.

(h) **"Simulation"** means an educational technique that replaces or amplifies real experiences with guided experiences that evoke or replicate substantial aspects of the real world in a fully interactive manner.

(i) **"Simulation-based learning experiences"** means structured facilitated activities that represent actual or potential situations that allow students to demonstrate, develop, or enhance knowledge, skills, or attitudes and provide an opportunity to analyze and respond to realistic situations in a simulated environment. Simulation-based learning experiences include the entire set of actions and events from initiation to termination of an individual simulation event. For purposes of counting simulation hours using 1:2 ratio, simulation-based learning experiences include the synchronously facilitated prebriefing, clinical scenario, and debriefing, but do not include asynchronous preparation activities such as readings or case reviews.

(j) **"Simulation operations support personnel"** means an individual who is involved in the preparation, operations, implementation, or delivery of the simulation-based learning experience but does not have primary responsibility for the experience. Responsibilities may include, but are not limited to, preparing the environment, operating equipment and technology, and voicing roles.

(3) Simulation-based learning experience hours may not exceed 50 percent of clinical hours for a particular course. The board may grant exceptions to a nursing education program demonstrating difficulty in locating clinical placement for a particular curriculum content area required by WAC 246-840-539 and 246-840-541, or 246-840-542.



- (4) Screen-based simulation hours may not be counted for clinical hours at the 1:2 ratio.
- (5) A simulation-based learning experience can include the use of immersive augmented reality or virtual reality so long as it is synchronously facilitated.
- (6) Group size shall be limited to the number of students who can be actively engaged in a simulation-based learning experience such that it is conducive to learning, and shall not exceed 10 students for every one nursing faculty member who facilitates a simulation-based learning experience. Each student shall participate in the hands-on nurse role in each simulation-based learning experience and when not in that role, as an active observer or active participant in another role that contributes to the students' achievement of learning objectives. The program shall have a plan for ensuring active engagement of all students that includes participation of each student in the hands-on nurse role and use of an observer engagement tool.
- (7) The nursing faculty member who facilitates a simulation-based learning experience must not have operational responsibilities.
- (8) The nursing education program must obtain and maintain endorsement or accreditation from a board-approved organization that provides endorsement or accreditation in health care simulation. A nursing education program offering simulation at a 1:2 ratio must obtain board-approved certification or endorsement by June 30, 2029. As of July 1, 2029, a nursing education program must obtain board-approved endorsement or accreditation prior to offering simulation-based learning experiences to students at a 1:2 ratio. New nursing education programs receiving full board approval must obtain board-approved endorsement or accreditation within four years of receiving full board approval.
- (9) The nursing education program shall have:
- (a) A strategic plan for the simulation program;
  - (b) A plan to manage simulation space, equipment, and personnel resources for the simulation program;
  - (c) Policies and procedures to support and sustain the simulation program; and
  - (d) Defined qualifications of simulation operation support personnel.
- (10) The simulation program must be managed by an individual who has all of the academic and experiential qualifications required of nursing faculty. The simulation program manager must also hold a Certified Healthcare Simulation Educator (CHSE) certification, Certified Healthcare Simulation Educator-Advanced certification (CHSE-A), or other board-approved certification in simulation by June 30, 2029. As of July 1, 2029, the simulation program manager must have and maintain board-approved health care simulation educator certification prior to initiating simulation program management duties.
- (11) As of July 1, 2029, at least 10 percent of nursing faculty who facilitate simulation-based learning experiences must hold a CHSE or CHSE-A certification, or other board-approved certification in simulation.
- (12) The board may grant an exception to the requirements that the simulation program manager and at least 10 percent of nursing faculty who facilitate simulation-based learning experiences must hold a board-approved certification if the following conditions are met:
- (a) The program has a written plan for the simulation faculty and simulation program manager to obtain CHSE, CHSE-A certification, or

other board-approved certification, within three years of application for exception;

(b) The simulation program manager and simulation faculty participate in professional development under subsection (15) of this section; and

(c) Evidence of orientation, mentorship, and evaluation of the simulation faculty and the simulation program manager is maintained and available to the board for review upon request.

