

WSR 14-19-071
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed September 12, 2014, 3:44 p.m., effective October 13, 2014]

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

Purpose: The department is adopting these rules as a result of 3ESSB 5034. These rules will provide licensing requirements for enhanced services facilities. The legislature has directed that residents be placed in enhanced services facilities in 2014.

Statutory Authority for Adoption: Chapter 70.97 RCW.

Adopted under notice filed as WSR 14-12-081 on June 3, 2014.

Changes Other than Editing from Proposed to Adopted Version: The changes are shown with new language underlined and deleted "text" lined through.

WAC 388-107-0001:

"Applicant" means the ~~person~~ individual or entity.

"Licensee" means the ~~person~~ individual or entity.

WAC 388-107-0200 Quality of care:

(3)(j) Special needs, including but not limited to.

(iii) Colostomy, ~~ureterostomy~~ urostomy.

WAC 388-107-0250:

(2)(c) Meets the long-term worker training and certification requirements ~~of as described~~ in chapter 388-112 WAC.

WAC 388-107-0320:

(2) The enhanced services facility must ensure residents receive their medications as prescribed, subject to the resident's right to refuse as described in this chapter.

WAC 388-107-0360 Medication refusal—Antipsychotics:

~~(2) The enhanced services facility can not give the antipsychotic medication in an override of the resident's refusal.~~

WAC 388-107-0560 Resident records—Clinical records:

(3) Maintain resident records and preserve their confidentiality in accordance with the applicable state and federal statutes and rules, including chapters 70.02 and ~~70.129~~ 70.96A RCW.

WAC 388-107-1320 Annual renewal:

To renew an enhanced services facility license, the enhanced services facility must, ~~submit a completed~~ submit a completed when renewal of license ~~renewal application on forms designated by notification is received, submit the department annual license fee,~~ renewal application on forms designated by notification is received, submit the department annual license fee, at least thirty days prior to the license expiration date.

~~(2) Sign the application;~~

~~(3) Submit the annual license fee; and~~

~~(4) If the licensee's agent prepares a renewal application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained on the renewal application.~~

WAC 388-107-1432 Circumstances that may result in enforcement remedies:

(c) Failed or refused to comply with the requirements of chapter ~~70.97~~ 48.20 RCW, applicable provisions of chapters ~~70.96A and 71.05~~ 70.129 RCW or this chapter;

WAC 388-107-1150 Application process:

(f) Submit verification that construction plans have been approved by construction review services and verify that the department has received an approved inspection by the state fire marshal.

WAC 388-107-1050 Unlicensed operations—Application of Consumer Protection Act:

Operation of a facility without a license in violation of this chapter and discrimination against Medicaid recipients are ~~is~~ a matter vitally affecting the public interest for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW.

WAC 388-107-0630 Training and home care aide certification requirements:

(1) Under RCW 18.88B.041 and chapter 246-980 WAC, certain individuals including registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant program are exempt from [from] long-term care worker training requirements.

(2) Continuing education requirements are outlined in chapter 388-112 WAC; registered nurses and licensed practical nurses are exempt from the long-term care worker continuing education requirement.

(3) The enhanced services facility must ensure staff persons meet training requirements in effect on the date hired, including requirements described in chapter 388-112 WAC, unless exempt under RCW 18.88B.041.

(4) The enhanced services facility must ensure all enhanced services facility administrators, or their designees, and caregivers who are not exempt under subsection (1) of this section meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

WAC 388-107-0710:

(3) If the facility does construction to meet enhanced services facility requirements.

WAC 388-107-1390 Change in licensee/change of ownership—Relinquishment of license:

(1) On the effective date of the change in licensee, the current enhanced services facility licensee is required to relinquish ~~its~~ their enhanced service facility license.

WAC 388-107-1440 Enforcement orders—Hearings:

(3) Subject to the requirements of subsection (2) of this section, all hearings under this chapter and judicial review of such determinations must be in accordance with the Administrative Procedure Act, chapter 34.05 RCW and chapter 388-02 WAC.

WAC 388-107-1580 Policies and procedures:

(3)(v)(i) Medication refusals, including refusals of court ordered medication.

WAC 388-107-1500 Disputing a preliminary finding:

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date of mailing of the notice of the preliminary finding; except under the circumstances described in subsection.

A final cost-benefit analysis is available by contacting Melissa G. Lovell, P.O. Box 45600, Olympia, WA 98513, phone (360) 725-2408, fax (360) 438-7903, e-mail Melissa.lovell@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 179, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 179, Amended 0, Repealed 0.

Date Adopted: September 11, 2014.

Kevin Quigley
Secretary

Definitions

NEW SECTION

WAC 388-107-0001 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prod-

ding, or the use of chemical restraints or physical restraints except as described in section 388-107-0420;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Administrative hearing" is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

"Administrator" means an enhanced services facility administrator who must be in active administrative charge of the enhanced services facility as required in this chapter. Unless exempt under RCW 18.88B.041, the administrator must complete long-term care worker training and home care aide certification.

"Advance directive," as used in this chapter, means any document indicating a resident's choice with regard to a specific service, treatment, medication or medical procedure option that may be implemented in the future such as power of attorney health care directive, limited or restricted treatment cardiopulmonary resuscitation (CPR), do not resuscitate (DNR), and organ tissue donation.

"Aggressive behavior" means actions by the individual that constitute a threat to the individual's health and safety or the health and safety of others in the environment.

"Antipsychotic medications" means that class of medications primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

"Applicant" means the ~~(person)~~ individual or entity, as defined in this section, that has submitted, or is in the process of submitting, an application for an enhanced services facility license.

"Capacity" means the maximum amount an enhanced services facility can serve is sixteen residents.

"Caregiver" means the same as "Long-Term Care Worker" as defined in RCW 74.39A.009, as follows: "Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual pro-

viders of home care services, direct care workers employed by home care agencies, providers of home care agencies to persons with developmental disabilities under title 71A RCW, all direct care workers in state-licensed enhanced services facilities, assisted living facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

"Challenging behavior" means a persistent pattern of behaviors that inhibit the individual's functioning in public places, in the facility and integration within the community, or uncontrolled symptoms of a physical or mental condition. These behaviors may have been present for long periods of time or have manifested as an acute onset.

"Chemical dependency" means alcoholism, medication addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires and as those terms are defined in chapter 70.96A RCW.

"Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

"Department" means the department of social and health services.

"Direct supervision" means oversight by a person on behalf of the enhanced services facility who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Enhanced services facility" means a facility that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues. For the purposes of this chapter, an enhanced services facility is not an evaluation and treatment facility certified under chapter 71.05 RCW.

"Facility" means an enhanced services facility.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.-020(6).

"Holding technique" means using the least amount of force necessary to manually hold all or part of a person's body in a way that restricts the person's free movement; also includes any approved controlling maneuvers identified in the individual treatment plan. Examples include holds taught in approved training for de-escalation techniques and control of self-harm or aggressive behavior. This definition does not apply to briefly holding, without force, a person in order to calm the person, or holding a person's hand to escort the person safely from one area to another.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Inspection" means the process by which department staff evaluates the enhanced services facility licensee's compliance with applicable statutes and regulations.

"License suspension" is an action taken by the department to temporarily revoke an enhanced services facility license in accordance with RCW 70.97.120 and this chapter.

"Licensee" means the ~~((person))~~ **individual or entity**, as defined in this chapter, to whom the department issues the enhanced services facility license.

"Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

"Likelihood of serious harm" means a substantial risk that:

(1) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(2) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(3) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others.

"Long-term care worker" as defined in RCW 74.39A.-009, has the same meaning as the term "caregiver."

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter":

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, Assisted living facility; chapter 18.51 RCW, Nursing homes; chapter 70.128 RCW, Adult family homes; chapter 72.36 RCW, Soldiers' homes; chapter 71A.20 RCW, Residential habilitation centers; chapter 70.97 RCW, Enhanced services facility or any other facility licensed by the department.

"Medically fragile" means a chronic and complex physical condition which results in prolonged dependency on specialized medical care that requires frequent daily skilled nursing interventions. If these medically-necessary interventions are interrupted or denied, the resident may experience irreversible damage or death. Examples of specialized medical care and treatment for medically fragile residents include but are not limited to: IV therapies requiring monitoring of vital signs and dose titration dependent on lab values; wound care requiring external vacuum or other mechanical devices for debridement; complicated wound care requiring other specialized or extensive interventions and treatment; ventilator or other respiratory device dependence and monitoring;

dependence on licensed staff for complex respiratory support; and peritoneal or hemodialysis (on-site).

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication service" means any service provided either directly or indirectly by an enhanced services facility related to medication administration medication assistance, or resident self-administration of medication.

"Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

"Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, licensed mental health counselor, licensed mental health counselor-associate, licensed marriage and family therapist, licensed marriage and family therapist-associate, licensed independent clinical social worker, licensed independent clinical social worker-associate, licensed advanced social worker, or licensed advanced social worker-associate and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

"Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Permanent Restraining Order" means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 5 years), after which it expires.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe medications.

"Professional person" means a mental health professional and also means a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

"Reasonable accommodation" and "reasonably accommodate" have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the enhanced services facility must:

(a) Not impose an admission criterion that excludes individuals unless the criterion is necessary for the provision of enhanced services facility services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the enhanced services facility; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

"Resident" means a person admitted to an enhanced services facility.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, enhanced services facility, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the enhanced services facility and to receive information from the enhanced services facility if there is no legal representative. The resident's representative may not be affiliated with the licensee, enhanced services facility, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.-010 (1)(e).

"Secretary" means the secretary of the department or the secretary's designee.

"Significant change" means:

(1) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(2) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for discharge or for treatment in a less intensive or less secure setting.

"Significant medication error" includes any failure to administer or receive a medication according to an authorized

health care provider's order, or according to the manufacturer's directions for nonprescription medications, that results in an error involving the wrong medication, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration.

"Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.-010.

"Staff" or "Staff person" means any person who:

(1) Is employed or used by an enhanced services facility, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements of chapter 388-112 WAC.

"Stop placement" or "stop placement order" is an action taken by the department prohibiting enhanced services facility admissions, readmissions, and transfers of patients into the enhanced services facility from the outside.

"Temporary Restraining Order" means restraining order or order of protection that expired without a hearing, was terminated following an initial hearing, or was terminated by stipulation of the parties in lieu of an initial hearing.

"Treatment" means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or chemical dependency education and counseling, medical, physical therapy, restorative nursing, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling.

"Violation" is an enhanced services facility failed practice, action or inaction that violates any or all of the following:

(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and

(2) In the case of a Medicare and Medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal Medicare and Medicaid regulations.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any enhanced services facility; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

(7) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

(8) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

Reviser's note: The unnecessary underscoring and strikethrough in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

General

NEW SECTION

WAC 388-107-0010 Scope and purpose. This implements Chapter 70.97 RCW and sets the minimum health and safety standards for licensure and operations of enhanced services facilities. An enhanced services facility will provide treatment and services to a maximum of sixteen residents for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues.

NEW SECTION

WAC 388-107-0020 Department authority. Chapter 70.97 RCW authorizes the department to develop rules to implement the chapter, and to license enhanced services facilities. At a minimum the rules are to be written to promote safe treatment and necessary care of individuals residing in each facility, to provide for safe and clean conditions and to establish licensee qualifications, licensing and enforcement standards, and license fees sufficient to cover the cost of licensing and enforcement.

Admission and Assessment

NEW SECTION

WAC 388-107-0030 Admission criteria. The enhanced services facility will only admit residents who:

(1) Are at least eighteen years old; and

(2) Require:

(a) Daily care by or under the supervision of a mental health professional, chemical dependency professional, or nurse; or

(b) Assistance with three or more activities of daily living; and

(3) Have any of the following:

(a) A mental disorder, chemical dependency disorder, or both;

(b) An organic or traumatic brain injury; or

(c) A cognitive impairment that results in symptoms or behaviors requiring supervision and facility services.

(4) Will benefit from the staffing levels and professional supports provided in this setting.

(5) If at a state hospital, has been deemed stable and ready for discharge.

(6) Does not meet the requirement for active treatment at a state hospital, but has not found appropriate placement in other community settings due to a history of two or more of the following:

(a) Self-endangering behaviors that are frequent or difficult to manage;

(b) Aggressive, threatening, or assaultive behaviors that create a risk to the health or safety of other residents or staff,

or a significant risk to property and these behaviors are frequent or difficult to manage;

(c) Intrusive behaviors that put residents or staff at risk;

(d) Complex medication needs which include psychotropic medications;

(e) A history of or likelihood of unsuccessful placements in either a licensed facility or other state facility or a history of rejected applications for admission to other licensed facilities based on the resident's behaviors, history, or security needs;

(f) A history of frequent or protracted mental health hospitalizations; and/or

(g) A history of offenses against a person or felony offenses that created substantial damage to property.

NEW SECTION

WAC 388-107-0040 Preadmission assessment. (1)

The enhanced services facility must complete a face to face preadmission assessment at the hospital with each potential resident prior to admission which includes the following minimum information:

(a) Resident identification information such as but not limited to the name, address and telephone number of the resident's:

(i) Representative;

(ii) Health Care providers;

(iii) Significant family members identified by the resident;

(iv) Other individuals the resident wants involved or notified; and

(b) Presenting issues;

(c) Current medical and mental health history;

(d) Necessary and contraindicated medications, including psychotropic;

(e) A licensed medical or health professional's physical and mental health diagnoses;

(f) Significant known behaviors such as but not limited to aggressive, threatening, intrusive, assaultive, self-endangering including attempted suicide and/or homicide or other symptoms that may cause concern or require special care and staffing;

(g) Chemical dependency history, including tobacco;

(h) Level of personal care needs, assistance with activities of daily living;

(i) Activities and service preferences;

(j) Preferences regarding other issues important to the prospective resident, such as food and daily routine;

(k) Information that a potential resident is or is not court-ordered for treatment or under the supervision of the department of corrections;

(l) Individual's anticipated level of need for supervision in the community;

(m) Cognitive impairments that result in symptoms of behaviors requiring supervision and facility services;

(n) History of unsuccessful placement in the community settings; and

(o) Treatment recommendations or recommendations for additional program-specific assessment.

(p) A transition plan that:

(i) Allows the facility to work with the state hospital staff to understand what the resident responds to in difficult situations; and

(ii) Allows the facility to request hospital staff to visit resident in new environment and teach enhanced services facility staff techniques that have been successful in the hospital.

(2) The enhanced services facility will integrate information from the state's last comprehensive assessment reporting evaluation (CARE) into the facility's preadmission assessment.

NEW SECTION

WAC 388-107-0050 Timing of preadmission assessment. The assessor must complete the preadmission assessment of the prospective resident before the resident moves into the enhanced services facility.

NEW SECTION

WAC 388-107-0060 Comprehensive assessment required. (1) The enhanced services facility must complete a comprehensive assessment for each resident within fourteen (14) days of admission.

(2) The assessment will be repeated when there is a significant change in the resident's condition or, at a minimum, every one hundred eighty days if there is no significant change in condition.

NEW SECTION

WAC 388-107-0070 Comprehensive assessment. The enhanced services facility must obtain sufficient information to be able to assess the capabilities, needs, and preferences for each resident, and must complete a comprehensive assessment. The assessment addresses the following, within fourteen days of the resident's move-in date:

(1) Individual's recent medical history, including, but not limited to:

(a) Diagnoses from a licensed medical or health professional, unless the resident objects for religious reasons;

(b) Chronic, current, and potential skin conditions; or

(c) Known allergies to foods or medications; or

(d) Other considerations for providing care or services.

(2) Currently necessary and contraindicated medications and treatments for the individual, including any prescribed medications, over-the-counter medications, and antipsychotic medications.

(3) The individual's nursing needs.

(4) Significant known challenging behaviors or symptoms of the individual causing concern or requiring special care, including:

(a) History of substance abuse;

(b) History of harming self, others, or property;

(c) Other conditions that require behavioral intervention strategies;

(d) Individual's ability to leave the enhanced services facility unsupervised;

(e) Any court order or court stipulation regarding activities, surroundings, behaviors, and treatments; and

(f) Other safety considerations that may pose a danger to the individual or others, such as use of medical devices or the individual's ability to smoke unsupervised, if smoking is permitted outdoors in a specific location on the premises.

(5) Individual's special needs, by evaluating available information, or if available information does not indicate the presence of special needs, selecting and using an appropriate tool to determine the presence of symptoms consistent with, and implications for, care and services of:

(a) Mental illness, or needs for psychological or mental health services;

(b) Developmental disability;

(c) Dementia. While screening a resident for dementia, the enhanced services facility must:

(i) Base any determination that the resident has short-term memory loss upon objective evidence; and

(ii) Document the evidence in the resident's record.

(d) Other conditions affecting cognition, such as traumatic brain injury or other neurological conditions.

(6) Individual's activities, typical daily routines, habits and service preferences.

(7) Individual's personal identity and lifestyle, to the extent the individual is willing to share the information, and the manner in which they are expressed, including preferences regarding food, community contacts, hobbies, spiritual preferences, or other sources of pleasure and comfort.

(8) Who has decision-making authority for the individual, including:

(a) The presence of any advance directive or other legal document that will establish a substitute decision maker in the future;

(b) The presence of any legal document that establishes a current substitute decision maker or court orders for treatment, or documents indicating resident is under the supervision and care of the department of corrections; and

(c) The scope of decision-making authority of any substitute decision maker.

(9) A plan to use antipsychotic medications as prescribed and documented in the clinical record in accordance with chapters 71.05 and 70.97 RCW.

(10) If the resident is a medicaid client the assessment must include elements of the CARE assessment.

NEW SECTION

WAC 388-107-0080 On-going comprehensive assessments. The enhanced services facility must:

(1) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070, upon a significant change in the resident's condition or at least every 180 days if there is no significant change in condition;

(2) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations and related issues:

(a) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

(b) When the resident's individual treatment plan no longer addresses the resident's current needs and preferences;

(c) When the resident has an injury requiring the intervention of a practitioner.

(3) Ensure the staff person performing the on-going assessments is qualified to perform them.

NEW SECTION

WAC 388-107-0090 Qualified assessor. (1) The enhanced services facility must ensure that an assessor performing an assessment for any potential or admitted resident has experience working with residents who have severe behavioral issues due to but not limited to functional or cognitive disabilities, mental health or chemical dependency disorder, or both, or an organic or traumatic brain injury and meets the following qualifications:

(a) A master's degree in social services, human services, behavioral sciences or an allied field and two years social service experience working with adults who have severe behavioral issues; or

(b) A bachelor's degree in social services, human services, behavioral sciences or an allied field and five years social service experience working with adults who have severe behavioral issues; or

(c) Has a valid Washington state license to practice as a nurse under chapter 18.79 RCW and three years of clinical nursing experience working with adults who have severe behavioral issues; or

(d) Is currently a licensed physician, including an osteopathic physician, in Washington state with experience working with adults who have severe behavioral issues; or

(e) Is a licensed psychologist or psychiatrist; or

(f) Is a professional appropriately credentialed or qualified to provide chemical dependency, mental health, organic or traumatic brain injury and/or functional or cognitive services and work experience with adults who have severe behavioral issues.

(2) The facility must ensure that an assessor who meets the requirements of subsections (1)(a), (b), (c), (d), (e), or (f) of this section does not have unsupervised access to any resident unless the assessor has:

(a) A current criminal history background check; and

(b) Has no disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-107-1290, unless the individual is eligible for an exception under chapter 388-113 WAC.

Individual Treatment Plan

NEW SECTION

WAC 388-107-0100 Enhanced services facility team. The facility will identify a team for each resident. The team will:

(1) Include the resident and any support persons identified by the resident, as well as a mental health professional, nursing staff, and other persons identified by the facility;

(2) Ensure a coordinated approach to the development, implementation and evaluation of the individual treatment plan for the resident; and

(3) Meet at least monthly to review and modify the individual treatment plan as needed.

NEW SECTION

WAC 388-107-0110 Initial individual treatment plan. The enhanced services facility team must develop the initial individual treatment plan, using information from the resident, the resident's representative if the resident has one, the Comprehensive Assessment Reporting Evaluation (CARE) assessment for medicaid clients, and the preadmission assessment, prior to admitting the resident to the facility. The enhanced services facility team must ensure that each resident has an initial individual treatment plan that includes:

- (1) The resident's immediate specific problems and needs (physical, mental and behavioral) identified in the pre-assessment;
- (2) Direction to staff and caregivers relating to the resident's immediate needs, capabilities, and preferences;
- (3) The means for which the resident chooses not to accept or refuses care or services;
- (4) What the facility will do to ensure the resident's health and safety related to the refusal of any care or service;
- (5) Resident defined goals and preferences;
- (6) How the facility will provide behavioral support to prevent a crisis and maintain placement in the facility; and
- (7) While in the community, what the facility will do to ensure resident and community safety; and
- (8) Identifying factors that will prevent the resident from accessing less restrictive community based services and developing a plan regarding when and how the resident may be able to transfer or transition from the enhanced services facility to a more independent living situation in the community.