(13) All nursing faculty who facilitate simulation-based learning experiences must be academically and experientially qualified and demonstrate competency in the use of simulation. Accordingly, nursing education programs shall document:

(a) Nursing faculty who facilitate simulation-based learning experiences have specific knowledge and skills in simulation pedagogy;

(b) The facilitative approach is appropriate to the level of learning, experience, and competency of the students; and

(c) Facilitation occurs throughout the simulation-based learning experience which aims to support students in achieving expected outcomes. The facilitation methods include prebriefing to prepare students for the simulation, and a debriefing, feedback session, or guided reflection exercise.

The nursing education program may maintain documentation of simulation nursing faculty's current CHSE, CHSE-A, or other board-approved certification as proof of compliance with subsection (13) (a) and (b) of this section.

(14) The nursing education program shall have a written plan to orient, mentor, and evaluate the simulation program manager and nursing faculty who facilitate simulation-based learning experiences.

(15) For nursing faculty who facilitate simulation-based learning experiences and do not hold current CHSE, CHSE-A, or other board-approved certification, the nursing education program shall provide a means for faculty participation in simulation-related professional development that includes:

(a) A simulation-related educational needs assessment;

(b) An annual professional development plan; and

(c) At least eight hours of simulation-related professional development per year. Professional development includes activities that reasonably contribute to the professional knowledge and development of faculty for purposes of providing simulation-based learning experiences to students.

(16) The nursing education program shall ensure that simulation-based learning experiences are:

(a) Student-centered and evidence-based;

(b) Aligned with appropriate and measurable student learning objectives;

(c) Designed to include context and the appropriate level of fidelity; and

(d) Supportive of the students' psychological safety.

(17) The nursing education program shall have a written plan for evaluation of the students, the simulation-based learning experience, and facilitation of the simulation-based learning experience as follows. The evaluation data shall be used for continuous quality improvement, including to inform group size.

(a) When using simulation-based learning experiences for evaluation of students, the method of evaluation shall be determined before the simulation-based experience and criteria for formative, summative, and high-stakes evaluation are met;

(b) All students shall provide a meaningful assessment of all elements of each simulation-based learning experience including pre-brief, clinical scenario, debrief, and facilitation by the faculty;

(c) All students shall provide a meaningful assessment of their engagement and achievement of learning objectives while in the hands-on nurse, active participant, and active observer roles in each simulation-based learning experience; and

(d) Nursing faculty shall provide a meaningful assessment of each simulation-based learning experience including prebrief, clinical scenario, debrief, facilitation, design, and student achievement of the learning objectives.

(18) If documentation required by this section is also required to maintain board-approved endorsement or accreditation in health care simulation, then that documentation may serve as proof of compliance with this section.

(19) Nursing education programs may not use a 1:2 ratio if:

(a) The program is on conditional approval from the board under WAC 246-840-558;

(b) The program is on conditional or probationary status from a nursing accrediting body;

(c) The program's first time National Council Licensure Examination (NCLEX) pass rates are below 80 percent for two consecutive years; or

(d) The program is on a plan of correction for a deficiency related to providing simulation-based learning experiences at either a 1:1 ratio under WAC 246-840-534 or a 1:2 ratio under this section.

(20) The board may take action as identified in WAC 246-840-558 against a nursing education program offering simulation-based learning experiences at a 1:2 ratio that does not obtain or maintain a board-approved endorsement or accreditation as required by this section.

## WSR 24-15-138

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed July 23, 2024, 4:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-068.

Title of Rule and Other Identifying Information: Continuing education (CE) requirements for osteopathic physicians. The board of osteopathic medicine and surgery (board) is proposing amendments to WAC 246-853-080 to update the CE requirements for licensure renewal of osteopathic physicians to clarify Washington-specific mandated CE requirements.

Hearing Location(s): On September 13, 2024, at 10:00 a.m. PST, at the Hilton Garden Inn Seattle, 1801 East Valley Road, Renton, WA 98057; or virtually. You are invited to a Zoom webinar on September 13, 2024, at 9:00 a.m. PST (US and Canada). Topic: Board of osteopathic medicine and surgery business meeting. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_mLzgguj9QhmrftjY96WFG](https://us02web.zoom.us/webinar/register/WN_mLzgguj9QhmrftjY96WFG). You may register in advance for the virtual portion of the hearing. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: September 13, 2024.

Submit Written Comments to: Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2850, beginning on the date and time of this filing, by September 6, 2024, at midnight.

Assistance for Persons with Disabilities: Contact Becky McElhiney, phone 360-236-4766, fax 360-236-2901, TTY 711, email [osteopathic@doh.wa.gov](mailto:osteopathic@doh.wa.gov), by September 5, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing an amendment to include that Washington-specific mandated CE may be required to satisfy licensure requirements.

In 2023, the board adopted new WAC 246-853-075 Health equity continuing education requirements to implement ESSB 5229 (chapter 276, Laws of 2021). ESSB 5229 directs the board to adopt rules establishing the standards for health equity CE, which must be completed at least once every four years.

The purpose of the proposed amendment to WAC 246-853-080 is to clarify that Washington-specific mandated CE may be required to satisfy licensure requirements. The proposed amendments ensure that osteopathic physicians are aware of any legislatively mandated CE that is required for Washington state providers such as health equity.

Reasons Supporting Proposal: The reason for this proposal is that WAC 246-853-080 Continuing education, does not currently refer to the new health equity CE rules in WAC 246-853-075. WAC 246-853-080 currently states that osteopathic physicians may meet all CE requirements if they have a national certification or recognition award from specific national organizations. However, as the board or department of health (department) do not have oversight of any of these national organizations, they cannot guarantee that these organizations require health equity CE or any other Washington-specific mandated CE as part of the process of earning these certifications.

The proposed changes clarify CE requirements to also include any Washington-state specific mandated CE so that licensed providers are

aware of any CE mandated by the legislature to satisfy their CE requirement for licensure.

Statutory Authority for Adoption: RCW 18.57.005, 18.130.050, 18.130.250, and 18.340.020.

Statute Being Implemented: RCW 43.70.613.

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

Name of Proponent: Board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McElhiney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4766; Implementation and Enforcement: James Chaney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2831.

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 proposed rule is exempt from a cost-benefit analysis under RCW 34.05.328 (5)(b)(iv) because the proposed rule clarifies that Washington CE that is mandated by law may be a requirement for licensure.

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: This rule only impacts the licensing of providers and not the business.

Scope of exemption for rule proposal:

Is fully exempt.

July 23, 2024

U. James Chaney

Executive Director

Board of Osteopathic Medicine and Surgery

## OTS-5274.2

AMENDATORY SECTION (Amending WSR 20-09-025, filed 4/6/20, effective 5/7/20)

**WAC 246-853-080 Continuing education.** (1) Licensed osteopathic physicians and surgeons must complete (~~one hundred fifty~~) 150 hours of creditable continuing medical education (CME) every three years in accordance with chapter 246-12 WAC (~~, Part 7~~).

(2) To satisfy the CME requirements in subsection (1) of this section, a licensed osteopathic physician and surgeon may:

(a) Certify or recertify with the American Board of Osteopathic Medical Specialties (ABOMS) or the American Board of Medical Specialties (ABMS) within the last six years;

(b) Hold a current American Osteopathic Association (AOA) certificate of excellence in CME; or

(c) Hold a current American Medical Association (AMA) physician's recognition award (PRA).