NEW SECTION

WAC 388-107-0120 Comprehensive individual treatment plan. The enhanced services facility team must integrate the information obtained in the resident's preadmission assessment, medicaid client's CARE assessment information from the department's case manager, comprehensive assessment and initial individual treatment plan to develop a written comprehensive individual treatment plan. The enhanced services facility team must ensure each resident's comprehensive individual treatment plan includes:

- (1) A list of the care and services to be provided;
- (2) Identification of who will provide the care and services;
- (3) When and how the care and services will be provided;
- (4) How medications will be managed, including how the resident will receive medications when the resident is not in the facility;
- (5) The resident's daily activities preferences, spiritual and/or cultural preferences, interests, strengths and needs and how the facility will meet those within the behavioral challenges of the resident;
- (6) Other preferences and choices about issues important to the resident, including, but not limited to:
 - (a) Food;
 - (b) Daily routine;
 - (c) Grooming; and

(d) How the enhanced services facility will accommodate the preferences and choices.

(7) A behavioral support plan to prevent crisis and maintain placement in the facility by:

(a) A crisis prevention and response protocol that outlines specific indicators which may signal a potential crisis for the resident;

(b) Specific interventions and pre-crisis prevention strategies for each of the resident's indicators of a potential crisis;

(c) A crisis prevention and response protocol that outlines steps to be taken if the prevention or intervention strategies are unsuccessful in diverting the crisis including the community crisis responder's coordination plan; and

(d) A plan on how to respond to a resident's refusal of care or treatment, including when the resident's physician or practitioner should be notified of the refusal.

(8) Identification of any communication barriers the resident may have and how the home will use behaviors and nonverbal gestures to communicate with the resident;

(9) A hospice care plan if the resident is receiving services for hospice care delivered by a licensed hospice agency.

(10) Advance directives, if the resident chooses, that are validly executed pursuant to chapters 70.122 RCW and 71.32 RCW, as applicable;

(11) A plan regarding how the facility will work with the Department of Corrections (DOC) if the resident is under the supervision of DOC, collaborating to maximize treatment outcomes and reduce the likelihood of re-offense.

(12) A plan which maximizes the opportunities for independence, maintaining health and safety, recovery, employment, the resident's participation in treatment decisions, collaboration with peer-supported services and care and treatment provided in the least restrictive manner appropriate to the resident and to any relevant court orders with which the resident must comply.

(13) A discharge plan that addresses factors and barriers that prevent a resident from being placed in a less restrictive community placement and assist the resident in the transition. This plan will include an assessment of all current medications and the resident's ability to self-medicate in a more independent living situation.

(14) The enhanced services facility must complete the comprehensive individual treatment plan within fourteen days of the resident's move-in date.

NEW SECTION

WAC 388-107-0130 On-going comprehensive individual treatment plan. (1) The enhanced services facility team will review and update each resident's comprehensive individual treatment plan, as follows:

(a) Within a reasonable time consistent with the needs of the resident following any change in the resident's physical, mental, emotional or behavioral functioning; and

(b) Whenever the comprehensive individual treatment plan no longer adequately addresses the resident's current assessed needs and preferences; and

(c) Following every full comprehensive assessment.

(2) The process of developing and updating the comprehensive individual treatment plan will include the following:

- (a) The resident;
 - (b) The resident's representative to the extent he or she is willing and capable, if the resident has one;
 - (c) Other individuals the resident wants included;
 - (d) The medicaid client's department case manager; and
 - (e) Staff designated by the enhanced services facility.
- (3) The enhanced services facility team will ensure:
- (a) Individuals participating in developing the resident's comprehensive individual treatment plan:
 - (i) Discuss the resident's assessed needs, capabilities, and preferences; and
 - (ii) Negotiate, if possible and feasible, an agreed upon comprehensive individual treatment plan which would support the resident; and
 - (b) Staff persons document in the resident's record the agreed upon plan for services.

NEW SECTION

WAC 388-107-0140 Implementation of the individual treatment plan. (1) The enhanced services facility must provide the care and services as agreed upon or outlined in the initial and comprehensive individualized treatment plan to each resident unless a deviation from the plan is mutually agreed upon between the enhanced services facility team, the medicaid client's department case manager, and the resident or the resident's representative at the time the care or services are scheduled.

(2) The details of any deviation from the plan must be clearly documented in the resident record.

NEW SECTION

WAC 388-107-0150 Comprehensive individual treatment plan sent to the state. When a resident's services are paid for by the department, the enhanced services facility must give the department case manager a copy of the comprehensive individual treatment plan each time it is completed or updated and after it has been signed and dated. The department's case manager will:

- (1) Review the individual treatment plan;
- (2) Sign, date, and return the individual treatment plan to the facility;
- (3) Document the review in the resident record, indicating it was signed and approved; and
- (4) Schedule a department reassessment.

NEW SECTION

WAC 388-107-0160 Behavioral support plan. The enhanced services facility will ensure that each resident's individual treatment plan has interventions for behavioral support that are used first when a resident's behavior is escalating at home or in the community, including but not limited to the following:

- (1) Strengths the individual holds that support strategies for prevention and intervention.
- (2) Specific indicators which may signal a potential crisis for the individual or that left unaddressed in the past has led to a behavioral crisis. Examples include but are not limited to typical challenging behaviors the individual displays

when escalating, actions the resident may typically take before a behavioral outburst, or words or phrases the individual has been known to express during a time of escalation.

(3) Specific interventions and pre-crisis prevention strategies for each of the indicators identified above.

(4) Steps to be taken by each of the facility team members if the prevention or intervention strategies are unsuccessful in diverting the individual from a behavior or action that leads to crisis.

(5) A plan to ensure coordination with community crisis responders in regard to each resident's treatment plan as part of a regular, routine protocol for crisis prevention and intervention.

(6) A resident may not be secluded or isolated as part of the behavior support plan.

Resident RightsNEW SECTION

WAC 388-107-0170 Resident dignity and accommodation of needs. (1) The enhanced services facility must ensure that:

(a) Resident care is provided in a manner to enhance each resident's dignity and quality of life including a safe, clean, comfortable and homelike environment, and to respect and recognize his or her individuality; and

(b) Each resident's personal care needs and behavioral health treatment are provided in a manner that protects resident's dignity and privacy.

(2) Each resident has the right to reasonable accommodation of personal needs and preferences, except when the health or safety of the individual, other residents, or members of the community would be endangered.

NEW SECTION

WAC 388-107-0180 Self-determination and participation. Except when the health or safety of the individual or other residents or members of the community would be endangered and consistent with the individual treatment plan, each resident has the right to:

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and individual treatment plan;

(2) Interact with members of the community both inside and outside the enhanced services facility;

(3) Make choices about aspects of his or her life in the facility that are significant to the resident; and

(4) Participate in social, religious, and community activities that do not interfere with the rights of other residents in the enhanced services facility.

NEW SECTION

WAC 388-107-0190 Rights of residents. (1) Each resident of an enhanced services facility is entitled to all the rights set forth in this chapter, and chapters 71.05 and 70.96A RCW, and must retain all rights not denied him or her under these chapters.

(2) The enhanced services facility will only consider a resident's competence as determined or withdrawn under the provisions of chapters 10.77 or 11.88 RCW.

(3) The facility must give each resident, at the time of his or her treatment planning meeting, a written statement setting forth the substance of this section.

(4) Every resident of an enhanced services facility has the right to adequate care and individualized treatment.

(5) The provisions of this chapter must not be construed to deny to any resident treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(6) Each resident of an enhanced services facility must have, in addition to other rights not specifically withheld by law, the rights enumerated in (a) through (m) below, unless exercise of these rights creates a danger to the resident or to others. The facility must prominently post a list of these rights in a place accessible to residents and must make this list available to residents without need of request. The resident has the right:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To have access to fluids and snacks of choice;

(c) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(d) To have access to individual locked storage space for his or her private use;

(e) To have visitors at reasonable times;

(f) To have reasonable access to a telephone, both to make and receive confidential calls, consistent with an effective treatment program;

(g) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(h) To discuss and actively participate in treatment plans and decisions with professional persons;

(i) To a clean, comfortable and home-like environment;

(j) Not to have psychosurgery performed on him or her under any circumstances;

(k) To dispose of property and sign contracts unless the resident has been adjudicated an incompetent in a court proceeding directed to that particular issue; and

(l) To complain about rights violations or conditions and request the assistance of a mental health ombuds or representative of Washington protection and advocacy. The facility may not prohibit or interfere with a resident's decision to consult with an advocate of his or her choice.

(m) To receive a minimum of thirty days written notice if there are any changes to the scope of services identified in the individual treatment plan.

(7) Nothing contained in this chapter must prohibit a resident from petitioning by writ of habeas corpus for release.

(8) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or active supervision by the department of corrections.

(9) A resident has a right to refuse placement in an enhanced services facility. No person must be denied other department services solely on the grounds that he or she has made such a refusal.

(10) A resident has a right to appeal the decision of the department that he or she is eligible for placement at an enhanced services facility, and must be given notice of the right to appeal in a format that is accessible to the resident with instructions regarding what to do if the resident wants to appeal.

Quality of Care

NEW SECTION

WAC 388-107-0200 Quality of care. (1) Consistent with resident rights, the enhanced services facility must provide each resident with the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, self-care and independence in accordance with his or her comprehensive assessment and individual treatment plan.

(2) Based on the comprehensive assessment of a resident, the enhanced services facility must ensure that:

(a) A resident's abilities in activities of daily living do not decline unless circumstances of the resident's clinical condition demonstrate that the decline was unavoidable. This includes the resident's ability to:

(i) Bathe, dress, and groom;

(ii) Transfer and ambulate;

(iii) Toilet;

(iv) Eat; and

(v) Use speech, language, or other functional communication systems.

(b) A resident is given the appropriate treatment and services to maintain or improve the resident's abilities in activities of daily living specified in subsection (2)(a) of this section; and

(c) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(3) The enhanced services facility must ensure that the appropriate care and services are provided to the resident in a minimum of the following areas, as applicable in accordance with the resident's individualized assessments and individual treatment plan:

(a) Mental health treatment;

(b) Chemical dependency treatment;

(c) Vision and hearing;

(d) Skin;

(e) Continence;

(f) Range of motion;

(g) Mental and psychosocial functioning and adjustment;

(h) Nutrition;

(i) Hydration;

(j) Special needs, including but not limited to:

(i) Injections;

(ii) Parenteral and enteral fluids;

(iii) Colostomy, urostomy, or ileostomy care;

(iv) Tracheostomy care and/or tracheal suctioning;

- (v) Respiratory care;
- (vi) Dental care;
- (vii) Foot care; and
- (viii) Prostheses.
- (k) Medications, including freedom from:
 - (i) Unnecessary medications; and
 - (ii) Significant medication errors; and
 - (l) Independent living skills.

NEW SECTION

WAC 388-107-0210 Care and services. The enhanced services facility must develop and implement a program to meet the needs of each resident and to ensure each resident receives:

- (1) The care and services identified in the individualized treatment plan.
- (2) The necessary care and services to help the resident reach the highest level of physical, mental, and psychosocial well-being consistent with resident choice, current functional status and potential for improvement or decline.
- (3) The care and services in a manner and in an environment that:
 - (a) Actively supports, maintains or improves each resident's quality of life;
 - (b) Actively supports the safety of each resident; and
 - (c) Reasonably accommodates each resident's individual needs and preferences except when the accommodation endangers the health or safety of the individual, another resident, or a member of the community.
- (4) Services by the appropriate professionals based upon the resident's assessment and individualized treatment plan.

Quality Improvement

NEW SECTION

WAC 388-107-0220 Quality improvement. (1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, any enhanced services facility licensed under this chapter must maintain an active quality improvement committee.

- (2) The quality improvement committee will include a multi-disciplinary team.
- (3) The quality improvement committee will maintain an ongoing plan that includes areas the facility is working on improving and one continuous quality improvement project annually, beginning in the second contract year for completion by the end of the second calendar year.
- (4) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

- (a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and
- (b) The records or reports are created for and collected and maintained by the committee.
- (5) If the enhanced services facility refuses to release records or reports that would otherwise be protected under

this section, the department may then request only that information that is necessary to determine whether the enhanced services facility has a quality assurance committee and to determine that it is operating in compliance with this section. However, if the enhanced services facility offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with enhanced services facility requirements, the documents are not protected as quality assurance committee documents when in the possession of the department.

(6) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for sanctions.

(7) Any records that are created for and collected and maintained by the quality assurance committee shall not be discoverable or admitted into evidence in a civil action brought against an enhanced services facility.

(8) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

Nursing Services and Staffing

NEW SECTION

WAC 388-107-0230 Sufficient staffing. An enhanced services facility must have sufficient numbers of staff with the appropriate credentials and training to provide residents with the identified care and treatment needs. At a minimum the facility must have staff to provide:

- (1) Mental health and/or chemical dependency treatment;
- (2) Medication management services;
- (3) Personal care, assistance with the activities of daily living;
- (4) Medical treatment, including psychiatric;
- (5) Activities;
- (6) Social service support;
- (7) Negotiated services;
- (8) Dietary services; and
- (9) Security.

NEW SECTION

WAC 388-107-0240 Staffing ratios. (1) The enhanced services facility must ensure that:

(a) Sufficient numbers of appropriately qualified and trained staff are available to provide necessary care and services consistent with residents' negotiated service agreements safely under routine conditions, as well as during fire, emergency, and disaster situations; and

(b) At least two staff are on duty in the facility at all times if there are any residents in the facility.

(2) A licensed nurse must be on duty in the facility at all times.

(a) A registered nurse must be on duty in the facility at least eight hours per day; and

(b) A registered nurse must be on call during any shift that a licensed practical nurse is on duty in the facility.

(3) A mental health professional must be on-site at least six-teen hours per day.

NEW SECTION

WAC 388-107-0250 Staffing credentials and qualifications. (1) The enhanced services facility must ensure the staffing ratios are met with the following credentialed staff, who are in good professional standing:

- (a) Registered nurse;
- (b) Licensed practical nurse;
- (c) Nursing Assistant Certified or Certified Home Care Aide; and
- (d) Mental health professional.

(2) The enhanced services facility must ensure that any caregiver, excluding professional licensed nursing staff:

- (a) Must be at least 18 years of age;
- (b) Has successfully completed a department-approved certified nursing assistant training program; or
- (c) Meets the long-term worker training and certification requirements as described in Chapter 388-112 WAC.

NEW SECTION

WAC 388-107-0260 Staffing for medically fragile residents. If an enhanced services facility serves one or more medically fragile residents, the facility must ensure that a registered nurse is on site for at least sixteen hours per day. A registered nurse or a doctor must be on-call during the remaining eight hours.

NEW SECTION

WAC 388-107-0270 Providing care and services. The enhanced services facility must ensure that all staff, including management, provides care and services consistent with:

- (1) Empowering each resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being, self-care and independence;
- (2) Respecting resident rights; and
- (3) Enhancing each resident's quality of life.

Operations

NEW SECTION

WAC 388-107-0280 Transfer and discharge. (1) Upon completion of the annual reassessment and/or significant change assessment by both case management and enhanced services facility staff, the enhanced services team will review each resident for possible discharge. The team will determine if the resident:

- (a) No longer needs the level of behavioral support provided by the enhanced services facility;
- (b) Behaviors are now mitigated by changed medical or personal care needs;
- (c) Expresses the desire to move to a different type of community based setting and has demonstrated the ability or capacity to be successful; or

(d) Is a good candidate for relocation and recommends other community based programs to the resident.

(2) The enhanced services facility, with input from the team, will meet with case management staff to identify residents with potential for discharge or transfer to a less restrictive program, and will participate in discharge planning for each resident who meets the above criteria for potential discharge from the facility.

(3) The enhanced services facility must provide a thirty (30) day notice before discharging a resident unless the situation is emergent and the case manager is involved in the decision.

Service Provided

NEW SECTION

WAC 388-107-0290 Activities. The enhanced services facility must:

- (1) Provide space and staff support necessary for:
 - (a) Each resident, at any time, to engage in independent or self-directed activities that are appropriate to the setting, consistent with the resident's assessed interests, choices, functional abilities, preferences, and individualized treatment plan; and
 - (b) Group activities at least five times per week that may be planned and facilitated by caregivers consistent with the collective interests of a group of residents.
- (2) Make available routine supplies and equipment necessary for activities described in subsection (1) of this section.

NEW SECTION

WAC 388-107-0300 Admission and continuation of services. The enhanced services facility must only admit or continue to provide services to a resident when:

- (1) The department has determined that the individual is eligible for placement in an enhanced services facility.
- (2) The facility can safely and appropriately meet the assessed needs and preferences of the resident:
 - (a) With available staff; and
 - (b) Through reasonable accommodation.
- (3) Admitting the resident does not negatively affect the ability of the facility to:
 - (a) Meet the needs, and does not endanger the safety, of other residents and members of the community; or
 - (b) Safely evacuate all people in the facility during an emergency according to the approved fire safety and evacuation plans appropriate to the occupancy type of the building.

NEW SECTION

WAC 388-107-0310 Medical and/or adaptive equipment. The enhanced services facility is responsible to meet the needs of residents through qualified and trained staff, services, medical and/or adaptive equipment, security and building design.

NEW SECTION

WAC 388-107-0320 Medication services. (1) An enhanced services facility providing medication service, either directly or indirectly, must:

(a) Meet the requirements of chapter 69.41 RCW regarding legend and prescription medications, and other applicable statutes and administrative rules;

(b) Develop and implement systems that support and promote safe medication service for each resident; and

(c) Ensure that each resident is monitored for desired responses and undesirable side effects of prescribed medications.

(2) The enhanced services facility must ensure residents receive their medications as prescribed, subject to the resident's right to refuse as described in this chapter.

(3) If resident requests assistance, the enhanced services facility assumes responsibility for obtaining a resident's prescribed medications and must obtain them in a correct and timely manner.

(4) The enhanced services facility must generally provide medications in the form they are prescribed when administering medications or providing medication assistance to a resident. The enhanced services facility may provide medications in an altered form consistent with the following:

(a) Alteration includes, but is not limited to, crushing tablets, cutting tablets in half, opening capsules, mixing powdered medications with foods or liquids, or mixing tablets or capsules with foods or liquids;

(b) Residents must be aware that the medication is being altered or added to their food;

(c) A pharmacist or other practitioner practicing within their scope of practice must determine that it is safe to alter a medication; and

(d) If the medication is altered, documentation of the appropriateness of the alteration must be on the prescription container, and in the resident's record.

(5) Alteration of medications for self-administration with assistance is provided in accordance with chapter 246-888 WAC.

NEW SECTION

WAC 388-107-0330 Pharmacy services. (1) The enhanced services facility must:

(a) Obtain routine and emergency medications for its residents under an agreement with a licensed pharmacy;

(b) Ensure that pharmaceutical services:

(i) Meet the needs of each resident; and

(ii) Establish and monitor systems for the accurate acquiring, receiving, dispensing, control and administering of all medications; and

(c) Employ or obtain the services of a license pharmacist who must:

(i) Provide consultation on all aspects of the provision of pharmacy services in the enhanced services facility;

(ii) Determine that enhanced services facility medication records are in order;

(iii) Perform regular reviews at least once each month of each resident's medication therapy; and

(iv) Document and report medication irregularities to the attending physician.

(2) Medications used in the enhanced services facility must be labeled and stored in accordance with applicable state and federal laws.

(3) The enhanced services facility must provide pharmaceutical services that meet recognized and accepted standards of pharmacy practice.

(4) The enhanced services facility must ensure:

(a) Education and training for enhanced services facility staff by the licensed pharmacist on medication-related subjects including, but not limited to:

(i) Recognized and accepted standards of pharmacy practice and applicable pharmacy laws and rules;

(ii) Appropriate monitoring of residents to determine desired effect and undesirable side effects of medication regimens; and

(iii) Use of psychotropic medications.

(b) Reference materials regarding medication administration, adverse reactions, toxicology, and poison center information are readily available;

(c) Pharmacist monthly medication review reports are acted on in a timely and effective manner;

(d) Accurate detection, documentation, reporting and resolution of medication errors and adverse medication reactions; and

(e) Only individuals authorized by state law to do so will receive medication orders, administer medications, and destroying expired medications.

(5) The resident has the right to a choice of pharmacies when purchasing prescription and nonprescription medications as long as the following conditions are met to ensure the resident is protected from medication errors:

(a) The medications are delivered in a unit of use compatible with the established system of the facility for dispensing medications; and

(b) The medications are delivered in a timely manner to prevent interruption of dose schedule.

NEW SECTION

WAC 388-107-0332 Storing, securing, and accounting for medications. (1) The enhanced services facility must secure medications for residents who are not capable of safely storing their own medications.

(2) The enhanced services facility must ensure all medications under the enhanced services facility's control are properly stored and accounted for:

(a) In containers with pharmacist-prepared label or original manufacturer's label;

(b) Together for each resident and physically separated from other residents' medications;

(c) Separate from food or toxic chemicals;

(d) In a locked compartment that is accessible only to designated responsible staff persons; or as otherwise directed by a physician; and

(e) In environments recommended on the medication label.