(3) In addition to subsection (2) of this section, the licensed osteopathic physician and surgeon must complete any Washington state-specific mandated continuing education requirements.

**WSR 24-15-148**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed July 24, 2024, 10:00 a.m.]

The Washington department of fish and wildlife is withdrawing the proposed rule publication (CR-102) for gray wolf under WSR 24-04-094 filed on February 7, 2024.

Scott Bird  
Rules Coordinator

## WSR 24-15-149

## PROPOSED RULES

## DEPARTMENT OF LICENSING

[Filed July 24, 2024, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-13-120.

Title of Rule and Other Identifying Information: Real estate appraisers fee increases; WAC 308-125-120 Fees and charges.

Hearing Location(s): On August 28, 2024, at 11:00 a.m., [contact agency for link], Meeting ID 273 047 929 182, Passcode CZwosL; or dial in by phone +1 564-999-2000,,180522015# United States, Olympia, Phone conference ID 180 522 015#; or in person at the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98504. If you are having trouble accessing the virtual meeting, please call 360-902-3486 at the time of the hearing to request assistance. Please email rulescoordinator@dol.wa.gov if you would like to request an interpreter or other accommodation at least one week in advance of the public hearing.

Date of Intended Adoption: August 29, 2024.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov (subject: Appraisers' Fee Increases Public Hearing), beginning July 24, 2024, by August 28, 2024.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by August 19, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of licensing (DOL) is required to set fees for each professional, occupational, or business licensing program at a sufficient level to defray the costs of administering that program. Current fees for appraisers are insufficient to sustain the program, and therefore DOL is increasing fees.

Reasons Supporting Proposal: In accordance with RCW 43.24.086, we are required to set these fees "at a sufficient level to defray the costs of administering that program." After completing an account audit with the federal appraiser subcommittee (ASC), DOL identified an error in the program fund balance. To bring the program balance to good standing, DOL must increase program fees. The appraiser program has not had a fee increase since 2009 (15 years). Current fees are insufficient to sustain this program with cost of business increases. Fee increases are needed to continue providing the information technology systems, training and oversight, and other critical services needed to support licensees and maintain public safety.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule and RCW 46.01.110 and 18.140.050 Fees and collection procedures.

Statute Being Implemented: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule and 18.140.050 Fees and collection procedures.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Lauren Gilmore, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-634-5365; Implementation and Enforcement: Chantelle Petrone Marker, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-634-5365.

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 34.055 (b) (vi) [34.05.328 (5) (b) (vi)] exempts DOL from this requirement since DOL sets and adjusts fees pursuant to legislative standards, authorized in RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule, and RCW 18.140.050 Fees and collection procedures.

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.

July 24, 2024  
 Ellis Starrett  
 Rules and Policy Manager

**OTS-5650.2**

AMENDATORY SECTION (Amending WSR 20-18-024, filed 8/26/20, effective 9/26/20)

**WAC 308-125-120 Fees and charges.** The following fees shall be paid under the provisions of chapter 18.140 RCW:

Title of Fee	Fee
(1) Application for examination	(( <del>\$370.00</del> )) <u>\$740.00</u>
(2) Examination	120.00**
(3) Reexamination	120.00**
(4) Original certification	(( <del>250.00*</del> )) <u>420.00*</u>
(5) Active license renewal	(( <del>530.00*</del> )) <u>980.00*</u>
<del>((6)) Inactive license renewal</del>	<del>110.00)</del>
<del>((7)) Inactive license reinstatement</del>	(( <del>530.00</del> ))
<del>(6)</del>	<u>1,200.00*</u>
<del>((8)) Late renewal</del>	(( <del>38.00</del> ))
<del>(7)</del>	<u>76.00</u>
<del>((9)) Certification history record</del>	30.00
<del>(8)</del>	
<del>((10)) Application for reciprocity</del>	(( <del>370.00</del> ))
<del>(9)</del>	<u>660.00</u>
<del>((11)) Original certification via reciprocity</del>	(( <del>250.00</del> ))
<del>(10)</del>	<u>420.00</u>
<del>((12)) Temporary practice</del>	(( <del>150.00</del> ))
<del>(11)</del>	<u>250.00</u>
<del>((13)) Trainee registration</del>	(( <del>200.00</del> ))
<del>(12)</del>	<u>400.00</u>