(3) The enhanced service facility must develop and implement a system for:

- (a) Safe and secure medication disposal; and
- (b) Documentation of the medication disposal.

NEW SECTION**WAC 388-107-0334 Resident controlled medications.**

(1) The enhanced services facility must ensure all medications are stored in a manner that prevents each resident from gaining access to another resident's medications.

(2) The enhanced services facility must allow a resident to control and secure the medications that he or she self-administers or self-administers with assistance if the enhanced services facility assesses the resident to be capable of safely and appropriately storing his or her own medications and the resident desires to do so.

(3) The enhanced services facility must ensure no staff person other than a nurse or licensed pharmacist fills medication organizers for residents.

(4) The enhanced services facility must ensure that any nurse who fills a medication organizer for a resident labels the medication organizer with:

- (a) The name of the resident;
- (b) The name of the medications in the organizer; and
- (c) The frequency of the dosage.

(3) The enhanced services facility must ensure documentation that accounts for medications that has been properly destroyed, when:

- (a) A medication expires; or
- (b) A resident moves to another location; or
- (c) Upon a residents death.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-107-0340 Prescribed medication authorizations. (1) Before the enhanced services facility may provide medication administration to a resident for prescribed medications, the enhanced services facility must have one of the following:

- (a) A prescription label completed by a licensed pharmacy;
- (b) A written order from the prescriber;
- (c) A facsimile or other electronic transmission of the order from the prescriber; or
- (d) Written documentation by a nurse of a telephone order from the prescriber.

(2) The documentation required above in subsection (1) of this section must include the following information:

- (a) The name of the resident;
- (b) The name of the medication;
- (c) The dosage and dosage frequency of the medication; and
- (d) The name of the prescriber.

NEW SECTION

WAC 388-107-0350 Medication refusal. (1) When a resident who is receiving medication administration services

from the enhanced services facility chooses to not take his or her medications, the enhanced services facility must:

(a) Respect the resident's right to choose not to take medication;

(b) Document the time, date and medication the resident did not take in the resident's medical record;

(c) Notify the physician of the refusal and follow any instructions provided, unless there is a staff person available who, acting within his or her scope of practice, is able to evaluate the significance of the resident not getting his or her medication, and such staff person:

(i) Conducts an evaluation; and

(ii) Takes the appropriate action, including notifying the prescriber or primary care practitioner when there is a consistent pattern of the resident choosing to not take his or her medications.

(2) The enhanced services facility must comply with subsection (1) of this section, unless the prescriber or primary care practitioner has provided the enhanced services facility with:

(a) Specific directions for addressing the refusal of the identified medication;

(b) The enhanced services facility documents such directions; and

(c) The enhanced facility is able to fully comply with such directions.

NEW SECTION

WAC 388-107-0360 Medication refusal—Antipsychotics. (1) When a resident who is being administered antipsychotic medication, chooses to not take his or her medications after two or three attempts, the enhanced services facility must:

(a) Respect the resident's right to choose not to take medication;

(b) Document the time, date and medication the resident did not take in the medical record; and

(c) Notify the physician within eight hours of the refusal.

(d) Notify the DSHS case manager within twenty four hours of the refusal.

NEW SECTION

WAC 388-107-0370 Treatment services. The enhanced services facility must:

(1) Provide for diagnostic and therapeutic services prescribed by the attending clinical staff that meet all of the resident needs identified in the individual treatment plan, to include mental health and chemical dependency treatment;

(2) Ensure that each resident's individual treatment plan has interventions for behavioral support in accordance with WAC 388-107-0160;

(3) Ensure that all services are provided by specific program professionals, such as mental health professionals and chemical dependency professionals.

NEW SECTION

WAC 388-107-0380 Use of psychopharmacologic medications. (1) The enhanced services facility must ensure

that each resident is free from psychopharmacologic medications used for discipline, to restrain, or for convenience of the staff.

(2) The facility must ensure that when a psychopharmacologic medication is used the resident assessment indicates that the use is necessary to treat the resident's medical symptoms and documented in the medical record.

NEW SECTION

WAC 388-107-0390 Use of routine psychopharmacologic medications. When the resident is using a psychopharmacological medication on a routine basis, the facility must ensure that the:

- (1) Medication is prescribed by a physician or health care professional with prescriptive authority;
- (2) Resident's individual treatment plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;
- (3) Changes in medication only occur when the prescriber decides it is medically necessary;
- (4) The resident's record includes documentation about the specific symptom or behavior that caused the physician to order the medication and what the resident needs to be able to do or stop doing in order to discontinue the medication.
- (5) Documentation includes that the resident, guardian or legal representative, if any, was informed of the need for the psychopharmacologic medication.

NEW SECTION

WAC 388-107-0400 Use of as needed psychopharmacologic medications. If the physician has ordered an as-needed psychopharmacologic medication for a resident, the facility must ensure that the:

- (1) Order details the circumstances under which the medication may be used and the medication is given only as specifically ordered;
- (2) Resident's individual treatment plan includes behavioral intervention strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;
- (3) Documentation in the resident record is done on the specific symptom or behavior that caused the need for the medication and what the results of the use is; and
- (4) Documentation includes that the resident, guardian or legal representative, if any, was informed of the need for the medication.

NEW SECTION

WAC 388-107-0410 Management of escalating behaviors. (1) An enhanced services facility must have a specific procedure for de-escalating, preventing and redirecting aggressive and challenging behavior. This protocol must always be the first approach and strategy in resolving behavioral issues. The protocol must include:

- (a) Training on prevention of escalation of behavior before it reaches the stage of physical assault;

(b) Techniques for staff to use in response to challenging client behaviors;

(c) Evaluation of the safety of the physical environment;

(d) Issues of respect and dignity of the resident; and

(e) Use of the least restrictive physical and behavioral interventions depending upon the situation;

(2) If the facility uses holding techniques as a last resort to physically restrain residents in emergency situations and as part of behavioral intervention protocols, the facility must:

(a) Use other established resident-specific behavioral interventions first to attempt to de-escalate the situation;

(b) Limit the holding technique to specific emergent situations where behavioral interventions have not been successful in de-escalating a situation and the resident is at imminent risk of harm to self or others due to aggressive behavior;

(c) Limit the time used to only until the arrival of emergency personnel and/or the emergency ceases;

(d) Release residents from the holding technique as soon as possible;

(e) Instruct observers on how to support signs of:

(i) Distress by the client; and

(ii) Fatigue by the staff.

(f) Document:

(i) The reason for use of the holding technique;

(ii) Other behavioral interventions attempted prior to the use of the holding technique;

(iii) The duration of the use of the holding technique; and

(iv) The condition of the resident at the time of release from the holding technique.

Restraints

NEW SECTION

WAC 388-107-0420 Physical restraints for medical purposes only. (1) For the purposes of this section, "physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, required to treat the resident's medical symptoms. The enhanced services facility must ensure:

(2) Each resident has the right to be free from physical and chemical restraints used for discipline, behavioral intervention, or staff convenience;

(3) That physical restraints are used only during infrequent and episodic occurrences for the protection of the individual during delivery of medical care or treatment.

(4) That before using the physical restraint, the least restrictive alternatives have been tried and documented, and such restraint is deemed required to temporarily protect the resident from harming themselves during the medical care or treatment;

(5) That before physical restraints are used, the resident has been assessed as needing the restraint to treat the emergent medical symptoms or provide the medical care, and to prevent the resident from self-harm; and

(a) The treatment team has been consulted and evaluated the resistance to medical care; and

(b) The documentation has been updated to include positive interventions and supports used.

(6) That if physical restraints are used, the restraints are episodic and infrequently applied and immediately supervised on-site by a:

- (a) Licensed registered nurse;
- (b) Licensed practical nurse; or
- (c) Licensed physician; and
- (d) For the purposes of this subsection, immediately supervised means that the licensed person is in the facility, quickly and easily available;
- (7) When any physical restraint is used per (3) above:
 - (a) A staff person is in the presence of the resident at all times when the restraint is in use;
 - (b) A physician's order is obtained within one hour;
 - (c) The order includes treatments to assist in resolving the emergency situation and eliminating the need for the restraint;
 - (d) Behavioral consultation is obtained within two hours;
 - (e) Resident is released immediately upon the cessation of the behavior that preceded the need for restraint.
 - (f) The restraint is removed immediately at the conclusion of the medical emergency, treatment or procedure;
 - (g) The enhanced services facility self-reports within 24 hours the use of the physical restraint for medical purposes to the complaint resolution unit; and
 - (h) The use of the physical restraint is documented:
 - (i) On the specific medical issue that caused the need for restraint and what the resident needs to do or stop doing in order to discontinue the restraint; and
 - (ii) That the resident, guardian or legal representative, if any, was informed of the need for restraint;
 - (i) The treatment team will consult within twenty four hours to determine less intrusive methods to meet the resident's needs for future care.

Food Services

NEW SECTION

WAC 388-107-0430 Food services. The enhanced services facility must provide or contract out food services for residents. If the facility chooses to contract out the food service, the contracted services must meet all of the applicable food codes and requirements.

- 1) The enhanced services facility must:
 - (a) Provide a minimum of three meals a day;
 - (b) Provide snacks;
 - (i) Between meals and in the evening at regular intervals; and
 - (ii) With no more than fourteen hours between the evening meal and breakfast, unless the enhanced services facility provides a nutritious snack after the evening meal and before breakfast.
 - (c) Provide access to fluids and snacks at all times;
 - (d) Provide sufficient time and staff support for residents to consume meals;
 - (e) Ensure all menus:

(i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in (h) of this subsection;

- (ii) Indicate the date, day of week, month and year;
- (iii) Include all food and snacks served that contribute to nutritional requirements;
- (iv) Are kept at least six months;
- (v) Provide a variety of foods;
- (vi) Provide foods at safe and appropriate temperatures; and

(vii) Are not repeated for at least three weeks, except that breakfast menus in enhanced services facilities that provide a variety of daily choices of hot and cold foods are not required to have a minimum three-week cycle.

(f) Prepare food on-site, or provide food through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC regarding food service;

(g) Serve nourishing, palatable and attractively presented meals adjusted for:

- (i) Age, gender and activities, unless medically contraindicated; and
- (ii) Individual preferences to the extent reasonably possible.

(h) Substitute foods of equal nutrient value, when changes in the current day's menu are necessary, and record changes on the original menu;

(i) Make available and give residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value. The enhanced services facility is not required to post alternate choices in entrees on the menu one week in advance, but must record on the menus the alternate choices in entrees that are served;

(j) Develop, make known to residents, and implement a process for residents to express their views and comment on the food services; and

(k) Maintain a dining area or areas approved by the department with a seating capacity for seventy-five percent or more of the residents per meal setting, or ten square feet times the licensed resident bed capacity, whichever is greater.

(2) The enhanced services facility must plan in writing, prepare on-site or provide through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC, and serve to each resident as ordered:

(a) Prescribed general low sodium, general diabetic, and mechanical soft food diets according to a diet manual. The enhanced services facility must ensure the diet manual is:

- (i) Available to and used by staff persons responsible for food preparation;
- (ii) Approved by a dietitian; and
- (iii) Reviewed and updated as necessary or at least every five years.

(b) Prescribed nutrient concentrates and supplements when prescribed in writing by a health care practitioner.

(3) The enhanced services facility may provide to a resident at his or her request and as agreed upon in the resident's comprehensive individual treatment plan, non-prescribed:

- (a) Modified or therapeutic diets; and
- (b) Nutritional concentrates or supplements.

(4) The enhanced services facility must have a means for those residents whose individual treatment plan indicates they have the ability to make or select their own snacks and beverages an opportunity to do so without having to ask a staff member for assistance.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Infection Control

NEW SECTION

WAC 388-107-0440 Infection control system. (1) The enhanced services facility must:

(a) Establish and maintain an effective infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection;

(b) Prohibit any employee with a communicable disease or infected skin lesion from direct contact with residents or their food, if direct contact could transmit the disease; and

(c) Require staff to wash their hands after each direct resident contact for which hand-washing is indicated by accepted professional practice.

(2) Under the infection control system, the enhanced services facility must:

(a) Investigate, control and prevent infections in the facility;

(b) Decide what procedures should be applied in individual circumstances; and

(c) Maintain a record of incidence of infection and corrective action taken.

(3) Enhanced services facility personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(4) The enhanced services facility must develop and implement effective methods for the safe storage, transport and disposal of garbage, refuse and infectious waste, consistent with all applicable local, state, and federal requirements for such disposal.

(5) The enhanced services facility must provide areas, equipment, and supplies to implement an effective infection control program and ensure:

(a) Ready availability of hand cleaning supplies and appropriate drying equipment or material at each sink;

(b) Safe use of disposable and single service supplies and equipment;

(c) Effective procedures for cleaning, disinfecting or sterilizing according to equipment use;

(d) Chemicals and equipment used for cleaning, disinfecting, and sterilizing, including chemicals used to launder personal clothing, are used in accordance with manufacturer's directions and recommendations; and

(e) Safe and effective procedures for disinfecting all therapy tubs and bathing and shower facilities between each resident use.

NEW SECTION

WAC 388-107-0450 Early identification and management of individuals with active tuberculosis (TB). (1) The enhanced services facility must develop and implement policies and procedures that comply with nationally recognized TB standards set by the Centers for Disease Control and Prevention, and applicable state law. Such policies and procedures include, but are not limited to, the following:

(a) Identifying and following up on, staff and residents with symptoms suggestive of TB whether TB test results were positive or negative;

(b) Identifying, and following up on, staff or residents with suspected or confirmed TB, in a timely manner.

(2) The enhanced services facility must comply with chapter 49.17 RCW, Washington Industrial Safety and Health Act requirements to protect the health and safety of staff that may come in contact with persons having infectious TB.

NEW SECTION

WAC 388-107-0460 Tuberculosis (TB)—Testing—Required. The enhanced services facility must:

(1) Develop and implement a system to ensure staff have TB testing upon employment or starting service; and

(2) Ensure that staff have an annual risk assessment completed using the Washington state department of health approved criteria.

NEW SECTION

WAC 388-107-0465 Tuberculosis (TB) testing method—Required. The enhanced services facility must ensure that all TB testing is done through either:

(1) Tuberculin skin test with results read within forty-eight to seventy-two hours of placing the test by a qualified medical professional; or

(2) Other FDA approved TB test.

NEW SECTION

WAC 388-107-0470 Tuberculosis—No testing. The enhanced services facility is not required to have staff tested for TB if they have documentation of the following:

(1) A positive FDA approved TB test; or

(2) That the individual is receiving or has received appropriate therapy for active TB disease or latent TB infection and is cleared to safely work in an enhanced services facility.

NEW SECTION

WAC 388-107-0480 Tuberculosis (TB)—One test. The enhanced services facility is only required to have staff have one TB test if the staff person has any of the following:

(1) A documented history of a negative result from a previous two-step tuberculin skin test; or

(2) A documented negative result from one tuberculin skin test in the previous twelve months; or

(3) The person is tested using a FDA approved TB test that does not require a two-step testing process.

NEW SECTION

WAC 388-107-0490 Tuberculosis (TB)—Two-step skin testing. Unless the staff meets the requirement for having no TB test or only one test, the enhanced services facility must ensure that each staff person has the following two-step tuberculin skin testing:

- (1) An initial tuberculin skin test upon employment or starting service; and
- (2) A completed two-step tuberculin skin test within four weeks of initial tuberculin skin test.

NEW SECTION

WAC 388-107-0500 Tuberculosis (TB)—Positive test result. When there is a positive result from a tuberculin skin or other FDA approved TB test, the enhanced services facility must ensure:

- (1) The staff person has a chest radiograph within seven days of a positive TB test result; and
- (2) Each staff person or with a positive TB test result undergoes ongoing observation for signs and symptoms of TB; and
- (3) The recommendation of the staff health care provider is followed.

NEW SECTION

WAC 388-107-0510 Tuberculosis (TB)—Negative test result. The enhanced services facility may be required by the health care provider or licensing authority to ensure that staff with negative TB test results have follow-up testing in certain circumstances, such as:

- (1) After exposure to active TB; or
- (2) When TB symptoms are present.

NEW SECTION

WAC 388-107-0520 Tuberculosis (TB)—Declining a TB test. If staff decline a certain method of TB testing they must provide written documentation from a health care provider that the person is clear to work or reside in an enhanced services facility as evidenced by an alternative FDA approved diagnostic method used to screen for TB.

NEW SECTION

WAC 388-107-0530 Tuberculosis (TB)—Reporting and follow-up—Required. The enhanced services facility must:

- (1) Report any staff person or resident with TB symptoms or a positive chest radiograph to the appropriate health care provider in accordance with chapter 246-101 WAC;
- (2) Follow the infection control and safety measures as suggested in the 2003 CDC Guidelines for Environmental Infection Control in Health-Care Facilities (<http://www.cdc.gov/MMWR/preview/MMWRhtml/rr5210a1.htm>), or as hereafter amended);

(3) Ensure that staff persons caring for a resident with suspected TB comply with the Washington Industrial Safety and Health Act standard for respiratory protection found in chapter 296-842 WAC.

NEW SECTION

WAC 388-107-0540 Tuberculosis (TB)—Test records. The enhanced services facility must:

- (1) Keep the records of TB test results, reports of chest radiograph findings, and any physician or health care provider orders in the enhanced services facility;
- (2) Make the records readily available to the appropriate health provider and licensing agency;
- (3) Retain the records for at least two years after the date the staff either quits, is terminated, or released; and
- (4) Provide the staff with a copy of his/her test results.

NEW SECTION

WAC 388-107-0542 Care of residents with tuberculosis (TB). (1) When the enhanced services facility accepts the care of a resident with suspected or confirmed TB, the enhanced services facility must:

- (a) Coordinate the resident's admission, enhanced services care, discharge planning, and discharge with the health care provider;
- (b) Provide necessary education about TB for staff, visitors, and residents; and
- (c) Ensure that personnel caring for a resident with active TB comply with the Washington Industrial Safety and Health Act standards for respiratory protection, chapter 296-842WAC.

(2) For a resident who requires respiratory isolation for TB refer to 2003 CDC Guidelines for Environmental Infection Control in Health-Care Facilities (<http://www.cdc.gov/MMWR/preview/MMWRhtml/rr5210a1.htm>), or as hereafter amended.

Administration

NEW SECTION

WAC 388-107-0550 Contracted basic services. If the provider does not intend to provide basic services in-house, the provider must contract with an outside source to provide those services. The provider must ensure that the contracted services, at a minimum, meet applicable state, local, and licensing standards. Basic services include, but are not limited to:

- (1) Housekeeping services;
- (2) Food services; and
- (3) Laundry services.

NEW SECTION

WAC 388-107-0560 Resident records—Clinical records. (1) The enhanced services facility must:

- (a) Maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

- (i) Complete;
 - (ii) Accurately documented;
 - (iii) Readily accessible; and
 - (iv) Systematically organized.
- (b) Safeguard clinical record information against alteration, loss, destruction, and unauthorized use; and
- (c) Keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:
- (i) Transfer to another health care institution;
 - (ii) Law; or
 - (iii) The resident.
- (2) The enhanced services facility must ensure the clinical record of each resident includes at least the following:
- (a) Resident identification and sociological data, including the name and address of the individual or individuals the resident designates as significant;
 - (b) Medical information;
 - (c) Physician's orders;
 - (d) Assessments;
 - (e) Individual treatment plans;
 - (f) Services provided;
 - (g) Progress notes;
 - (h) Medications administered;
 - (i) Consents, authorizations, releases;
 - (j) Allergic responses;
 - (k) Laboratory, X-ray, and other findings; and
 - (l) Other records as appropriate.
- (3) Maintain resident records and preserve their confidentiality in accordance with applicable state and federal statutes and rules, including chapters 70.02 and 70.96A RCW.

NEW SECTION

- WAC 388-107-0570 Resident records—System.** (1) The enhanced services facility must:
- (a) Designate an individual responsible for the record system who:
 - (i) Has appropriate training and experience in clinical record management; or
 - (ii) Receives consultation from a qualified clinical record practitioner, such as a registered health information administrator or registered health information technician.
 - (b) Make all records available for review by:
 - (i) Authorized representatives of the department;
 - (ii) Representatives of the long term care and mental health ombud's office with authorization or permission from the resident or resident's representative;
 - (iii) Representatives of Disability Rights Washington; and
 - (iv) Representatives of the Washington State Fire Marshal when conducting fire safety inspections.
 - (c) Maintain the following:
 - (i) A master resident index having a reference for each resident including the health record number, if applicable; full name; date of birth; admission dates; and discharge dates; and
 - (ii) A chronological census register, including all admissions, discharge, deaths and transfers, and noting the receiving facility. The enhanced services facility must ensure the

register includes discharges and transfers to other treatment facilities in excess of twenty-four hours.

(2) The enhanced services facility must ensure the clinical record of each resident:

(a) Is documented and authenticated accurately, promptly and legibly by individuals giving the order, making the observation, performing the examination, assessment, treatment or providing the care and services. "**Authenticated**" means the authorization of a written entry in a record by signature, including the first initial and last name and title, or a unique identifier allowing identification of the responsible individual; and:

(i) Documents from other health care facilities that are clearly identified as being authenticated at that facility will be considered authenticated at the receiving facility; and

(ii) The original or a durable, legible, direct copy of each document will be accepted.

(b) Contains appropriate information for a deceased resident including:

(i) The time and date of death;

(ii) Apparent cause of death;

(iii) Notification of the physician and appropriate resident representative; and

(iv) The disposition of the body and personal effects.

NEW SECTION

WAC 388-107-0580 Resident records—Maintenance and retention. (1) In cases where the enhanced services facility maintains records by computer rather than hard copy, the facility must:

(a) Have in place safeguards to prevent unauthorized access; and

(b) Provide for reconstruction of information.

(2) The enhanced services facility must:

(a) Maintain all documentation filed in the resident record for five years after the date the resident leaves the enhanced services facility;

(b) In the event of a change of ownership, provide for the orderly transfer of clinical records to the new licensee;

(c) In the event an enhanced services facility ceases operation, make arrangements prior to cessation, as approved by the department, for preservation of the clinical records. The enhanced services facility licensee must provide a plan for preservation of clinical records to the department's designated local office no later than seven days after the date of notice of the facility closure unless an alternate date has been approved by the department; and

(d) Provide a resident access to all records pertaining to the resident as required.

(3) The enhanced services facility must assemble all records pertaining to a resident and make them available to a resident within twenty-four hours of the resident's or the resident's representative's request to review the resident's records.

(4) The enhanced services facility must provide to the resident or the resident's representative, photocopies of the records or any portions of the records pertaining to the resident, within two working days of the resident's or resident's representative's request for the records.

(a) For the purposes of this section, "working days" means Monday through Friday, except for legal holidays.

(b) The enhanced services facility may charge the resident or the resident's representative a fee not to exceed twenty-five cents per page for the cost of photocopying the resident's record.

Reporting Requirements

NEW SECTION

WAC 388-107-0590 Reporting abuse and neglect. (1)

The enhanced services facility must ensure that each staff person:

(a) Makes a report to the department's Aging and Long-Term Support Administration Complaint Resolution Unit hotline consistent with chapter 74.34 RCW in all cases where the staff person has reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred; and

(b) Makes an immediate report to the appropriate law enforcement agency and the department consistent with chapter 74.34 RCW of all incidents of suspected sexual abuse or physical abuse of a resident.

(2) The enhanced services facility must prominently post so it is readily visible to staff, residents and visitors, the department's toll-free telephone number for reporting resident abuse and neglect.

NEW SECTION

WAC 388-107-0600 Reporting significant change in a resident's condition. (1) The enhanced services facility must consult with the resident's representative, the resident's physician, the medicaid resident's department case manager, and other individuals designated by the resident as soon as possible but no later than 24 hours when:

(a) There is a significant change in the resident's condition;

(b) The resident is relocated to a hospital or other health care facility;

(c) The resident's condition improved and the resident no longer needs the care and services provided by the enhanced services facility; or

(d) The resident dies.

(2) Whenever any of the conditions in subsection (1) of this section occurs, the enhanced services facility must document in the resident's records:

(a) The date and time each individual was contacted; and

(b) The individual's relationship to the resident.

(3) In case of a resident's death, the enhanced services facility must notify the coroner if required by RCW 68.50.010.

NEW SECTION

WAC 388-107-0610 Reporting fires and incidents.

The enhanced services facility must immediately report to the department:

(1) Any accidental or unintended fire, or any deliberately set but improper fire, such as arson, in the enhanced services facility;

(2) Any missing resident, once the initial search for the resident is completed and 911 is notified;

(3) Any unusual incident that requires implementation of the enhanced services facility's disaster plan, including any evacuation of all or part of the residents to another area of the enhanced services facility or to another address; and

(4) Circumstances which threaten the enhanced services facility's ability to ensure continuation of services to residents.

NEW SECTION

WAC 388-107-0620 Retaliation or discrimination prohibited. (1) The enhanced services facility must not discriminate or retaliate in any manner against a resident or employee in its enhanced services facility who has initiated or participated in any action or proceeding authorized under enhanced services facility licensing law.

(2) For purposes of this chapter, "**retaliation**" or "**discrimination**" against a resident means an act including, but not limited to:

(a) Verbal or physical harassment or abuse;

(b) Any attempt to expel the resident from the facility;

(c) Non-medically indicated social, dietary, or mobility restrictions;

(d) Lessening of the level of care when not medically appropriate;

(e) Non-voluntary relocation within an enhanced services facility without appropriate medical, psychosocial, or nursing justification;

(f) Neglect or negligent treatment;

(g) Withholding privileges;

(h) Monitoring resident's phone, mail or visits without resident's permission;

(i) Withholding or threatening to withhold food or treatment unless authorized by a terminally ill resident or the resident's representative;

(j) Persistently delaying responses to resident's request for services or assistance; or

(k) Infringement on a resident's rights described in this chapter.

(3) For purposes of this chapter, "**retaliation**" or "**discrimination**" against an employee means an act including, but not limited to:

(a) Harassment;

(b) Unwarranted firing;

(c) Unwarranted demotion;

(d) Unjustified disciplinary action;

(e) Denial of adequate staff to perform duties;

(f) Frequent staff changes;

(g) Frequent and undesirable office changes;

(h) Refusal to assign meaningful work;

(i) Unwarranted and unsubstantiated report of misconduct under Title 18 RCW;

(j) Unsubstantiated letters of reprimand;

(k) Unsubstantiated unsatisfactory performance evaluations;

(l) Denial of employment;

(m) A supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower; or

(n) Workplace reprisal or retaliatory action as defined in RCW 74.34.180 (3)(b).

(4) If, within one year of the complaint by or on behalf of a resident, the resident is involuntarily discharged from the enhanced services facility, or is subjected to any type of discriminatory treatment, there will be a presumption that the action was in retaliation for the filing of the complaint. Under these circumstances, the enhanced services facility will have the burden of establishing that the action was not retaliatory, in accordance with RCW 74.34.180(2).

Training Requirements

NEW SECTION

WAC 388-107-0630 Training and home care aide certification requirements. (1) Under RCW 18.88B.041 and chapter 246-980 WAC, certain individuals including registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.

(2) Continuing education requirements are outlined in chapter 388-112 WAC; registered nurses and licensed practical nurses are exempt from the long-term care worker continuing education requirement.

(3) The enhanced services facility must ensure staff persons meet training requirements in effect on the date hired, including requirements described in chapter 388-112 WAC, unless exempt under RCW 18.88B.041.

(4) The enhanced services facility must ensure all enhanced services facility administrators, or their designees, and caregivers who are not exempt under subsection (1) of this section meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic training;

(c) Specialty for dementia and, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(5) The enhanced services facility must ensure that all staff receives appropriate training and orientation to perform their specific job duties and responsibilities.

(6) The enhanced services facility must ensure the following staff obtains home care aide certification, unless exempt under WAC 246-980-070:

(a) All long-term care workers, within two hundred days of hire;

(b) All enhanced services facility applicants, before licensure;

(c) All enhanced services facility administrators within two hundred days of hire, and

(d) Any other staff who will provide direct care and services to residents.

NEW SECTION

WAC 388-107-0640 Staff development trainings. (1) The enhanced services facility must have a staff development program that is under the direction of a designated registered nurse or licensed practical nurse or mental health professional.

(2) The enhanced services facility must:

(a) Ensure each employee receives initial orientation to the facility and its policies and is initially assigned only to duties for which the employee has demonstrated competence;

(b) Ensure all employees receive appropriate in-service and continuing education to maintain a level of knowledge appropriate to, and demonstrated competence in, the performance of ongoing job duties consistent with the principle of assisting the resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being. To this end, the enhanced services facility must:

(i) Assess the specific training needs of each employee and address those needs;

(ii) Determine the special needs of the enhanced services facility's resident population which may require training emphasis; and

(iii) Ensure that each employee is trained on de-escalating challenging behaviors, including the use of a manual technique intended to interrupt or stop a behavior from occurring.

(c) Comply with other applicable training requirements, such as, but not limited to, the blood borne pathogen standard.

NEW SECTION

WAC 388-107-0650 Specialized training. (1) The enhanced services facility must ensure all staff who have any interaction with the residents successfully complete the mental health and dementia specialized trainings, consistent with chapter 388-112 WAC, prior to working in the enhanced services facility.

(2) The facility must ensure all staff who have interaction with the residents complete any other specialty trainings to meet the needs of the residents being served, such as developmental disabilities.

NEW SECTION

WAC 388-107-0660 Continuing education requirements for the home care aide certified staff. All home care aides certified staff must have ten of their twelve hours of annual continuing education cover relevant education regarding the population served in the enhanced services facility.

NEW SECTION

WAC 388-107-0670 Continuing education requirements for nursing assistant certified staff. All nursing assistant certified staff must have ten of their twelve hours of annual continuing education cover relevant education regarding the population served in the enhanced services facility.

NEW SECTION

WAC 388-107-0680 Quarterly staff education requirements. In addition to the annual continuing education requirements for individual staff, the enhanced services facility must provide three hours of training per quarter relevant to the needs of the population being served.

NEW SECTION

WAC 388-107-0690 Facility-based trainers. If the enhanced services facility provides continuing education, in-service education or quarterly staff education, the educators must be approved by the department prior to educational intervention, in accordance with chapter 388-112 WAC.

Physical Plan Basic RequirementsNEW SECTION

WAC 388-107-0700 General. (1) The department of health construction review services will review the following general, code, program submittal and minimum requirements to ensure that the facility is in compliance with enhanced services facility physical plant basic requirements.

(2) The enhanced service facility building occupancy type will be consistent with resident admission practices and state adopted building codes for licensed (1) nursing homes, (2) assisted living facilities or (3) adult family homes. This determination will be based on the following categories:

(a) Enhanced service facility category 1: Admit resident(s) physically or cognitively incapable of self preservation (enhanced services facility-nursing home type);

(b) Enhanced service facility category 2: Admit resident(s) capable of self-preservation with physical assistance from another person (enhanced services facility-assisted living type); or

(c) Enhanced service facility category 3: Admit no more than six resident(s) capable of evacuating the facility within five minutes (enhanced services facility-adult family home type).

(3) Enhanced services facility building will be inspected and approved by the Washington state fire marshal to be licensed.

(4) For the purposes of the physical plant sections, the use of the term facility also means applicant where applicable.

(5) The department may not exempt any physical environment requirements established in law but may exempt the enhanced services facility from meeting other specific requirements related to the physical environment if the department determines the exemption will not:

(a) Jeopardize the health or safety of residents;

(b) Adversely affect the residents' quality of life; or

(c) Change the fundamental nature of the enhanced services facility operation into something other than an enhanced services facility.

(6) An enhanced services facility wishing to request an exemption must submit a written request to the department, including:

(a) A description of the requested exemption; and

(b) The specific WAC requirement for which the exemption is sought.

(7) If a physical plant requirement, such as an isolation or seclusion room, is not included or addressed in this chapter, it is not allowed.

NEW SECTION

WAC 388-107-0710 Conversion of a currently licensed facility to an enhanced services facility. (1) If the department licenses part or all of a currently licensed nursing home under chapter 18.51 RCW, assisted living facility under chapter 18.20 RCW, or adult family home under chapter 70.128 RCW, as an enhanced services facility, the facility is deemed to meet the applicable state and local rules, regulations, permits, and code requirements, with the exceptions of subsections (2), (3), (4) and (5) of this section.

(2) If the facility's previous construction has the potential to jeopardize resident health and safety, the department may require compliance with enhanced services facility physical plant new construction rules.

(3) If the facility does construction to meet enhanced services facility requirements, that construction has to be reviewed and approved by construction review services and applicable local and state building officials.

(4) The enhanced services facility must also meet specific new construction requirements related to the safety of any residents with complex needs that the facility is choosing to serve.

(6) All other facilities or new facilities must meet all enhanced services facility new construction requirements, including the applicable state and local rules, regulations, permits, and code requirements.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-107-0720 Types of new construction. New construction includes but is not limited to:

(1) New structures:

(a) A new building to be licensed as an enhanced services facility; or

(b) An addition to a building currently licensed as an enhanced services facility.

(2) Existing buildings:

(a) Conversion of another building to an enhanced services facility;

(b) Change in the use of space for access by residents within an existing enhanced services facility; and

(c) Alterations, additions, or modifications of an existing facility including but not limited to:

(i) Physical structure;

(ii) Electrical fixtures or systems;

(iii) Mechanical equipment or systems;

(iv) Fire alarm fixtures or systems;

(v) Fire sprinkler fixtures or systems;

(vi) Wall coverings 1/28 thick or thicker;

(vii) Floor coverings; or

(viii) Kitchen or laundry equipment.

(d) A change in the department-approved use of an existing facility or portion of a facility; and

(e) An existing building or portion thereof to be converted for the approved use.

NEW SECTION

WAC 388-107-0730 Applicable codes—New construction. New construction of enhanced services facilities must:

(1) Through its design, construction and necessary permits demonstrate compliance with this chapter, the following codes and local jurisdiction standards.

(2) Obtain all local permits before construction and maintain on file at the facility.

(3) Comply with the International Building Code, and International Building Code Standards, as published by the International Conference of Building Officials as amended and adopted by the Washington state building code council and published as chapter 51-50 WAC, or successor laws.

(4) Identify the planned types of residents served at the point of initial licensure to determine occupancy consistent with nursing homes, enhanced services facilities, assisted living facilities or adult family homes;

(5) Comply with the International Mechanical Code, including chapter 22, Fuel Gas Piping, Appendix B, as published by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials as amended and adopted by the Washington state building code council and published as chapter 51-52 WAC, or successor laws;

(6) Comply with the International Fire Code, and International Fire Code Standards, as published by the International Conference of Building Officials and the Western Fire Chiefs Association as amended and adopted by the Washington state building code council and published as chapter 51-54 WAC, and RCW 70.397.210, or successor laws;

(7) Comply with the Uniform Plumbing Code, and Uniform Plumbing Code Standards, as published by the International Association of Plumbing and Mechanical Officials, as amended and adopted by the Washington state building code council and published as chapters 51-56 and 51-57 WAC, or successor laws;

(8) Ensure that all electrical wiring complies with state and local electrical codes including chapter 296-46B WAC and the National Electric Code of the National Fire Protection Association (NFPA-70) as adopted by the Washington state department of labor and industries.

(9) Ensure conformance to the approved plans during construction.

NEW SECTION

WAC 388-107-0740 Required review of building plans. (1) The facility must submit plans to construction review services as directed by the department of health construction review services for approval prior to beginning any construction or conversion of an existing facility or a portion of an existing facility. The approved plans must be conformed to during construction.

(2) The facility must notify construction review services of all planned new construction regarding the facility prior to beginning work on any of the following:

(a) A new building or portion thereof to be used as a facility;

(b) An addition of, or modification or alteration to an existing facility, including, but not limited to, the facility's:

(i) Physical structure;

(ii) Electrical fixtures or systems;

(iii) Mechanical equipment or systems;

(iv) Fire alarm fixtures or systems;

(v) Fire sprinkler fixtures or systems;

(vi) Wall coverings 1/28 thick or thicker;

(vii) Floor coverings; or

(viii) Kitchen or laundry equipment.

(c) A change in the department-approved use of an existing facility or portion of a facility; and

(d) An existing building or portion thereof to be converted for the approved use.

(3) The facility does not need to notify construction review services of the following:

(a) Repair or maintenance of equipment, furnishings or fixtures;

(b) Replacement of equipment, furnishings or fixtures with equivalent equipment, furnishings, or fixtures;

(c) Repair or replacement of damaged construction if the repair or replacement is performed according to construction documents approved by construction review services within eight years preceding the current repair or replacement;

(d) Painting; or

(e) Cosmetic changes that do not affect resident activities, services, or care and are performed in accordance with the current edition of the building code.

NEW SECTION

WAC 388-107-0750 Document submittal requirements. The facility must:

(1) Provide one copy of the functional program;

(2) Provide an analysis of likely adverse impacts on current residents and plans to eliminate or mitigate such adverse impacts;

(3) Provide for the health, safety, and comfort of residents during construction projects;

(4) Ensure that construction documents include two copies of the following:

(a) Drawings prepared, stamped, and signed by an architect licensed by the state of Washington under chapter 18.08 RCW. The services of a consulting engineer licensed by the state of Washington may be used for the various branches of the work, if appropriate; and

(b) Drawings with coordinated architectural, mechanical, and electrical work drawn to scale showing complete details for construction, including:

(i) Site plan(s) showing streets, driveways, parking, vehicle and pedestrian circulation, utility line locations, and location of existing and new buildings;

(ii) Dimensioned floor plan(s) with the function of each room and fixed/required equipment designated;

(iii) Elevations, sections, and construction details;

- (iv) Schedule of floor, wall, and ceiling finishes;
 - (v) Schedules of doors and windows – sizes and type, and door finish hardware;
 - (vi) Mechanical systems – plumbing and heating/venting/air conditioning; and
 - (vii) Electrical systems, including lighting, power, and communication/notification systems.
- (c) Specifications that describe with specificity the workmanship and finishes;
- (d) Shop drawings and related equipment specifications for:
- (i) An automatic fire sprinkler system when required by other codes; and
 - (ii) An automatic fire alarm system when required by other codes.
- (5) Submit addenda, change orders, construction change directives or any other deviation from the approved plans prior to their installation; and
- (6) Provide a written construction project completion notice to the department of health construction review services indicating:
- (a) The completion date; and
 - (b) The actual construction cost.

NEW SECTION

WAC 388-107-0760 Functional program. The facility must implement a functional program. The functional program must clearly define the level, type and scope of care provided. The functional program will cover, but is not limited to the following:

- (1) Scope of the project;
- (2) Type of residents to be admitted to the facility;
- (3) Services offered;
- (4) Activities provided;
- (5) Transportation;
- (6) Staffing;
- (7) Emergency and disaster planning;
- (8) Type of rooms;
- (9) Resident rooms;
- (10) Outdoor spaces;
- (11) Laundry services;
- (12) Janitorial services;
- (13) Food services;
- (14) Communication systems;
- (15) Security systems; and
- (16) Other components.

Common Elements

NEW SECTION

WAC 388-107-0770 Environment of care. The facility must ensure that:

- (1) The facility is designed to provide the level of security appropriate for the specific type of service or program provided as well as the age level, acuity, and risk of the residents served (e.g., geriatric, acute psychiatric, or forensic).
- (2) Facility spaces accessible to residents must be designed to minimize locations where residents are out of the line of sight of staff.

(3) All rooms with lockable doors, including but not limited to resident sleeping rooms and bathrooms, have a readily accessible means of rapid access for all staff.

(4) Perimeter security addresses elopement prevention, prevention of contraband smuggling, visitor access control, and exit process and procedures.

(5) Openings in the perimeter security system (e.g., windows, doors, and gates) are controlled by locks (manual, electric, or magnetic) when required by the functional program.

NEW SECTION

WAC 388-107-0780 Electronic monitoring equipment—Audio monitoring and video monitoring. (1) Except as provided in this section or in WAC 388-107-0790, the facility must not use the following in the facility:

- (a) Audio monitoring equipment; or
- (b) Video monitoring equipment if it includes an audio component.

(2) The facility may video monitor and video record activities in the facility, without an audio component, only in the following areas:

- (a) Entrances and exits if the cameras are:
 - (i) Focused only on the entrance or exit doorways; and
 - (ii) Not focused on areas where residents gather.
- (b) Outdoor areas not commonly used by residents; and
- (c) Designated smoking areas, 25 feet away from the facility, subject to the following conditions:
 - (i) Residents are assessed as needing supervision for smoking;
 - (ii) A staff person watches the video monitor at any time the area is used by such residents;
 - (iii) The video camera is clearly visible;
 - (iv) The video monitor is not viewable by the general public; and
 - (v) The facility notifies all residents in writing of the video monitoring equipment.

(d) Areas used exclusively by staff persons such as, medication preparation and storage areas or food preparation areas, if residents do not go into these areas.

NEW SECTION

WAC 388-107-0790 Electronic monitoring equipment—Resident requested use. (1) The facility must not use audio or video monitoring equipment to monitor any resident unless:

- (a) The resident has requested the monitoring; and
- (b) The monitoring is only used in the sleeping room of the resident who requested the monitoring.

(2) If the resident requests audio or video monitoring, before any electronic monitoring occurs the facility must ensure:

- (a) That the electronic monitoring does not violate chapter 9.73 RCW;
- (b) The resident has identified a threat to the resident's health, safety or personal property; and
- (c) The resident and the facility have agreed upon a specific duration for the electronic monitoring documented in writing.

(3) The facility must:

(a) Reevaluate the need for the electronic monitoring with the resident at least quarterly; and

(b) Have each reevaluation in writing signed and dated by the resident.