Title of Fee	Fee
<del>((14))</del> Trainee registration renewal	<del>((200.00))</del>
<u>(13)</u>	<u>400.00</u>
<del>((15))</del> DOL license print	5.00
<u>(14)</u>	

\* Fees for these categories marked with an asterisk include a national registry fee in an amount determined by the appraisal subcommittee to be submitted by the state. Title XI, SEC. 1109 requires each state to submit a roster listing of state licensed and certified appraisers to the Appraiser Subcommittee.

\*\* Charges for categories marked with a double asterisk are determined by contract with an outside testing service.

## WSR 24-15-152

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed July 24, 2024, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-052.

Title of Rule and Other Identifying Information: WAC 182-531-1675  
Washington apple health—Gender affirming interventions for gender dysphoria.

Hearing Location(s): On August 27, 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\\_Jx4tOCLyTByfJfI1Pj88Cg](https://us02web.zoom.us/webinar/register/WN_Jx4tOCLyTByfJfI1Pj88Cg). 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: August 28, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by August 27, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunications relay service 711, email [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov), by August 16, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is revising these rules to align with current standards of care. The rule amendments:

- Add gender affirming hair removal as a covered service to align with current practice.
- Clarify that modifications or corrections to a previous surgery must be related to infection or impairment of function.
- Require one behavioral health assessment instead of two for surgeries. For those age 17 and younger, the assessment must be a biopsychosocial behavioral health assessment.
- Remove the requirement that a client live 12 months in a congruent gender role. Gender incongruence must be marked and sustained.
- Require the client to be able to give informed consent. If a behavioral health condition interferes with the ability to give informed consent, the provider must facilitate treatment of the underlying behavioral health condition to support the ability to give informed consent.
- Clarify that 12 months of hormone therapy is required for breast augmentation (with exceptions where noted).
- Clarify that six months of hormone therapy is required for bottom surgery (with exceptions where noted).
- Require the surgeon to provide documentation of the client's informed consent.
- Require documentation for facial or body hair removal to align with current practice.

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: Lisa Little, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-2033.

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.

Scope of exemption for rule proposal:

Is not exempt.

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. The proposed rules do not impose more-than-minor costs on small businesses.

July 24, 2024  
Wendy Barcus  
Rules Coordinator

#### OTS-5495.1

AMENDATORY SECTION (Amending WSR 23-03-071, filed 1/13/23, effective 2/13/23)

**WAC 182-531-1675 Washington apple health—Gender affirming interventions for gender dysphoria. (1) Overview of treatment program.**

(a) **Medicaid agency coverage.** The medicaid agency covers the services listed in (b) of this subsection to treat gender dysphoria (also referred to as gender incongruence) under WAC 182-501-0050 and 182-531-0100. These services include life-changing procedures that may not be reversible.

(b) **Medical services covered.** Medical services covered by the agency include, but are not limited to:

(i) Presurgical and postsurgical hormone therapy;

(ii) Puberty suppression therapy;

(iii) Behavioral health services; ~~((and))~~

(iv) Gender affirming hair removal services; and

(v) Surgical and ancillary services including, but not limited

to:

(A) Anesthesia;

(B) Labs;

(C) Pathology;

(D) Radiology;

(E) Hospitalization;

(F) Physician services; and

(G) Hospitalizations and physician services required to treat postoperative complications of procedures performed under this section.