(4) The facility must immediately stop electronic monitoring if the:

(a) Resident no longer wants electronic monitoring; or

(b) Resident becomes unable to give consent.

(5) For the purposes of consenting to video electronic monitoring, without an audio component, the term "resident" includes the resident's decision maker.

(6) For the purposes of consenting to audio electronic monitoring, the term "resident" includes only:

(a) The resident residing in the facility; or

(b) The resident's court-appointed guardian or attorney-in-fact who has obtained a court order specifically authorizing the court-appointed guardian or attorney-in-fact to consent to audio electronic monitoring of the resident.

(7) If the resident's decision maker consents to audio electronic monitoring as specified in subsection (6) above, the facility must maintain a copy of the court order authorizing such consent in the resident's record.

NEW SECTION

WAC 388-107-0800 Equipment. (1) The enhanced services facility must have adequate equipment, supplies, and space to carry out all functions and responsibilities of the facility.

(2) Safe and sanitary areas for:

(a) Storage and handling of clean and sterile nursing equipment and supplies; and

(b) Cleaning and disinfecting of soiled nursing equipment.

NEW SECTION

WAC 388-107-0810 Resident room. The facility must ensure that each resident sleeping room:

(1) Meets the following standards:

(a) Maximum capacity of one resident.

(b) May be locked by the resident:

(i) Unless otherwise indicated by an identified need in the Individual Treatment Plan; and

(ii) All staff have a readily accessible means of unlocking the room when the door is locked.

(c) Minimum clear floor area of 100 square feet.

(d) Has one or more outside windows that:

(i) If used for ventilation, are easily opened;

(ii) Have break-away adjustable shades, blinds, or equivalent installed for visual privacy and are designed to meet the safety needs of the resident; and

(2) Is adjacent to bathing and toilet facilities;

(3) Is designed to offer visual privacy from casual observation by other residents and visitors. The design for privacy must not restrict resident access to the entrance, hand-washing station, or toilet.

(4) Is accessible, clean, and well-maintained with sufficient space, light, and comfortable furnishings for sleeping and personal activities including, but not limited to:

(a) A minimum of a three-foot clear access aisle from the entry door, along at least one side of the bed, and in front of all storage equipment;

(b) Enough room for medical equipment and for a resident to move about freely with mobility aides, such as wheelchairs; and

(c) Direct access to a hallway, living room, lounge, the outside, or other common use area without going through a laundry or utility area, a bath or toilet room, or another resident's bedroom.

(5) Is equipped with:

(a) One or more waste containers;

(b) Furniture appropriate for the age and physical condition of each resident, including but not necessarily limited to:

(i) A chair, which may be used in either the bedroom or a group room interchangeably;

(ii) A bed of appropriate length and size that is thirty-six or more inches wide with a mattress that fits the bed frame, is in good condition, and is at least four inches thick unless otherwise requested or necessary for resident health or safety; and

(iii) A lockable storage space accessible to each resident for storage of small personal items, upon request.

NEW SECTION

WAC 388-107-0820 Resident toilet room. The facility will ensure:

(1) Toilet room doors:

(a) Are equipped with keyed locks that allow staff to control access to the toilet room, where indicated by the resident safety risk assessment;

(b) Swing outward or be double-acting; and

(c) For accessible resident toilet rooms, provide space for facility caregivers to transfer residents to the toilet using portable mechanical lifting equipment.

(2) One toilet and hand-washing sink for every four residents, or fraction thereof, with:

(a) Provisions for privacy during toileting, bathing, showering, and dressing;

(b) Separate toilet rooms for each gender if the toilet room contains more than one toilet; and

(c) Separate bathrooms for each gender if the bathroom contains more than one bathing fixture.

(3) Toilet rooms and bathrooms are directly accessible from resident rooms or corridors, without passing through any kitchen, pantry, food preparation, food storage, or dish-washing area or from one bedroom through another bedroom.

(4) Grab bar(s) in non-accessible toilet rooms must be installed to prevent fall and injury based on resident specific needs.

(5) Grab bar(s) in accessible toilet rooms must be installed according to the state building code requirements for accessible toilets.

NEW SECTION

WAC 388-107-0830 Resident bathing facilities. The facility must provide access to a bathtub or shower for every resident. The facility will ensure that bathing facilities are

designed and located for resident convenience and privacy. The facility must ensure:

(1) At least one bathing unit for every four residents, or fraction thereof, who are located in a resident room without an adjoining bathroom;

(2) Access to at least one bathing device for immersion;

(3) Access to at least one roll-in shower or equivalent on each resident care unit:

(a) Designed and equipped for unobstructed ease of shower chair entry and use;

(b) With a spray attachment equipped with a backflow prevention device;

(c) One-half inch or less threshold that may be a collapsible rubber water barrier; and

(d) A minimum nominal (rough-framed) size of thirty-six inches by forty-eight.

(4) Resident bathing equipment is smooth, cleanable, and able to be disinfected after each use.

(5) In each bathing unit containing more than one bathing facility:

(a) Each bathtub, shower, or equivalent, is located in a separate room or compartment with three solid walls;

(b) The entry wall may be a break-away "shower" type curtain or equivalent;

(c) The area for each bathtub and shower is sufficient to accommodate a shower chair, an attendant, and provide visual privacy for bathing, drying, and dressing;

(d) All shower and tub surfaces are slip-resistant; and

(e) All bathing areas are constructed of materials that are impervious to water and cleanable.

(6) Common bathing facilities must comply with the state building code requirements for accessible bathing facilities.

(7) Grab bar(s) must be installed to prevent fall and injury in bathing facilities in non-accessible resident rooms.

(8) Grab bar(s) in accessible bathing rooms must be installed according to the state building code requirements for accessible bathing rooms.

NEW SECTION

WAC 388-107-0840 Locks in toilet and bathing facilities. The facility must ensure:

(1) All staff have a readily available means of unlocking lockable toilet facilities and bathrooms from the outside; and

(2) Locks are operable from the inside with a single motion.

NEW SECTION

WAC 388-107-0850 Resident storage. The facility must ensure:

(1) Each resident has, within his or her room, a separate wardrobe (for hanging garments), locker, or closet for storing personal effects.

(2) Shelves for folded garments may be used instead of arrangements for hanging garments if acceptable to the resident.

(3) Adequate storage must be available for a seven-day supply of clothes.

NEW SECTION

WAC 388-107-0860 Resident support spaces. The facility must ensure:

(1) Private space:

(a) For the use of individual residents, family, and caregivers to discuss the specific resident's needs or private family matters;

(b) With a minimum clear floor area of 144 square feet; and

(c) Furnished with comfortable seating to accommodate several people.

(2) If a room for resident grooming is provided, the room will include:

(a) Spaces for hair-washing station(s), hair clipping and hair styling, and other grooming needs.

(b) A hand-washing station, mirror, work counter(s), storage shelving, and sitting area(s) for resident.

(3) Resident support spaces have access to a common-use toilet facility.

Common Areas

NEW SECTION

WAC 388-107-0870 Common areas. The facility must ensure that all residents have access to common areas throughout the facility including, but not limited to, dining rooms, day rooms, and activity areas.

NEW SECTION

WAC 388-107-0880 Dining, dayrooms, and resident activity areas. (1) The facility must provide one or more rooms designated for resident dining and activities that is:

(a) Well lighted;

(b) Well ventilated;

(c) Adequately furnished;

(d) Large enough to accommodate all residents; and

(e) Large enough to accommodate all resident activities.

(2) The facility must design space for dining rooms, dayrooms, and activity areas for resident convenience and comfort and to provide a homelike environment. The facility must:

(a) Ensure these rooms or areas are exterior rooms with windows that have a maximum sill height of thirty-six inches;

(b) Provide space for dining, day use, and activities with a minimum of one hundred fifty square feet or combined total of thirty square feet for each licensed bed, whichever is greater;

(c) Design any multipurpose rooms to prevent program interference with each other; and

(d) Provide adjoining or adjacent storage spaces for all activity and recreational equipment and supplies.

NEW SECTION

WAC 388-107-0890 Outdoor recreation space and walkways. (1) A facility must provide a safe, protected outdoor area for resident use.

(2) The facility must ensure the outdoor area:

(a) Has areas protected from direct sunshine and rain throughout the day;

(b) Is accessible from the floor or story the resident resides on and has walking surfaces which are firm, stable, and free from cracks and abrupt changes with a maximum of one inch between the sidewalk and adjoining landscape areas;

(c) Has sufficient space and outdoor furniture provided with flexibility in arrangement of the furniture to accommodate residents who use wheelchairs and mobility aids;

(d) Contains non-poisonous shrubs, natural foliage, and trees;

(e) Is surrounded by walls or fences at least seventy-two inches high; and

(f) If used as a resident courtyard, the outdoor area must not be used for public or service deliveries.

Support Services

NEW SECTION

WAC 388-107-0900 Laundry. The facility must provide laundry and linen services on the premises, or by contract with a commercial laundry. If laundry services are provided on-site, the facility must ensure that laundry facilities, equipment, handling and processes provide residents with linen and laundered items that are clean, in good repair and adequate to meet the needs of residents. The facility:

(1) Must handle, clean, and store linen according to acceptable methods of infection control, and:

(a) Ensure all staff wear appropriate personal protective equipment and use appropriate infection control practices when handling laundry;

(b) Ensure that damp textiles or fabrics are not left in machines for longer than twelve hours;

(c) Ensure that gross soil is removed before washing and proper washing and drying procedures are used; and

(d) Ensure that contaminated textiles and fabrics are handled with minimum agitation to avoid contamination of air, surfaces and persons.

(2) Must equip the laundry area with:

(a) A utility sink;

(b) A table or counter for folding clean laundry;

(c) At least one washing machine and one clothes dryer; and

(d) Mechanical ventilation to the exterior.

(3) Must use and maintain laundry equipment according to manufacturer's instructions.

(4) Must use washing machines that have a continuous supply of hot water with a temperature of one hundred forty degrees Fahrenheit, or that automatically dispense a chemical sanitizer and detergent or wash additives as specified by the manufacturer, whenever the licensee washes:

(a) Enhanced services facility laundry;

(b) Enhanced services facility laundry combined with residents' laundry into a single load; or

(c) More than one resident's laundry combined into a single load.

(5) May allow residents to wash their individual personal laundry, separate from other laundry, at temperatures below one hundred forty degrees Fahrenheit provided chemicals suitable for low temperature washing at proper use concentration and according to the cleaning instructions of the textile, fabric or clothing.

(6) Must ventilate laundry rooms and areas to the exterior including areas or rooms where soiled laundry is held for processing by offsite commercial laundry services.

(7) Must locate laundry equipment in rooms other than those used for open food storage, food preparation or food service.

NEW SECTION

WAC 388-107-0910 Janitors closets on resident care units. The facility must ensure:

(1) There is a janitor's closet with a service sink and adequate storage space for housekeeping equipment, cleaning chemicals and supplies.

(2) The janitor's closet meets the ventilation requirements in WAC 388-107-1000.

(3) The janitor's closet must remain locked.

NEW SECTION

WAC 388-107-0920 Kitchen. The facility must provide food service on the premises or by contract with a commercial kitchen. If the facility provides food service on-site, the facility must ensure food service areas are in compliance with chapter 246-215 and 246-217 WAC, state board of health rules governing food service sanitation. The facility providing on-site food service must:

(a) Ensure food service areas are provided for the purpose of preparing, serving, and storing food and drink;

(b) Ensure food service areas are located to facilitate receiving of food supplies, disposal of kitchen waste, and transportation of food to dining and resident care areas;

(c) Locate and arrange the kitchen to avoid contamination of food, to prevent heat and noise entering resident care areas, and to prevent through traffic;

(d) Conveniently locate a hand-washing sink near the food preparation and dishwashing area, and include a waste receptacle and dispensers stocked with soap and paper towels;

(e) Adequately ventilate, light, and equip the dishwashing room or area for sanitary processing of dishes;

(f) Locate the garbage storage area in a well-ventilated room or an outside area;

(g) Provide space for an office or a desk and files for food service management located central to deliveries and kitchen operations; and

(h) Include housekeeping facilities or a janitor's closet for the exclusive use of food service with a service sink and storage space for housekeeping equipment and supplies.

NEW SECTION

WAC 388-107-0922 Sewage and liquid waste disposal. The enhanced services facility must:

(1) Ensure that all sewage and waste water drain into a municipal sewage disposal system according to chapter 246-271 WAC, if available; or

(2) Provide on-site sewage disposal systems designed, constructed, and maintained as required by chapters 246-272 and 173-240 WAC, and local ordinances.

NEW SECTION

WAC 388-107-0924 Garbage and refuse disposal.

The enhanced services facility must:

(1) Provide an adequate number of garbage containers to store refuse generated by the enhanced services facility:

(a) Located in a storage area convenient for resident and staff use;

(b) Constructed of nonabsorbent material; and

(c) Cleaned and maintained to prevent:

(i) Entrance of insects, rodents, birds, or other pests;

(ii) Odors; and

(iii) Other nuisances.

(2) Assure garbage and waste containers are emptied frequently to prevent hazards and nuisances; and

(3) Provide for safe and sanitary collection and disposal of:

(a) Garbage and refuse;

(b) Infectious waste; and

(c) Waste grease from the kitchen.

NEW SECTION

WAC 388-107-0930 Nursing and nutrition station.

(1) The enhanced services facility must have a kitchenette to give residents access to fluids and snacks, including those of nutritive value, to meet resident wants and needs. The kitchenette will include:

(a) A sink with hot and cold running water;

(b) A soap dispenser; and

(c) A refrigerator.

(2) The nursing station must:

(a) Have a work counter or table;

(b) Have locking storage;

(i) For clean and sterile nursing equipment and supplies; and

(ii) Medication.

Building Elements

NEW SECTION

WAC 388-107-0940 Resident safety and suicide prevention. The enhanced services facility must be designed to prevent injury and suicide prevention, with special design considerations to details, finishes, and equipment. The facility must ensure:

(1) Ceilings

(a) In resident bathrooms are secured to prevent resident access. Ceiling systems of a non-secured (non-clipped down) lay-in ceiling tile design are not permitted.

(b) In resident bedrooms and bathrooms, are designed to eliminate tie-off point(s) or at nine feet in height to prevent resident access.

(2) Doors and door hardware:

(a) Doorways are at least 36" wide;

(b) Door swings for private resident bathrooms or shower areas swing out to allow for staff emergency access.

(i) Door closers will not be used unless required by the building code. If required on the resident room door, the closer will be mounted on the public side of the door rather than the private resident's side of the door.

(3) Door hinges:

(a) Are designed to minimize points for hanging (i.e., cut hinge type); and

(b) Are consistent with the level of care for the resident.

(4) Door lever handles are specifically designed anti-ligature hardware.

(5) All hardware has tamper-resistant fasteners.

(6) Windows:

(a) Located in areas accessible to residents are designed to limit the opportunities for breakage;

(b) All glazing, both interior and exterior, and glass mirrors are fabricated with laminated safety glass or equal;

(c) Use of tempered glass for interior windows is permitted.

(d) Break-away window coverings for visual privacy; and

(e) The anchorage of windows and window assemblies, including frames, is designed to resist impact loads applied from the inside and must be tested in accordance with American national standards institute (ANSI) Z97.1. Where operable windows are used, the hinges and locking devices must also be tested.

(7) Bathroom hardware and accessories

(a) Special design considerations for injury and suicide prevention must be given to shower, bath, toilet, and sink hardware and accessories, including grab bars and toilet paper holders.

(b) Grab bars:

(i) Where grab bars are provided in resident rooms, resident toilet rooms, resident bathing rooms or other non-public space, the space between the bar and the wall must be filled to prevent the grab bar from becoming a ligature point.

(8) An overall design for anti-ligature including, but not limited to, grab bars, towel hooks, levers, handles, sprinkler heads, and other protrusions.

(9) Towel bars and shower curtain rods are not permitted.

(10) In unsupervised resident areas, sprinkler heads must be recessed or of a design to minimize resident access.

(11) In resident bathrooms, lighting fixtures, sprinkler heads, electrical outlets, and other fixtures must be the tamper-resistant type.

NEW SECTION

WAC 388-107-0950 Safety—Handrails. The facility must:

(1) Provide handrails on each side of all corridors and stairwells accessible to residents and ensure that:

(a) Ends of handrails are returned to the walls;

(b) Handrails are mounted thirty to thirty-four inches above the floor; and

(c) Handrails terminate not more than six inches from a door.

(2) Equip stairways with more than one riser and ramps with slopes greater than one in twenty with handrails on both sides. Ensure that ends of handrails are designed in a manner that eliminates a hooking hazard.

(3) Must maintain nonskid surfaces on all stairways and ramps used by residents.

NEW SECTION

WAC 388-107-0960 Plumbing—Water supply. The facility must:

(1) Provide:

(a) Water meeting the provisions of chapter 246-290 WAC, Group A public water supplies or chapter 246-291 WAC, Group B public water systems;

(b) Hot and cold water under adequate pressure readily available throughout the enhanced services facility;

(c) Labels or color codes for nonpotable water supplies as "unsafe for domestic use."

(2) Provide faucet controls in lavatories and sinks with:

(a) Either anti-ligature fixtures or fixtures with at least four-inch wrist blades or single-levers based on a risk assessment made by the facility;

(b) Sufficient space for full open and closed operation; and

(c) Color-coding and labels to indicate "hot" and "cold".

(3) Ensure that all lavatories and sinks have gooseneck spouts, without aerators in areas requiring infection control. Locations determined by the facility's risk assessment must be permitted to have anti-ligature devices.

(4) Provide shower heads that are of the flash-mounted type.

NEW SECTION

WAC 388-107-0970 Sinks—Water temperature. The facility must provide all sinks in resident rooms, toilet rooms and bathrooms, and bathing fixtures used by residents with hot water between one hundred five degrees (105°) Fahrenheit and one hundred twenty degrees (120°) Fahrenheit at all times.

NEW SECTION

WAC 388-107-0980 Mechanical—Heating systems. The facility must ensure:

(1) The heating system is capable of maintaining a temperature of seventy-five degrees Fahrenheit for areas occupied by residents and seventy degrees Fahrenheit for non-resident areas.

(2) Resident rooms must have individual temperature control which may be covered, locked, or placed in an inconspicuous place.

(3) Electric resistant wall heat units and portable space heaters are prohibited.

(4) The heating system must be connected to an alternate source of power, or an alternate source of heating must be provided to maintain the temperature in resident rooms or in a room to which all residents can be moved.

NEW SECTION

WAC 388-107-0990 Mechanical—Cooling systems. The facility must have:

(1) A mechanical cooling system capable of maintaining a temperature of seventy-five degrees Fahrenheit for areas occupied by residents; and

(2) A cooling system that has mechanical refrigeration equipment to provide summer air conditioning to resident areas, food preparation areas, laundry, medication rooms, and therapy areas by either a central system with distribution ducts or piping, or packaged room or zonal air conditioners.

NEW SECTION

WAC 388-107-1000 Mechanical—Ventilation systems. The facility must ensure:

(1) Ventilation of all rooms is designed to prevent objectionable odors, condensation, and direct drafts on the residents;

(2) All habitable space is mechanically ventilated including air supply and air exhaust systems;

(3) Installation of air-handling duct systems according to the requirements of the International Mechanical Code and chapter 51-52 WAC;

(4) Installation of supply registers and return air grilles at least three inches above the floor;

(5) Installation of exhaust grilles on or near the ceiling; and

(6) Outdoor air intakes located a minimum of twenty-five feet from the exhaust from any ventilating system, combustion equipment, or areas which may collect vehicular exhaust and other noxious fumes, and a minimum of ten feet from plumbing vents. The facility must locate the bottom of outdoor air intakes serving central systems a minimum of three feet above the adjoining grade level or, if installed through the roof, three feet above the highest adjoining roof level.

(7) Minimum ventilation requirements meet the pressure relationship and ventilation rates per the following table:

PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS				
Function Area	Pressure Relationship To Adjacent Areas ^{1,2}	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors
RESIDENT CARE				
Resident room (holding room)	±			

PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS				
Function Area	Pressure Relationship To Adjacent Areas ^{1,2}	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors
Resident corridor	±			
Toilet room	N			
Resident gathering (dining, activity)	±	2	4	Optional
DIAGNOSTIC AND TREATMENT		Optional	2	Optional
Examination room	±	Optional	10	Yes
Physical therapy ³	N	2	4	Optional
Occupational therapy ³	N			
Soiled workroom or soiled holding	N	2	6	Optional
Clean workroom or clean holding	P	2	6	Optional
STERILIZING AND SUPPLY		2	6	Optional
Sterilizer exhaust room	N	2	10	Yes
Linen and trash chute room	N	2	4	Optional
Laundry, general ³	±			
Soiled linen sorting and storage	N	Optional	10	Yes
Clean linen storage	P	Optional	10	Yes
SERVICE		2	10	Yes
Food preparation center ³	±	Optional	10	Yes
Warewashing room ³	N	Optional	2	Yes
Dietary day storage	±			
Janitor closet	N	2	10	Yes
Bathroom	N	Optional	10	Yes
Personal services (barber/salon)	N	Optional	2	Yes

¹P=Positive N=Negative ± = Continuous directional control not required.