(c) ~~((Surgical services covered. Surgical services to treat gender dysphoria are a covered service for clients who have))~~ **Diagnosis of gender dysphoria/gender incongruence.** A diagnosis of gender dyspho-

ria/gender incongruence is required to obtain services under this program and must be made by a provider who meets the qualifications outlined in chapter 182-502 WAC.

(d) **Medical necessity.** ~~((Under this program,))~~ The agency authorizes and pays for only medically necessary services. Medical necessity is defined in WAC 182-500-0070 and is determined under WAC 182-501-0165 and limitation extensions in accordance with WAC 182-501-0169.

(e) **Provider requirements.** Providers should be knowledgeable of gender-nonconforming identities and expressions, and the assessment and treatment of gender dysphoria/gender incongruence, including experience utilizing standards of care that include the World Professional Association for Transgender Health (WPATH) Standards of Care.

(f) **Clients age ~~((twenty))~~ 20 and younger.** The agency evaluates requests for clients age ~~((twenty))~~ 20 and younger according to the early and periodic screening, diagnosis, and treatment (EPSDT) program described in chapter 182-534 WAC. Under the EPSDT program, the agency pays for a service if it is medically necessary, safe, effective, and not experimental.

(g) **Transportation services.** The agency covers transportation services under the provisions of chapter 182-546 WAC.

(h) **Out-of-state care.** Any out-of-state care, including a presurgical consultation, must be prior authorized as an out-of-state service under WAC 182-501-0182.

(i) **Reversal procedures.** The agency does not cover procedures and surgeries related to reversal of any gender affirming surgery.

(j) **Corrective surgeries for intersex traits.** The agency covers corrective or reparative surgeries for people with intersex traits who received surgeries that were performed without the person's consent.

(2) **Prior authorization.**

(a) **Prior authorization requirements for surgical services.** As a condition of payment, the agency requires prior authorization for all surgical services to treat gender ~~((dysphoria, including modifications to, or complications from, a previous surgery))~~ dysphoria/gender incongruence, except as provided in subsection (3) of this section. This includes modifications or revisions to, or correcting complications from, a previous surgery related to infections or impairment of a function.

(b) **Required documentation.** The provider must include the following documentation with the prior authorization request:

(i) ~~((Two psychosocial evaluations required.))~~ **Behavioral health assessment.** Documentation of ~~((two separate psychosocial evaluations))~~ a behavioral health assessment performed within 18 months preceding surgery by ~~((two separate))~~ a qualified ~~((mental))~~ behavioral health professional~~((s))~~ as defined in WAC 182-531-1400. ~~((These providers))~~ This provider must be a licensed health care professional~~((s))~~ who ~~((are))~~ is eligible under chapter 182-502 WAC, as follows:

- (A) Psychiatrist;
- (B) Psychologist;
- (C) Psychiatric advanced practice registered nurse ~~((practitioner~~ ~~(-ARNP))~~ (APRN);
- (D) Psychiatric mental health nurse practitioner-board certified (PMHNP-BC);
- (E) Mental health counselor (LMHC);
- (F) Independent clinical social worker (LICSW);
- (G) Advanced social worker (LASW); or
- (H) Marriage and family therapist (LMFT).

(ii) ~~((One psychosocial evaluation for top surgery. For top surgery with or without chest reconstruction, the agency requires only one comprehensive psychosocial evaluation.~~

~~(iii))~~ **Evaluation requirements.** ~~((Each))~~ The comprehensive ((psychosocial evaluation)) behavioral health assessment must:

(A) Confirm the diagnosis of gender dysphoria, or gender incongruence, or both, as defined by the *Diagnostic Statistical Manual of Mental Disorders*;

(B) Document that:

(I) ~~((The client has:~~

~~• Lived for 12 continuous months in a gender role that is congruent with their gender identity, except for top surgery, hysterectomy, or orchiectomy; or~~

~~• Been unable to live in their gender identity due to personal safety concerns.~~

~~(II) The client has been evaluated for any coexisting behavioral health conditions and if any are present, the conditions are adequately managed.~~

~~(iv))~~ The client's experience of gender incongruence is marked and sustained;

(II) The client has the desire to make their body as congruent as possible with a desired gender through surgery, hormone treatment, or other medical therapies;

(III) Gender incongruence causes clinically significant distress or impairment in social, occupational, or other important areas of functioning; and

(IV) The client has no contraindicating behavioral health conditions that would impair the ability to give informed consent, as described in (c) of this subsection. If a client has a behavioral health condition that interferes with their ability to give informed consent and the client understands the risks, benefits, and alternatives to gender affirming treatment, the provider must facilitate treatment of the underlying behavioral health condition to support the client's ability to provide informed consent.

(iii) Hormone therapy. Documentation from the primary care provider or the provider prescribing hormone therapy that the client has:

(A) As appropriate to the client's gender goal for the following procedures:

(I) Had ((12)) six continuous months of hormone therapy immediately preceding ((the)) a request for genital surgery((, as appropriate to the client's gender goals,)); or

(II) Twelve continuous months of continuous hormone therapy immediately preceding a request for breast augmentation surgery, unless:

~~• Hormones are not clinically indicated for the ((individual, with the exception of))~~ client or hormones are not aligned with the client's gender health care plan, or both; or

~~• The client has requested a mastectomy or reduction mammoplasty((, which do not require hormone therapy)); or~~

~~((B))~~ • The client has a medical contraindication to hormone therapy; and

~~((C))~~ • The client has a medical necessity for surgery and ((that)) the client is adherent with current gender dysphoria treatment.

~~((v))~~ (B) Gender dysphoria/gender incongruence that is not a symptom of another medical condition; and

(C) Had no medical conditions that would impair the client's ability to give informed consent.

(iv) **Surgical.** Documentation from the surgeon of the client's:

(A) Medical history and physical examination(s) performed within the 12 months preceding surgery;

(B) Medical necessity for surgery and surgical plan; and

(C) For hysterectomies, a completed agency hysterectomy consent form must be submitted.

(c) **Informed consent.** The surgeon must provide documentation showing that they informed the client of:

(i) The nature of the proposed care, treatment, services, medications, and procedures;

(ii) Potential benefits, risks, or side effects, including potential problems that might occur during recuperation;

(iii) The likelihood of achieving the client's treatment goals;

(iv) Reasonable alternatives;

(v) Relevant risks, benefits, and side effects related to alternatives, including the possible results of not receiving care, treatment, and services;

(vi) Any limitations on the confidentiality of information learned from or about the patient;

(vii) The effect of gender-affirming treatment on reproduction; and

(viii) Reproductive options before having gender-affirming surgeries that have the potential to create iatrogenic infertility.

(d) **Requirements for hair removal.** For facial or body hair removal, a client must submit:

(i) A letter written within the past 18 months from the provider managing the client's gender-affirming hormone therapy:

(A) Describing the client's attempted hair removal techniques that failed, for each affected part of the body; and

(B) Identifying the medical condition that prevents the client from shaving or using other hair removal techniques, such as documented folliculitis, documented sensitivity to hair removal techniques, or thick, male-pattern hair growth that prohibits adequate hair removal.

(ii) A letter of medical necessity from the client's dermatologist or primary care provider written within the past 18 months that includes:

(A) The size and location of the area to be treated; and

(B) For each area of the body, the number of expected units needed to complete treatment.

(iii) Photographs of the areas to be treated, if requested by the agency.

(e) **Other requirements.** If the client fails to complete all of the requirements in ~~((subsection (2)))~~ (b) of this ~~((section))~~ subsection, the agency will not authorize gender affirming surgery unless:

(i) The clinical decision-making process is provided in the referral letter and attachments described in ~~((subsection (2)))~~ (b) of this ~~((section))~~ subsection; and

(ii) The agency has determined that the request is medically necessary in accordance with WAC 182-501-0165 based on review of all submitted information.