²Whether positive or negative, pressure must be a minimum of seventy cubic feet per minute (CFM).

³The volume of air may be reduced up to fifty percent in these areas during periods of nonuse. The soiled holding area of the general laundry must maintain its full ventilation capacity at all times.

NEW SECTION

WAC 388-107-1001 Lighting (1) The enhanced services facility must maintain electric light fixtures and lighting necessary for the comfort and safety of residents and for the activities of residents and staff.

(2) The enhanced services facility must provide enough lighting in each resident's room to meet the resident's needs, preferences and choices.

(3) New enhanced services facility construction must, at a minimum, meet the illuminating engineering society of North America (IESNA) recommendations for lighting in common areas as established in the IESNA lighting handbook. The applicable handbook is the edition in effect on the date a construction review fee is paid to the department of health, construction review services, for new enhanced services facility construction.

(4) Existing enhanced services facility construction must maintain, at a minimum, the illuminating engineering society of North America (IESNA) recommendations for lighting in common areas as established in the IESNA lighting handbook. The applicable handbook is the edition in effect on the

date a construction review fee was paid to the department of health, construction review services, for the enhanced services facility or that portion of the enhanced services facility that underwent construction review.

Communication

NEW SECTION

WAC 388-107-1005 Call systems on resident care units. The facility must provide a system that meets the following standards:

- (1) A wired or wireless communication system that notifies at the staff work station. The system must be equipped to receive resident calls from:
 - (a) The bedside of each resident;
 - (b) Every common area, dining and activity areas, common use toilet rooms, and other areas used by residents; and
 - (c) Resident toilet, bath and shower rooms.
- (2) The call system may be adapted to meet the resident needs.
 - (3) The call system may not utilize any cords.
 - (4) Provisions must be made for easy removal or covering of call buttons.
 - (5) All hardware must have tamper-resistant fasteners.
 - (6) Provide residents, families, and other visitors with a means to contact a staff person inside the building from outside the building after hours.

NEW SECTION

WAC 388-107-1010 Telephone on resident care units. The facility must provide twenty-four hour access to a telephone for resident use which:

- (1) Provides auditory privacy;
- (2) Is accessible to a resident with a disability and accommodates a resident with sensory impairment;
- (3) Is not located in a staff office or at a nurse's station;
- (4) Does not require payment for local calls; and
- (5) Does not utilize any cords.

Electrical - Special Provisions

NEW SECTION

WAC 388-107-1020 General. In areas accessed by residents, the facility must have:

- (1) Electrical receptacles that are tamper-resistant or equipped with ground fault circuit interrupters.
- (2) Lights designed to prevent unauthorized access and tampering.

NEW SECTION

WAC 388-107-1030 Backup power. (1) The facility must have an alternate source of power and automatic transfer equipment to connect the alternate source within ten seconds of the failure of the normal source.

- (2) The facility must ensure the alternate source is a generator:
 - (a) With on-site fuel supply;

- (b) That is permanently fixed in place;

(3) The facility must ensure the backup power supply is coordinated with the facility's emergency plan. The system must provide a minimum of four hours of effective power for lighting for night lights, exit corridors, stairways, dining and recreation areas, work stations, medication preparation areas and boiler rooms.

- (4) A facility must have alternate power supplied to:
 - (a) Communication systems and all alarm systems; and
 - (b) Electrical outlets located in medication preparation areas, pharmacy dispensing areas, staff work stations, dining areas, and resident corridors.

(5) The alternate power equipment must meet the:

- (a) Earthquake standards for the facility's geographic locale; and
- (b) Requirements in NFPA 110, Generators; and
- (c) Requirements in NFPA 99.

Licensing

NEW SECTION

WAC 388-107-1040 License and contract. An enhanced services facility must:

- (1) Be licensed by the department;
- (2) May be granted a contract by the department; and
- (3) Admit and keep residents whose care is paid for under a department contract.

License Required/Unlicensed Operator

NEW SECTION

WAC 388-107-1050 Unlicensed operation—Application of Consumer Protection Act. Operation of a facility without a license in violation of this chapter and discrimination against medicaid recipients are a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an enhanced services facility without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION

WAC 388-107-1060 Unlicensed operation—Criminal penalty. A person operating or maintaining a facility without a license under this chapter is guilty of a misdemeanor and each day of a continuing violation after conviction must be considered a separate offense.

NEW SECTION

WAC 388-107-1070 Unlicensed operation—Injunction or other remedies. Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for an injunction, civil penalty, or other process against a person

to restrain or prevent the operation or maintenance of a facility without a license issued under this chapter.

NEW SECTION

WAC 388-107-1080 Licensing fees. The enhanced services facility must:

- (1) Submit an annual per bed license fee of \$1,040 based on the licensed bed capacity;
- (2) Submit an additional late fee in the amount of ten dollars per day from the license renewal date until the date of mailing the fee, as evidenced by the postmark; and
- (3) Submit to construction review services a fee for the review of the construction documents per the review fee schedule.

NEW SECTION

WAC 388-107-1090 License valid and not transferable. (1) The enhanced services facility is required to renew the license each year.

- (2) The license remains valid unless:
 - (a) The department takes enforcement action to suspend or revoke the license per law;
 - (b) The facility voluntarily surrenders the license and closes the facility;
 - (c) The facility relinquishes the license; or
 - (d) The facility fails to pay the annual licensing fee.
- (3) The facility license is:
 - (a) Not transferable; and
 - (b) Valid only for the provider and address listed on the license.

NEW SECTION

WAC 388-107-1100 Licensee's responsibilities. (1) The enhanced services facility licensee is responsible for:

- (a) The operation of the enhanced services facility;
- (b) Complying at all times with the requirements of this chapter, chapter 70.97 RCW, and other applicable laws and rules; and
- (c) The care and services provided to the enhanced services facility residents.
 - (2) The licensee must:
 - (a) Maintain the occupancy level at or below the licensed resident bed capacity of the enhanced services facility;
 - (b) Maintain and post in a size and format that is easily read, in a conspicuous place on the enhanced services facility premises:
 - (i) A current enhanced services facility license, including any related conditions on the license;
 - (ii) The name, address and telephone number of:
 - (A) The department;
 - (B) Appropriate resident advocacy groups; and
 - (C) The state and local long-term care ombuds with a brief description of ombuds services.
 - (iii) A copy of the report, including the cover letter, and plan of correction of the most recent full inspection conducted by the department.
 - (c) Ensure any party responsible for holding or managing residents' personal funds is bonded or obtains insurance in

sufficient amounts to specifically cover losses of resident funds; and provides proof of bond or insurance to the department.

(3) The licensee must not delegate to any person responsibilities that are so extensive that the licensee is relieved of responsibility for the daily operations and provisions of services in the enhanced services facility.

(4) The licensee must act in accord with any department-approved management agreement, if the licensee has entered into a management agreement.

(5) The licensee must appoint an enhanced services facility administrator.

NEW SECTION

WAC 388-107-1110 Liability insurance required. The enhanced services facility must:

- (1) Obtain liability insurance upon licensure and maintain the insurance as required in WAC 388-107-1120 and 388-107-1130; and
- (2) Have evidence of liability insurance coverage available if requested by the department.

NEW SECTION

WAC 388-107-1120 Liability insurance required—Commercial general liability insurance or business liability insurance—Coverage. The enhanced services facility must have commercial general liability insurance or business liability insurance that includes:

- (1) Coverage for the acts and omissions of any employee and volunteer;
- (2) Coverage for bodily injury, property damage, and contractual liability;
- (3) Coverage for premises, operations, independent contractor, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract; and
- (4) Minimum limits of:
 - (a) Each occurrence at one million dollars; and
 - (b) General aggregate at two million dollars.

NEW SECTION

WAC 388-107-1130 Liability insurance required—Professional liability insurance coverage. The enhanced services facility must have professional liability insurance or error and omissions insurance if the enhanced services facility licensee has a professional license, or employs professionally licensed staff. The insurance must include:

- (1) Coverage for losses caused by errors and omissions of the enhanced services facility, its employees, and volunteers; and
- (2) Minimum limits of:
 - (a) Each occurrence at one million dollars; and
 - (b) Aggregate at two million dollars.

Initial License Application

NEW SECTION

WAC 388-107-1140 Licensee qualifications. The department must consider separately and jointly as applicants each person named in the application for an enhanced services facility license.

(1) If the department finds any person unqualified as specified in WAC 388-107-1290, the department must deny, terminate, or not renew the license.

(2) If the department finds any person unqualified as specified in WAC 388-107-1290, the department may deny, terminate, or not renew the license.

NEW SECTION

WAC 388-107-1150 Application process. (1) To apply for an enhanced services facility license, a person must:

(a) Submit to the department a complete license application on forms designated by the department at least sixty days prior to the proposed effective date of the license;

(b) Submit all relevant attachments specified in the application;

(c) Submit department background authorization forms;

(d) Sign the application;

(e) Submit the license fee;

(f) Submit verification that construction plans have been approved by construction review services and verify that the department has received an approved inspection by the state fire marshal;

(g) Submit a revised application before the license is issued if any information has changed since the initial license application was submitted;

(h) Submit a revised application containing current information about the proposed licensee or any other persons named in the application, if a license application is pending for more than one year; and

(i) If the licensee's agent prepares an application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained in the application.

(2) A currently licensed facility converting to an enhanced services facility must:

(a) Give up its current license before applying; and

(b) Meet all requirements in subsection (1) above.

(3) A currently licensed facility converting a wing, or portion of the facility, to an enhanced services facility must:

(a) Change the current license to reflect the new facility structure and capacity of the existing facility;

(b) Apply for an enhanced services facility license and meet all requirements in subsection (1) above;

(c) Create a new business entity separate from the existing business structure of the current licensee; and

(d) Provide the department with enough information to show that the enhanced services facility will be operated independently from the currently licensed entity, with no shared services, separate indoor and outdoor space, separate staffing, and separate administrative structure.

(3) A license must be issued only to the individual or entity that applied for the license.

(4) A license may not exceed twelve months in duration and expires on a date set by the department.

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

NEW SECTION

WAC 388-107-1160 Necessary information. In making a determination whether to issue an enhanced services facility license, in addition to the information for each person named in the application, the department may review other documents and information the department deems relevant, including inspection and complaint investigation findings for each facility with which the applicant or any partner, officer, director, managerial employee, or owner of five percent or more of the applicant has been affiliated.

NEW SECTION

WAC 388-107-1170 Department access. (1) The applicant must allow department staff to inspect the entire premises including all of the facility's rooms, buildings, grounds, and equipment and all pertinent records during the initial licensing of the facility.

(2) During inspections and complaint investigations, the enhanced services facility must give department staff access to:

(a) The entire premises;

(b) Examine all areas and articles in the facility that are used to provide care or support to residents, including the physical premises and residents' records and accounts;

(c) All records related to the residents or operation of the facility; and

(d) Interview anyone determined to have information pertinent to the inspection or investigation, including but not limited to the provider, staff, family members, individuals residing in the facility, and residents.

NEW SECTION

WAC 388-107-1180 Administrator qualifications—General. The licensee must appoint an administrator who:

(1) Is at least twenty-one years old;

(2) Has a Bachelor's degree in social sciences, social services, human services, behavioral sciences, or an allied medical field;

(3) Meets the training requirements under chapter 388-112 WAC and has specialized training in the provision of the care and services required for vulnerable adults with dementia, mental health and behavioral issues;

(4) Has at least one year of full-time experience working with vulnerable populations with complex personal care and behavioral needs;

(5) Knows and understands how to apply Washington state statutes and administrative rules related to the operation of a long-term care facility; and

(6) Is qualified to perform the administrator's responsibilities specified in WAC 388-107-1190.

NEW SECTION**WAC 388-107-1190 Administrator responsibilities.**

The licensee must ensure the administrator:

- (1) Directs and supervises the overall twenty-four-hour-per-day operation of the enhanced services facility;
- (2) Ensures residents receive the care and services identified in their individual treatment plan and assessment;
- (3) Is readily accessible to meet with residents;
- (4) Complies with the enhanced services facility's policies;
- (5) When not available on the premises, either:
 - (a) Is available by telephone or electronic pager; or
 - (b) Designates a person approved by the licensee to act in place of the administrator. The designee must be:
 - (i) Qualified by experience to assume designated duties; and
 - (ii) Authorized to make necessary decisions and direct operations of the enhanced services facility during the administrator's absence.

NEW SECTION

WAC 388-107-1200 Notification of change in administrator The licensee must notify the department in writing within ten calendar days of the effective date of a change in the enhanced services facility administrator. The notice must include the full name and qualifications of the new administrator and the effective date of the change.

Criminal History Background CheckNEW SECTION**WAC 388-107-1205 Background checks—General.**

- (1) Background checks conducted by the department and required in this chapter include:
 - (a) Washington state name and date of birth background checks; and
 - (b) After January 7, 2012, a national fingerprint background check in accordance with RCW 74.39A.056.
- (2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the enhanced services facility.
- (3) In addition to chapter 70.97 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.051.

NEW SECTION

WAC 388-107-1210 Background checks—Who is required to have. (1) Applicants for an enhanced services facility license must have the following background checks before licensure:

- (a) A Washington state name and date of birth background check; and
 - (b) A national fingerprint background check.
- (2) The enhanced services facility must ensure that the administrator and all caregivers employed directly or by contract after January 7, 2012, have the following background checks:

- (a) A Washington state name and date of birth background check; and
 - (b) A national fingerprint background check.
- (3) The enhanced services facility must ensure that the following individuals have a Washington state name and date of birth background check:
- (a) Volunteers who are not residents, and students who may have unsupervised access to residents;
 - (b) Staff persons who are not caregivers or administrators;
 - (c) Managers who do not provide direct care to residents; and
 - (d) Contractors other than the administrator and caregivers who may have unsupervised access to residents.

NEW SECTION

WAC 388-107-1215 Background checks—Process—Background authorization form. Before the enhanced services facility employs, directly or by contract, an administrator, staff person or caregiver, or accepts any volunteer, or student, the home must:

- (1) Require the person to complete a DSHS background authorization form; and
- (2) Submit to the department's background check central unit, including any additional documentation and information requested by the department.

NEW SECTION**WAC 388-107-1220 Background checks—Washington state name and date of birth background check.**

Unless the individual is eligible for an exception under WAC 388-113-0040, if the results of the Washington state name and date of birth background check indicate the person has a disqualifying criminal conviction or a pending charge for a disqualifying crime under chapter 388-113 WAC, or a disqualifying negative action under WAC 388-107-1290, then the enhanced services facility must:

- (1) Not employ, directly or by contract, a caregiver, administrator, or staff person; and
- (2) Not allow a volunteer or student to have unsupervised access to residents.

NEW SECTION**WAC 388-107-1230 Background checks—National fingerprint background check.**

- (1) Administrators and all caregivers who are hired after January 7, 2012, and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.
- (2) After receiving the results of the national fingerprint background check the enhanced services facility must not employ, directly or by contract, an administrator or caregiver who has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or
- (3) The enhanced services facility may accept a copy of the national fingerprint background check results letter and any additional information from the department's background

check central unit from an individual who previously completed a national fingerprint check through the department's background check central unit, provided the national fingerprint background check was completed after January 7, 2012.

NEW SECTION

WAC 388-107-1240 Background check—Results—Inform. (1) After receiving the results of the Washington state name and date of birth background check, the enhanced services facility must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-107-1290.

(2) After receiving the result letter for the national fingerprint background check, the enhanced services facility must inform the person:

(a) Of the national fingerprint background check result letter;

(b) That they may request a copy of the national fingerprint check result letter; and

(c) That any additional information requested can only be obtained from the department's background check central unit.

NEW SECTION

WAC 388-107-1250 Background checks—Washington state name and date of birth background check—Valid for two years—National fingerprint background check—Valid indefinitely. (1) A Washington state name and date of birth background check is valid for two years from the initial date it is conducted. The enhanced services facility must ensure:

(a) A new DSHS background authorization form is submitted to the department's background check central unit every two years for all administrators, caregivers, staff persons, volunteers and students; and

(b) There is a valid Washington state name and date of birth background check for all administrators, caregivers, staff persons, volunteers and students.

(2) A national fingerprint background check is valid for an indefinite period of time. The enhanced services facility must ensure there is a valid national fingerprint background check completed for all administrators and caregivers hired after January 7, 2012. To be considered valid, the national fingerprint background check must be initiated and completed through the department's background check central unit after January 7, 2012.

NEW SECTION

WAC 388-107-1252 Background check—Sharing by health care facilities In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain circumstances. Results of the national fingerprint checks may not be shared. For the purposes of the section health care facility means a nursing home licensed under chapter 18.51 RCW, an assisted living facility license under chapter 18.20 RCW, an enhanced services facility license under chapter 70.97 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) The health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the individual was last employed at a licensed health care facility and the date of the individual's current employment application;

(c) The background check is no more than two years old; and

(d) The enhanced services facility has no reason to believe the individual has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, a negative action that is disqualifying under WAC 388-107-1290.

(2) The enhanced services facility may also establish, maintain and follow a written agreement with home health, hospice, or home care agencies licensed under chapter 70.127 RCW or nursing pools registered under chapter 18.52 RCW in order to ensure that agency or pool staff meets the requirements of WAC 388-107-1290.

NEW SECTION

WAC 388-107-1260 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check. The enhanced services facility may conditionally hire an administrator, caregiver, or staff person directly or by contract, pending the result of the Washington state name and date of birth background check, provided that the enhanced services facility:

(1) Submits the background authorization form for the person to the department no later than one business day after he or she starts working;

(2) Requires the person to sign a disclosure statement indicating if he or she has a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-107-1290;

(3) Has received three positive references for the person;

(4) Does not allow the person to have unsupervised access to any resident;

(5) Ensures direct supervision of the administrator, all caregivers, and staff persons; and

(6) Ensures that the person is competent, and receives the necessary training to perform assigned tasks and meets the training requirements under chapter 388-112 WAC.

NEW SECTION

WAC 388-107-1270 Background checks—Employment—Provisional hire—Pending results of national fingerprint background check. The enhanced services facility may provisionally employ a caregiver and an administrator hired after January 7, 2012, for one hundred twenty-days and allow the caregiver or administrator to have unsupervised access to residents when:

(1) The caregiver or administrator is not disqualified based on the results of the Washington state name and date of birth background check; and

(2) The results of the national fingerprint background check are pending.

NEW SECTION

WAC 388-107-1280 Background check—Disclosure statement. (1) The enhanced services facility must require each administrator, caregiver, staff person, volunteer and student, prior to starting his or her duties, to make disclosures of any crimes or findings consistent with RCW 43.43.834(2). The disclosures must be in writing and signed by the person under penalty of perjury.

(2) The department may require the enhanced services facility or any administrator, caregiver, staff person, volunteer or student to complete additional disclosure statements or background authorization forms if the department has reason to believe that a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-107-1290 have occurred since completion of the previous disclosure statement or background check.

NEW SECTION

WAC 388-107-1290 Background check—Employment-disqualifying information—Disqualifying negative actions. (1) The enhanced services facility must not employ an administrator, caregiver, or staff person, to have unsupervised access to residents, as defined in RCW 43.43.830, the individual has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, unless the individual is eligible for an exception under WAC 388-113-0040.

(2) The enhanced services facility must not employ an administrator, caregiver, or staff person, or allow an administrator, caregiver, or staff person to have unsupervised access to residents, as defined in RCW 43.43.830, if the individual has one or more of the following disqualifying negative actions:

(a) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;

(b) The individual is a registered sex offender;

(c) The individual is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by Adult Protective Services prior to October 2003;

(d) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by child protective services prior to October 1, 1998;

(e) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;

(f) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;

(g) The person has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or

(h) The person has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial, exploitation or mistreatment of a child or vulnerable adult.

NEW SECTION

WAC 388-107-1300 Background checks—Employment—Non-disqualifying information. (1) If the background check results show that an employee or prospective employee has a criminal conviction or pending charge for a crime that is not a disqualifying crime under chapter 388-113 WAC, then the enhanced services facility must determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the enhanced services facility.

NEW SECTION

WAC 388-107-1310 Background check—Confidentiality—Use restricted—Retention. The enhanced services facility must ensure that all disclosure statements, background authorization forms, background check results and related information are:

(1) Maintained on-site in a confidential and secure manner;

(2) Used for employment purposes only;

(3) Not disclosed to anyone except to the individual, authorized state and federal employees, the Washington state patrol auditor, persons or health care facilities authorized by chapter 43.43 RCW; and

(4) Retained and available for department review during the individual's employment or association with a facility and for at least two years after termination of the employment or association.

Annual Renewal of License/Change in Bed CapacityNEW SECTION

WAC 388-107-1320 Annual renewal. To renew an enhanced services facility license, the enhanced services facility must, when renewal of license notification is received, submit the annual license fee, at least thirty days prior to the license expiration date.