~~((d))~~ (f) **Behavioral health provider requirements.** The behavioral health provider ~~((s))~~ who performs the ~~((psychosocial evaluation))~~ behavioral health assessment described in ~~((subsection (2)))~~ (b) (i) of this ~~((section))~~ subsection must:

(i) Meet the provisions of WAC 182-531-1400;

(ii) Be competent in using the *Diagnostic Statistical Manual of Mental Disorders*, and the *International Classification of Diseases* for diagnostic purposes;

(iii) Be able to recognize and diagnose coexisting (~~(mental)~~) behavioral health conditions and to distinguish these from gender dysphoria/gender incongruence;

(iv) Be knowledgeable of gender-nonconforming identities and expressions, and the assessment and treatment of gender dysphoria; and

(v) Have completed continuing education in the assessment and treatment of gender dysphoria. This may include attending relevant professional meetings, workshops, or seminars; obtaining supervision from a (~~(mental)~~) behavioral health professional with relevant experience; or participating in research related to gender nonconformity and gender dysphoria.

~~((e))~~ (g) **Clients age 17 and younger.** Clients age 17 and younger must meet the requirements for prior authorization identified in ~~((subsection (2))~~ (a) through (d) of this ~~((section))~~ subsection, except that (:

~~(i) One of~~) the comprehensive (~~(psychosocial evaluations))~~ behavioral health assessment required in ~~((subsection (2))~~ (b) (i) of this ~~((section))~~ subsection must be a biopsychosocial behavioral health assessment performed by a behavioral health provider who specializes in adolescent transgender care and meets the qualifications outlined in WAC 182-531-1400.

~~((ii) For top surgery with or without chest reconstruction, the agency requires only one comprehensive psychosocial evaluation from a behavioral health provider who specializes in adolescent transgender care and meets the qualifications outlined in WAC 182-531-1400.))~~

(3) **Expedited prior authorization (EPA).**

(a) **Approved EPA procedures.** The agency allows a provider to use the EPA process for clients age 17 and older for the following medically necessary procedures:

(i) Bilateral mastectomy or reduction mammoplasty with or without chest reconstruction; and

(ii) Genital or donor skin graft site hair removal when medically necessary to prepare for genital reassignment.

(b) **Clinical criteria and documentation.** To use the EPA process for procedures identified in (a) of this subsection, the following clinical criteria and documentation must be kept in the client's record and made available to the agency upon request:

(i) One comprehensive (~~(psychosocial evaluation))~~ biopsychosocial behavioral health assessment performed by a licensed behavioral health provider within the 18 months preceding surgery that meets the requirements identified in subsection (2) of this section;

(ii) Documentation from the primary care provider or the provider prescribing hormone therapy of the medical necessity for surgery and confirmation that the client is adherent with current gender dysphoria treatment; and

(iii) Documentation from the surgeon of the client's:

(A) Medical history and physical examinations performed within the 12 months preceding surgery; and

(B) Medical necessity for surgery and surgical plan.

(c) **Documentation exception.** When the requested procedure is for genital or donor skin graft site hair removal to prepare for bottom surgery, there is an exception to the requirements in (b) of this subsection. The only documentation required is either a:

(i) Letter of medical necessity from the treating surgeon that includes the size and location of the area to be treated, and expected date of planned genital surgery; or

(ii) Letter of medical necessity from the provider who will perform the hair removal that includes the surgical consult for bottom surgery and addresses the need for hair removal prior to gender affirming surgery.

(d) **Prior authorization required for other surgeries.** All other surgeries to treat gender dysphoria, including modifications to, or complications from a previous surgery require prior authorization to determine medical necessity.

(e) **Recoupment.** The agency may recoup any payment made to a provider for procedures listed in this subsection if the provider does not follow the EPA process outlined in WAC 182-501-0163 or if the provider does not maintain the documentation required by this subsection.