NEW SECTION

WAC 388-107-1330 Changes in licensed bed capacity. To change the licensed bed capacity in an enhanced services facility, the enhanced services facility must:

- (1) Be sixteen beds or less;
- (2) Have met the applicable building requirements;
- (3) Submit a completed request for approval to the department at least one week before the intended change;
- (4) Submit the prorated fee for additional beds if applicable; and
- (5) Post an amended license obtained from the department, indicating the new bed capacity.

Change of Licensee/OwnershipNEW SECTION

WAC 388-107-1340 Change in licensee/change of ownership—When change in licensee is required. The licensee of an enhanced services facility must change whenever the following events occur:

- (1) The licensee's form of legal organization is changed (e.g., a sole proprietor forms a partnership or corporation);
- (2) The licensee transfers ownership of the enhanced services facility business enterprise to another party regardless of whether ownership of some or all of the real property and/or personal property assets of the enhanced services facility is also transferred;
- (3) The licensee dissolves, consolidates or merges with another legal organization and the licensee's legal organization does not survive;
- (4) If, during any continuous twenty-four-month period, fifty percent or more of the "licensed entity is transferred, whether by a single transaction or multiple transactions, to:
 - (a) A different person (e.g., new or former shareholders or partners); or
 - (b) A person that had less than a five percent ownership interest in the enhanced services facility at the time of the first transaction.
- (5) Any other event or combination of events that results in a substitution, elimination, or withdrawal of the licensee's control of the enhanced services facility. As used in this section, "**control**" means the possession, directly or indirectly, of the power to direct the management, operation and/or policies of the licensee or enhanced services facility, whether through ownership, voting control, by agreement, by contract or otherwise.

NEW SECTION

WAC 388-107-1350 Change in licensee/change of ownership—When change in licensee not required. The licensee is not required to change when only the following, without more, occur:

- (1) The licensee contracts with a party to manage the enhanced services facility enterprise for the licensee pursuant to an agreement as specified in WAC 388-107-1630; or
- (2) The real property or personal property assets of the enhanced services facility are sold or leased, or a lease of the real property or personal property assets is terminated, as long as there is not a substitution or substitution of control of the licensee or enhanced services facility.

NEW SECTION

WAC 388-107-1360 Change in licensee/change of ownership—Application. (1) The prospective licensee must complete, sign and submit to the department a change of ownership application prior to the proposed date of change in licensee.

(2) The annual enhanced services facility license fee, if a license fee is due, must accompany the change in ownership application.

(3) The prospective licensee must submit, along with the change of ownership application, the following information:

- (a) Evidence of control of the real estate on which the enhanced services facility is located, such as a purchase and sales agreement, lease contract, or other appropriate document; and
- (b) Any other information requested by the department.
- (4) The prospective licensee must submit the completed application to the department within the applicable timeframes of WAC 388-107-1400 or 388-107-1410.

NEW SECTION

WAC 388-107-1370 Change in licensee/change of ownership—Revised application. The prospective licensee must submit a revised application to the department if:

- (1) Any information included on the original application is no longer accurate; or
- (2) Requested by the department.

NEW SECTION

WAC 388-107-1380 Change in licensee/change of ownership—Notice to department and residents. (1) In order to change the licensee of an enhanced services facility, the current licensee must notify the following in writing of the proposed change in licensee:

- (a) The department; and
- (b) All residents, or resident representatives (if any).
- (2) The licensee must include the following information in the written notice:
 - (a) Name of the present licensee and prospective licensee;
 - (b) Name and address of the enhanced services facility for which the licensee is being changed; and
 - (c) Date of proposed change.

NEW SECTION

WAC 388-107-1390 Change in licensee/change of ownership—Relinquishment of license. (1) On the effective date of the change in licensee, the current enhanced services facility licensee is required to relinquish its enhanced services facility license.

(2) To relinquish a license, the licensee must mail to the department the enhanced services facility license along with a letter, addressed to the department, stating licensee's intent to relinquish the enhanced services facility license to the department.

NEW SECTION

WAC 388-107-1400 Change in licensee/change of ownership—Ninety days' notice. The current enhanced services facility licensee must provide written notice to the department and residents, or resident representatives (if any), ninety calendar days prior to the date of the change of licensee, if the proposed change of enhanced services facility licensee is anticipated to result in the discharge or transfer of any resident.

NEW SECTION

WAC 388-107-1410 Change in licensee/change of ownership—Sixty days' notice. The current enhanced services facility licensee must provide written notice to the department and residents, or resident representatives (if any), at least sixty calendar days prior to the date of the change of licensee, if the proposed change of enhanced services facility licensee is not anticipated to result in the discharge or transfer of any resident.

NEW SECTION

WAC 388-107-1420 Inspections. (1) The department must make at least one inspection of each facility prior to licensure and an unannounced full inspection of facilities at least once every eighteen months. The statewide average interval between full facility inspections must be fifteen months.

(2) Any duly authorized officer, employee, or agent of the department may enter and inspect any facility at any time to determine that the facility is in compliance with this chapter and applicable rules, and to enforce any provision of this chapter. Complaint inspections must be unannounced and conducted in such a manner as to ensure maximum effectiveness. No advance notice must be given of any inspection unless authorized or required by federal law.

(3) During inspections, the facility must give the department access to areas, materials, and equipment used to provide care or support to residents, including resident and staff records, accounts, and the physical premises, including the buildings, grounds, and equipment. The department has the authority to privately interview the provider, staff, residents, and other individuals familiar with resident care and treatment.

(4) Any public employee giving advance notice of an inspection in violation of this section must be suspended

from all duties without pay for a period of not less than five nor more than fifteen days.

(5) The department must prepare a written report describing the violations found during an inspection, and must provide a copy of the inspection report to the facility.

(6) The facility must develop a written plan of correction for any violations identified by the department and provide a plan of correction to the department within ten working days from the receipt of the inspection report.

(7) The facility must ensure the administrator or the administrator's designee is available during any inspection or complaint investigation to respond to questions or issues identified by department staff.

NEW SECTION

WAC 388-107-1422 Denial, suspension, revocation, or nonrenewal of license statutorily required. (1) The department must deny, suspend, revoke, or refuse to renew an enhanced services facility license if any person described in subsection (2) of this section is found by the department to have:

(i) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;

(ii) The individual is a registered sex offender;

(iii) The individual is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003;

(iv) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by child protective services prior to October 1, 1998;

(v) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;

(vi) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;

(vii) The person has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or

(viii) The person has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.

(2) This section applies to any enhanced services facility:

(a) Applicant;

(b) Partner, officer or director;

(c) Manager or managerial employee; or

(d) Owner of five percent or more of the applicant:

(i) Who is involved in the operation of the enhanced services facility; or

(ii) Who controls or supervises the provision of care or services to the enhanced services facility residents; or

(iii) Who exercises control over daily operations.

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

NEW SECTION

WAC 388-107-1430 Enforcement authority—Penalties and sanctions. (1) In any case in which the department finds that a licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, managing employee, any person who may have unsupervised access to residents or failed or refused to comply with the requirements of this chapter or the rules established under them, the department may take any or all of the following actions:

(a) Suspend, revoke, or refuse to issue or renew a license;

(b) Order stop placement; or

(c) Assess civil monetary penalties.

(2) The department may suspend, revoke, or refuse to renew a license, assess civil monetary penalties, or both, in any case in which it finds that the licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, or managing employee:

(a) Operated a facility without a license or under a revoked or suspended license;

(b) Knowingly or with reason to know made a false statement of a material fact in the license application or any data attached thereto, or in any matter under investigation by the department;

(c) Refused to allow representatives or agents of the department to inspect all books, records, and files required to be maintained or any portion of the premises of the facility;

(d) Willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter;

(e) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or of the rules adopted under it; or

(f) Failed to pay any civil monetary penalty assessed by the department under this chapter within ten days after the assessment becomes final.

(3)(a) Civil penalties collected under this chapter must be deposited into a special fund administered by the department.

(b) Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day the facility is or was out of compliance. Civil monetary penalties must not exceed three thousand dollars per day. Each day upon which the same or a substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.

(4) The department may use the civil penalty monetary fund for the protection of the health or property of residents of facilities found to be deficient including:

(a) Payment for the cost of relocation of residents to other facilities;

(b) Payment to maintain operation of a facility pending correction of deficiencies or closure; and

(c) Reimbursement of a resident for personal funds or property loss.

(5)(a) The department may issue a stop placement order on a facility, effective upon oral or written notice, when the department determines:

(i) The facility no longer substantially meets the requirements of this chapter; and

(ii) The deficiency or deficiencies in the facility:

(A) Jeopardizes the health and safety of the residents; or

(B) Seriously limits the facility's capacity to provide adequate care.

(b) When the department has ordered a stop placement, the department may approve a readmission to the facility from a hospital, residential treatment facility, or crisis intervention facility when the department determines the readmission would be in the best interest of the individual seeking readmission.

(6) If the department determines that an emergency exists and resident health and safety is immediately jeopardized as a result of a facility's failure or refusal to comply with this chapter, the department may summarily suspend the facility's license and order the immediate closure of the facility, or the immediate transfer of residents, or both.

(7) If the department determines that the health or safety of the residents is immediately jeopardized as a result of a facility's failure or refusal to comply with requirements of this chapter, the department may appoint temporary management to:

(a) Oversee the operation of the facility; and

(b) Ensure the health and safety of the facility's residents while:

(i) Orderly closure of the facility occurs; or

(ii) The deficiencies necessitating temporary management are corrected.

NEW SECTION

WAC 388-107-1432 Circumstances that may result in enforcement remedies. (1) The department is authorized to impose enforcement remedies described in WAC 388-107-1440 if any person described in subsection (2) of this section is found by the department to have:

(a) A history of significant noncompliance with federal or state laws or regulations in providing care or services to frail elders, vulnerable adults or children, whether as a licensee, contractor, managerial employee or otherwise. Evidence of significant noncompliance may include, without limitation:

(i) Citations for violation of laws or regulations imposed by regulating entities;

(ii) Sanctions for violation of laws or regulations imposed by regulating entities;

(iii) Involuntary termination, cancellation, suspension, or nonrenewal of a Medicaid contract or Medicare provider agreement, or any other agreement with a public agency for the care or treatment of children, frail elders or vulnerable adults;

(iv) Been denied a license or contract relating to the care of frail elders, vulnerable adults or children; or

(v) Relinquished or failed to renew a license or contract relating to care of frail elders, vulnerable adults or children following written notification of the licensing agency's initiation of denial, suspension, cancellation or revocation of a license.

(b) Failed to provide appropriate care to frail elders, vulnerable adults or children under a contract, or having such contract terminated or not renewed by the contracting agency due to such failure;

(c) Failed or refused to comply with the requirements of chapter 70.97 RCW, applicable provisions of chapter 70.96A and 71.05 RCW or this chapter;

(d) Retaliated against a staff person, resident or other individual for:

(i) Reporting suspected abuse, neglect, financial exploitation, or other alleged improprieties;

(ii) Providing information to the department during the course of an inspection of the enhanced services facility; or

(iii) Providing information to the department during the course of a complaint investigation in the enhanced services facility.

(e) Operated a facility for the care of children or vulnerable adults without a current, valid license or under a defunct or revoked license;

(f) Attempted to obtain a contract or license from the department by fraudulent means or by misrepresentation;

(g) A conviction or pending charge for a crime that is not automatically disqualifying under chapter 388-113 WAC, but that:

(i) Was committed on an enhanced services facility premises; or knowingly permitted, aided or abetted an illegal act on an enhanced services facility premises;

(ii) Involved the illegal use of drugs or the excessive use of alcohol; or

(iii) Is reasonably related to the competency of the person to operate an enhanced services facility.

(h) Abused, neglected or exploited a vulnerable adult;

(i) Had a sanction or corrective or remedial action taken by federal, state, county or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(j) Failed to report alleged abuse, neglect or exploitation of a vulnerable adult in violation of chapter 74.34 RCW;

(k) Failed to exercise fiscal accountability and responsibility involving a resident, the department, public agencies, or the business community; or to have insufficient financial resources or unencumbered income to sustain the operation of the enhanced services facility;

(l) Knowingly or with reason to know, made false statements of material fact in the application for the license or the renewal of the license or any data attached thereto, or in any matter under investigation by the department;

(m) Willfully prevented or interfered with or attempted to impede in any way any inspection or investigation by the department, or the work of any authorized representative of the department or the lawful enforcement of any provision of this chapter;

(n) Refused to allow department representatives or agents to examine any part of the licensed premises including the books, records and files required under this chapter;

(o) Moved all residents out of the enhanced services facility without the department's approval and appears to be no longer operating as an enhanced services facility; or

(p) Demonstrated any other factors that give evidence the applicant lacks the appropriate character, suitability and competence to provide care or services to vulnerable adults.

(2) This section applies to any enhanced services facility:

(a) Applicant;

(b) Partner, officer or director;

(c) Manager or managerial employee; or

(d) Majority owner of the applicant or licensee:

(i) Who is involved in the management or operation of the enhanced services facility;

(ii) Who may have direct access to enhanced services facility residents;

(iii) Who controls or supervises the provision of care or services to enhanced services facility residents; or

(iv) Who exercises control over daily operations of the enhanced services facility.

(3) For other circumstances resulting in discretionary enforcement remedies, see WAC 388-107-1430.

NEW SECTION

WAC 388-107-1440 Enforcement orders—Hearings.

(1) All orders of the department denying, suspending, or revoking the license or assessing a monetary penalty must become final twenty days after the same has been served upon the applicant or licensee unless a hearing is requested.

(2) All orders of the department imposing stop placement, temporary management, emergency closure, emergency transfer, or summary license suspension must be effective immediately upon notice, pending any hearing.

(3) Subject to the requirements of subsection (2) of this section, all hearings under this chapter and judicial review of such determinations must be in accordance with the administrative procedure act, chapter 34.05 RCW and chapter 388-02 WAC.

Resident Protection Program

NEW SECTION

WAC 388-107-1450 Resident protection program definition. As used in WAC 388-107-1460 through 388-107-1550, the term "**individual**," means anyone used by the enhanced services facility to provide services to residents who is alleged to have abandoned, abused, neglected, or misappropriated property of a resident or financially exploited a resident. "individual" includes, but is not limited to, employees, contractors, and volunteers.

NEW SECTION

WAC 388-107-1460 Investigation of mandated reports. (1) The department will review all allegations of resident abandonment, abuse, neglect, or financial exploitation, or misappropriation of resident property, as those terms are defined in chapter RCW 74.34.020.

(2) If, after the review of an allegation, the department concludes that there is reason to believe that an individual has

abandoned, abused, neglected, or financially exploited a resident, or has misappropriated a resident's property, then the department will initiate an investigation.

(3) The department's investigation may include, but is not limited to:

- (a) The review of facility and state agency records;
- (b) Interviews with anyone who may have relevant information about the allegation; and
- (c) The collection of any evidence deemed necessary by the investigator.

NEW SECTION

WAC 388-107-1470 Preliminary finding. If, after review of the results of the investigation, the department determines that an individual has abandoned, abused, neglected, or financially exploited a resident, or has misappropriated a resident's property, the department will make a preliminary finding to that effect. However, a preliminary finding of neglect will not be made if the individual demonstrates that the neglect was caused by factors beyond the control of the individual.

NEW SECTION

WAC 388-107-1480 Notice to individual of preliminary findings. (1) The department will serve notice of the preliminary finding as provided in WAC 388-107-1560.

(2) The department may establish proof of service as provided in WAC 388-107-1570.

NEW SECTION

WAC 388-107-1490 Notice to others of preliminary findings. Consistent with confidentiality requirements concerning the resident, witnesses, and the reporter, the department may provide notification of a preliminary finding to:

- (1) Other divisions within the department;
- (2) The agency, program or employer where the incident occurred;
- (3) The employer or program that is currently associated with the individual;
- (4) Law enforcement;
- (5) Other entities as authorized by law including chapter 74.34 RCW and this chapter; and
- (6) The appropriate licensing agency.

NEW SECTION

WAC 388-107-1500 Disputing a preliminary finding.

(1) The individual may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date of mailing the notice of the preliminary finding; except under the circumstances described in subsection (4).

(4) If an individual requests a hearing within one hundred eighty days of the date of the notice of the preliminary

finding and the individual can demonstrate good cause for failing to request a hearing within thirty days, the office of administrative hearings may grant the request. Under these circumstances, the finding against the individual will remain on the department's registry pending the outcome of the hearing.

NEW SECTION

WAC 388-107-1510 Hearing procedures to dispute preliminary finding. Upon receipt of a written request for a hearing from an individual, the office of administrative hearings will schedule a hearing, taking into account the following requirements:

(1) The hearing decision must be issued within one hundred twenty days of the date the office of administrative hearings receives a hearing request, except as provided in subsection (6);

(2) Neither the department nor the individual can waive the one hundred twenty day requirement;

(3) The hearing will be conducted at a reasonable time and at a place that is convenient for the individual;

(4) The hearing, and any subsequent appeals, will be governed by this chapter, chapter 34.05 RCW, and chapter 388-02 WAC, or its successor regulations;

(5) A continuance may be granted for good cause upon the request of any party, as long as the hearing decision can still be issued within one hundred twenty days of the date of the receipt of the appeal, except under the circumstances described in subsection 6;

(6) If the administrative law judge finds that extenuating circumstances exist that will make it impossible to render a decision within one hundred twenty days, the administrative law judge may extend the one hundred twenty day requirement by a maximum of sixty days; and

(7) To comply with the time limits described in this section, the individual must be available for the hearing and other preliminary matters. If the decision is not rendered within the time limit described in subsection (1), or if appropriate under subsection (6), the administrative law judge must issue an order dismissing the appeal and the preliminary finding will become final.

NEW SECTION

WAC 388-107-1520 Finalizing the preliminary finding. (1) The preliminary finding becomes a final finding when:

(a) The department notifies the individual of a preliminary finding and the individual does not ask for an administrative hearing within the time frame provided under WAC 388-107-1510;

(b) The individual requested an administrative hearing to appeal the preliminary finding and the administrative law judge:

(i) Dismisses the appeal following withdrawal of the appeal or default;

(ii) Dismisses the appeal for failure to comply with the time limits under WAC 388-107-1510; or

(iii) Issues an initial order upholding the finding; or

(c) The board of appeals reverses an administrative law judge's initial order and issues a final order upholding the preliminary finding.

(2) A final finding is permanent, except under the circumstances described in (3).

(3) A final finding may be removed from the department's registry and, as appropriate, any other department lists under the following circumstances:

- (a) The department determines the finding was made in error;
- (b) The finding is rescinded following judicial review; or
- (c) The department is notified of the individual's death.

NEW SECTION

WAC 388-107-1530 Reporting final findings. The department will report a final finding of abandonment, abuse, neglect, financial exploitation of a resident, and misappropriation of resident property within ten working days to the following:

- (1) The individual;
- (2) The current administrator of the facility in which the incident occurred;
- (3) The administrator of the facility that currently employs the individual, if known;
- (4) The department's registry;
- (5) The appropriate licensing authority; and
- (6) Any other lists maintained by a state or federal agency as appropriate.

NEW SECTION

WAC 388-107-1540 Appeal of administrative law judge's initial order or finding. (1) If the individual or the department disagrees with the administrative law judge's decision, either party may appeal this decision by filing a petition for review with the department's board of appeals as provided under chapter 34.05 RCW and chapter 388-02 WAC.

(2) If the individual appeals the administrative law judge's decision, the finding will remain on the department's registry or other lists.

NEW SECTION

WAC 388-107-1550 Disclosure of investigative and finding information. (1) Information obtained during the investigation into allegations of abandonment, abuse, neglect, misappropriation of property, or financial exploitation of a resident, and any documents generated by the department will be maintained and disseminated with regard for the privacy of the resident and any reporting individuals and in accordance with laws and regulations regarding confidentiality and privacy.

(2) Confidential information about residents and mandated reporters provided to the individual by the department must be kept confidential and may only be used by the individual to challenge findings through the appeals process.

(3) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the residents will be redacted from the documents unless

release of that information is consistent with chapter 74.34 RCW and other applicable state and federal laws.

General Notice Requirements

NEW SECTION

WAC 388-107-1560 Notice—Service complete. Service of the department notices is complete when:

- (1) Personal service is made;
- (2) The notice is addressed to the individual or facility at his or her last known address, and deposited in the United States mail;
- (3) The notice is faxed and the department receives evidence of transmission;
- (4) Notice is delivered to a commercial delivery service with charges prepaid; or
- (5) Notice is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 388-107-1570 Notice—Proof of service. The department may establish proof of service by any of the following:

- (1) A declaration of personal service;
- (2) An affidavit or certificate of mailing to the enhanced services facility or to the individual to whom notice is directed;
- (3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or
- (4) Proof of fax transmission.

Policies

NEW SECTION

WAC 388-107-1580 Policies and procedures. (1) The enhanced services facility must develop and implement written policies and procedures for all treatment, care and services provided in the facility.

(2) The enhanced services facility must train staff persons on implementation of all the policies and procedures.

(3) The facility must ensure that the policies and procedures include, at a minimum the following:

- (a) Transitioning new residents;
- (b) Security precautions to meet the safety needs of the residents and the surrounding community;
- (c) Delayed egress, when used by the facility;
- (d) Crisis prevention and response protocol;
- (e) Discharge planning;
- (f) Compliance with resident rights, consistent with WAC 388-107-0190;
- (g) Suspected abandonment, abuse, neglect, exploitation, or financial exploitation of any resident;
- (h) Situations in which there is reason to believe a resident is not capable of making necessary decisions and no substitute decision maker is available;
- (i) Situations in which a substitute decision maker is no longer appropriate;

(j) Situations in which a resident stops breathing or a resident's heart appears to stop beating, including, but not limited to, any action staff persons must take related to advance directives and emergency care;

(k) Response to medical emergencies;

(l) Urgent situations in the enhanced services facility requiring additional staff support;

(m) Appropriate responses to residents engaging in aggressive or assaultive behavior, including, but not limited to:

(i) Preventive actions for a behavioral crisis or violent behavior to ensure the safety of residents and the community;

(ii) Actions to take to protect other residents;

(iii) When and how to seek outside intervention;

(iv) Training on de-escalation techniques for managing resident's challenging behavior before it reaches the stage of physical aggression or assault;

(v) Techniques for staff to use in response to aggressive behaviors when de-escalation techniques have not succeeded;

(vi) Evaluation of the safety of the physical environment;

(vii) Issues of respect and dignity of the client; and

(viii) Use of the least restrictive physical and behavioral interventions depending upon the situation, including use of holding techniques to physically restrain residents.

(n) Preventing and limiting the spread of infections, including tuberculosis, consistent with WACs 388-107-0440;

(o) Providing sub-acute detoxification services approved by an authorized health care provider and ensuring resident health and safety;

(p) Prohibition of restraints, except when medically necessary;

(q) Use of medications, including marijuana, for staff or residents;

(r) Presence of firearms in the facility, including provisions for keeping firearms locked and accessible only to authorized persons;

(s) Safe transportation of residents and the qualifications of the drivers;

(t) Management of pets in the enhanced services facility;

(u) Medication process for resident outings; and

(v) Medications to include:

(i) Medication services;

(ii) Pharmacy services;

(iii) Storing, securing and accounting for medications;

(iv) Resident controlled medications; and

(v) Medication refusals, including refusals of court ordered medication.

(w) Are reviewed and updated annually.

(4) The enhanced services facility must make the policies and procedures specified in subsection (3) of this section available to staff persons at all times and must inform residents and residents' representatives of their availability and make them available upon request.

NEW SECTION

WAC 388-107-1590 Emergency response teams. (1) The enhanced services facility must have a plan in place to

address emergency responses to behavioral crisis in order to protect the residents, staff and community.

(2) The enhanced services facility must develop a policy of emergency response notification, including after-hours notification. Subjects of notification may include:

(a) Law enforcement;

(b) Chemical dependency or mental health professional;

(c) Emergency medical personnel;

(d) Program administrator and supervisor;

(e) Resident's case manager; and

(f) Facility treatment team.

NEW SECTION

WAC 388-107-1600 Emergency disaster plan. (1) The enhanced services facility must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum, the enhanced services facility must ensure these plans provide for:

(a) Fire or smoke;

(b) Severe weather;

(c) Loss of power;

(d) Earthquake;

(e) Explosion;

(f) Missing resident, elopement;

(g) Loss of normal water supply;

(h) Bomb threats;

(i) Armed individuals;

(j) Gas leak, or loss of service;

(k) Loss of heat supply;

(l) Accounting for residents during a disaster; and

(m) Plans for evacuation of the facility.

(2) The enhanced services facility must train all employees in emergency procedures when they begin work in the enhanced services facility, periodically review emergency procedures with existing staff, and carry out unannounced staff drills using those procedures.

(3) The enhanced services facility must ensure emergency plans:

(a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;

(b) Are reviewed annually;

(c) Include plans to continue to serve and meet the needs of the residents during the emergency; and

(d) Include evacuation routes prominently posted on each unit.

NEW SECTION

WAC 388-107-1610 Pets. (1) Each resident must have a reasonable opportunity to have regular contact with animals, if desired.

(2) The enhanced services facility must:

(a) Consider the recommendations of enhanced services facility residents and staff;

(b) Determine how to provide resident's access to animals;

(c) Determine the type and number of animals available in the facility, which the facility can safely manage. Such ani-

mals should include only those customarily considered domestic pets;

(d) Ensure that any resident's rights, preferences, and medical needs are not compromised by the presence of an animal; and

(e) Ensure any animal visiting or living on the premises has a suitable temperament, is healthy, and otherwise poses no significant health or safety risks to residents, staff, or visitors.

(3) Animals living on the enhanced services facility premises must:

(a) Have regular examinations and immunizations, appropriate for the species, by a veterinarian licensed in Washington state; and

(b) Be veterinarian certified to be free of diseases transmittable to humans.

(4) Pets must be restricted from:

(a) Central food preparation areas; and

(b) Residents who object to the presence of pets.

NEW SECTION

WAC 388-107-1620 Management agreements/subcontracting staff. (1) If the proposed or current licensee uses a manager, the licensee must have a written management agreement approved by the department that is consistent with this chapter.

(2) The proposed or current licensee must notify the department of its use of a manager upon:

(a) Initial application for a license;

(b) Retention of a manager following initial application;

(c) Change of managers; and

(d) Modification of existing management agreement.

(3) The proposed or current licensee must provide a written management agreement, including an organizational chart showing the relationship between the proposed or current licensee, management company, and all related organizations.

(4) The written management agreement must be submitted:

(a) Sixty days before:

(i) The initial licensure date;

(ii) The proposed change of ownership date; or

(iii) The effective date of the management agreement; or

(b) Thirty days before the effective date of any amendment to an existing management agreement.

(5) The proposed licensee or the current licensee must notify the residents and their representatives sixty days before entering into a management agreement.

NEW SECTION

WAC 388-107-1630 Management agreements—Licensee. (1) The licensee is responsible for:

(a) The daily operations and provisions of services in the enhanced services facility;

(b) Ensuring the enhanced services facility is operated in a manner consistent with all laws and rules applicable to enhanced services facilities;

(c) Ensuring the manager acts in conformance with a department approved management agreement; and

(d) Ensuring the manager does not represent itself as, or give the appearance that it is the licensee.

(2) The licensee must not give the manager responsibilities that are so extensive that the licensee is relieved of daily responsibility for the daily operations and provision of services in the enhanced services facility. If the licensee does so, then the department must determine that a change of ownership has occurred.

(3) The licensee and manager must act in accordance with the terms of the department-approved management agreements. If the department determines they are not, then the department may take licensing action.

(4) The licensee may enter into a management agreement only if the management agreement creates a principal/agent relationship between the licensee and manager.

NEW SECTION

WAC 388-107-1640 Management agreements—Terms of agreement. Management agreements, at a minimum must:

(1) Describe the responsibilities of the licensee and manager, including items, services, and activities to be provided;

(2) Require the licensee's governing body, board of directors, or similar authority to appoint the facility administrator;

(3) Provide for the maintenance and retention of all records in accordance with this chapter and other applicable laws;

(4) Allow unlimited access by the department to documentation and records according to applicable laws or regulations;

(5) Require the manager to immediately send copies of inspections and notices of noncompliance to the licensee;

(6) State that the licensee is responsible for reviewing, acknowledging and signing all enhanced services facility initial and renewal license applications;

(7) State that the manager and licensee will review the management agreement annually and notify the department of any change according to applicable regulations;

(8) Acknowledge that the licensee is the party responsible for complying with all laws and rules applicable to enhanced services facilities;

(9) Require the licensee to maintain ultimate responsibility over personnel issues relating to the operation of the enhanced services facility and care of the residents, including but not limited to, staffing plans, orientation and training;

(10) State the manager will not represent itself, or give the appearance it is the licensee; and

(11) State that a duly authorized manager may execute resident agreements on behalf of the licensee, but all such resident agreements must be between the licensee and the resident.

NEW SECTION

WAC 388-107-1650 Management agreements—Department review. Upon receipt of a proposed management agreement, the department may require:

(1) The proposed or current licensee or manager to provide additional information or clarification;

(2) Any changes necessary to:

(a) Bring the management agreement into compliance with this chapter; and

(b) Ensure that the licensee has not been relieved of the responsibility for the daily operations of the facility.

(3) The licensee to participate in monthly meetings and quarterly on-site visits to the enhanced services facility.

NEW SECTION

WAC 388-107-1660 Management agreements—Resident funds. (1) If the management agreement delegates day-to-day management of resident funds to the manager, the licensee:

(a) Retains all fiduciary and custodial responsibility for funds that have been deposited with the enhanced services facility by the resident;

(b) Is directly accountable to the residents for such funds; and

(c) Must ensure any party responsible for holding or managing residents' personal funds is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds; and provides proof of bond or insurance.

(2) If responsibilities for the day-to-day management of the resident funds are delegated to the manager, the manager must:

(a) Provide the licensee with a monthly accounting of the resident funds; and

(b) Meet all legal requirements related to holding, and accounting for, resident funds.

WSR 14-21-001
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Securities Division)

[Filed October 1, 2014, 1:31 p.m., effective November 1, 2014]

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

Purpose: The rules in new chapter 460-99C WAC adopted hereby implement the new exemption from securities registration created by the Washington Jobs Act of 2014 for crowdfunding offerings. The rules define key terms pertaining to the crowdfunding exemption; specify the types of issuers and offerings that may use the exemption; mandate the use of the Washington Crowdfunding Form as the disclosure document for offerings under the exemption; establish the requirements for making an initial exemption filing, an amended filing, or a renewal filing with the securities division; establish the requirements for escrow agreements; specify the information to be included in quarterly reports; adopt investor protection measures such as bad actor disqualification and investor cancellation rights; describe the optional role of "portals" in assisting with crowdfunding offerings; establish recordkeeping requirements; require the filing of advertisements; set filing fees; describe the various restrictions on crowdfunding offerings under the Washington Jobs Act of 2014; and establish other rules necessary to implement the crowdfunding exemption.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886.

Other Authority: ESHB 2023.

Adopted under notice filed as WSR 14-17-073 on August 18, 2014.

Changes Other than Editing from Proposed to Adopted Version:

- The securities division added language to the definition of "portal" in WAC 460-99C-020(4) to clarify that a portal files offering materials with the director on behalf of issuers or offers services to issuers as contemplated in RCW 21.20.883.
- The securities division deleted proposed WAC 460-99C-030 (5)(f)(ii) because it was inconsistent with other provisions.
- The securities division revised WAC 460-99C-130 (2)(e) and (3) to state that the escrow agent may not be affiliated with any portal assisting with the offering, or its officers, directors, managing members, or affiliates.
- The securities division removed the financial statement requirement from the quarterly reports rule at WAC 460-99C-180.
- The securities division reduced the applicable look-back period in WAC 460-99C-230 from two years to twelve months.

A final cost-benefit analysis is available by contacting Jill Vallely, Department of Financial Institutions, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, phone (360) 902-8801, fax (360) 704-7035, e-mail jill.vallely@dfi.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 26, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 1, 2014.

Scott Jarvis
Director

Chapter 460-99C WAC
CROWDFUNDING

NEW SECTION

WAC 460-99C-010 Application. The rules in this chapter apply to the exemption from registration set forth in

RCW 21.20.880 for intrastate offerings of securities exempt under section 3 (a)(11) of the federal Securities Act of 1933 and Securities and Exchange Commission Rule 147, 17 C.F.R. 230.147 (crowdfunding exemption). The rules are intended to assist Washington start-up companies in accessing capital in small securities offerings through equity crowdfunding (crowdfunding offering). Issuers may work in collaboration with organizations that qualify as portals to develop business plans, complete disclosure documents, to seek out other technical assistance, and to submit filings in connection with a public securities offering. The exemption is intended to reduce the costs and burdens of raising equity capital for small businesses without sacrificing investor protection, and to maximize the amount of offering proceeds available to the issuer for investment in the business. Issuers eligible for this exemption shall use the Washington Crowdfunding Form as the disclosure document for the offering.

NEW SECTION

WAC 460-99C-020 Definitions. (1) "Escrow agent" means a bank, trust company, savings bank, national banking association, building and loan association, mortgage banker, credit union, insurance company, an escrow agent that is registered under chapter 18.44 RCW, or any other independent escrow agent acceptable to the director. The entity acting as the escrow agent must be independently audited or examined, in a manner acceptable to the director, on a regular basis.

(2) "Local associate development organization" means a Washington associate development organization as defined in RCW 43.330.010.

(3) "Port district" means a port district formed under chapter 53.04 RCW.

(4) "Portal" means:

(a) A port district;

(b) A local associate development organization; or

(c) A broker-dealer registered with the division; that files offering materials with the director on behalf of issuers seeking to rely on the crowdfunding exemption in RCW 21.20.-880 or that offers services to issuers as contemplated in RCW 21.20.883.

(5) "Promoter" means:

(a) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly, takes initiative in founding and organizing the business or enterprise of an issuer; or

(b) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly, receives in consideration of services or property, or both services and property, ten percent or more of any class of securities of the issuer or ten percent or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this subsection if such person does not otherwise take part in founding and organizing the enterprise.

NEW SECTION

WAC 460-99C-030 Availability. (1) The crowdfunding exemption in RCW 21.20.880 is intended to allow start-up companies to raise capital in small securities offerings to Washington residents. The rules in this chapter provide for the use of a simplified offering document designed to provide adequate disclosure to investors concerning the issuer, the securities offered, and the offering itself. Certain issuers may not be able to make adequate disclosure using the simplified Washington Crowdfunding Form and will, therefore, be unable to utilize this exemption. The director finds that the Washington Crowdfunding Form is generally unsuitable for the following issuers and programs and that, therefore, they will not be allowed to utilize the crowdfunding exemption unless written permission is obtained from the director based upon a showing that adequate disclosure can be made to investors using the Washington Crowdfunding Form:

(a) Holding companies, companies whose principal purpose is owning stock in, or supervising the management of, other companies;

(b) Investment companies subject to the Investment Company Act of 1940, including private equity funds;

(c) Portfolio companies, such as real estate investment trusts;

(d) Development stage companies that either have no specific business plan or purpose or have indicated that their business plan is to engage in merger or acquisition with an unidentified company or companies or other entity or person;

(e) Companies with complex capital structures;

(f) Blind pools;

(g) Commodity pools;

(h) Companies engaging in petroleum exploration or production or mining or other extractive industries;

(i) Equipment leasing programs; and

(j) Real estate programs.

(2) The crowdfunding exemption is available only to a corporation or centrally managed limited liability company or limited partnership that is resident and doing business within Washington at the time of any offer or sale of securities.

(3) The aggregate purchase price of all securities offered by an issuer in an offering made pursuant to the crowdfunding exemption in RCW 21.20.880 may not exceed one million dollars.

(4) The crowdfunding exemption is available only to equity offerings by the issuer of the securities and is not available to any affiliate of that issuer or to any other person for resale of the issuer's securities. The exemption is not available to debt offerings.

(5) For the purposes of this section, "equity" includes convertible preferred stock that is authorized and issued pursuant to charter documents that provide holders of the convertible preferred stock with the following protections:

(a) A provision restricting the payment of dividends on common stock or other outstanding securities of the issuer unless comparable dividends are paid on all convertible preferred stock based on the number of common shares into which they are convertible;

(b) A liquidation preference that provides that the holders of the convertible preferred stock are entitled to receive in

preference to the holders of any outstanding common stock an amount that is at least equal to the amount at which the convertible preferred stock was purchased from the company plus any accrued but unpaid dividends;

(c) A conversion feature that allows holders of the convertible preferred stock to convert their shares into common stock of the company at any time at the conversion rate of at least one common share per share of convertible preferred stock. The preferred stock may either be participating or non-participating preferred stock;

(d) An appropriate antidilution provision providing for an adjustment of the number of shares into which such stock is convertible upon any stock split, stock dividend, or similar event. Such charter documents must also provide for a similar adjustment upon the issuance of additional common stock, preferred stock, or convertible debt by the issuer for consideration less than either the consideration paid to the company for the convertible preferred stock or the current market price for the common stock;

(e) Voting rights that provide that holders of convertible preferred stock shall be entitled to that number of votes on all matters presented to stockholders equal to the number of shares of common stock then issuable upon conversion of such shares;

(f) Voting rights that provide that as long as at least fifty percent of the convertible preferred stock issued remains outstanding, the approval by at least fifty percent of the voting interests in the outstanding shares of convertible preferred stock is required in connection with:

(i) The creation of any senior or pari passu security to the convertible preferred stock;

(ii) Any increase or decrease in the number of authorized securities;

(iii) The adoption or amendment of any incentive compensation plan;

(iv) Any adverse change to the rights, preferences, and privileges of the convertible preferred stock;

(v) Any redemption, repurchase, or other acquisition for value of any of the company's equity securities, other than from present or former consultants, directors, or employees pursuant to the terms of a stock option plan of the company;

(vi) Any material change in the company's line of business;

(vii) The merger, consolidation, or reorganization of the company with and into another company or entity, or of any other company or entity with and into the company;

(viii) The acquisition of a substantial portion of the assets or business of another company or entity or any other acquisition of material assets;

(ix) A sale of all or substantially all of the company's assets;

(x) Dissolution or liquidation of the company; and

(xi) Any other action materially adversely affecting the interests of the holders of the convertible preferred stock.

NEW SECTION

WAC 460-99C-040 Filing requirements. In addition to filing a properly completed Washington Crowdfunding

Form, issuers seeking to rely on the crowdfunding exemption in RCW 21.20.880 shall file the following with the division:

(1) The filing fee as prescribed in WAC 460-99C-260;

(2) The issuer's articles of incorporation or other charter documents pursuant to which the issuer is organized in this state and all amendments thereto;

(3) The issuer's by-laws or operating agreement, and all amendments thereto;

(4) A copy of any resolutions by directors setting forth terms and provisions of capital stock to be issued or by managing members setting forth terms and or capital ownership interest to be issued;

(5) The issuer's financial statements as of the end of the issuer's most recent fiscal year, prepared in accordance with generally accepted accounting principles in the United States. If the date of the most recent fiscal year end is more than ninety days prior to the date of filing, the issuer must also submit an unaudited balance sheet and unaudited statement of income or operations prepared in accordance with generally accepted accounting principles in the United States for the issuer's most recent fiscal quarter;

(6) A copy of any agreements between the issuer and any portal;

(7) A copy of the escrow agreement between the issuer and an escrow agent located in the state of Washington in which offering proceeds will be deposited;

(8) A copy of any subscription agreement for the purchase of securities in this offering;

(9) A specimen or copy of the security to be offered, including required legends, if the issuer will issue physical certificates;

(10) A copy of all advertising and other materials directed to or to be furnished to investors in this offering; and

(11) Any other document reasonably requested by the director.

NEW SECTION

WAC 460-99C-050 Information requirements. The issuer shall furnish to prospective investors, at a reasonable time prior to the sale of securities in reliance on the crowdfunding exemption in RCW 21.20.880, the most recent Washington Crowdfunding Form declared exempt by the director, including all required exhibits thereto.

NEW SECTION

WAC 460-99C-060 Declaration of exempt offering. An offering made in reliance on the crowdfunding exemption in RCW 21.20.880 shall not commence until the director has declared the offering exempt. Neither the fact that an offering has been declared exempt under RCW 21.20.880 nor the fact that a Washington Crowdfunding Form has been filed constitutes a finding by the director that any document filed under these rules is true, complete, and not misleading. Neither any such fact nor the fact that a crowdfunding exemption is available means that the director has passed in any way upon the merits of or qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective pur-

chaser, customer, or client any representation inconsistent with this section.

NEW SECTION

WAC 460-99C-070 Duration of exempt offering. A crowdfunding offering under RCW 21.20.880 may be declared exempt for a maximum of twelve months. An exempt offering may be renewed for one additional twelve-month period in accordance with WAC 460-99C-100.

NEW SECTION

WAC 460-99C-080 Pending offering—Notice of termination. The director may in his or her discretion send notice to the issuer in any pending crowdfunding offering under RCW 21.20.880 in which no action has been taken for nine months immediately prior to the sending of such notice, advising the issuer that the pending filing will be terminated thirty days from the date of sending unless on or before the termination date the issuer makes application in writing to the director showing good cause why it should be continued as a pending offering. If such application is not made or good cause not shown, the director may terminate the pending offering.

NEW SECTION

WAC 460-99C-090 Amendments to Washington Crowdfunding Form—Material changes. In an offering made in reliance on the crowdfunding exemption in RCW 21.20.880, if at any time while the offering is ongoing there is a material change that would affect the accuracy of the information contained in the Washington Crowdfunding Form after the offering is declared exempt by the director, the issuer shall amend the form. In no event shall the Washington Crowdfunding Form be revised less often than every twelve months. All amendments must first be filed with the division and be declared exempt prior to their use.

NEW SECTION

WAC 460-99C-100 Renewal filing requirements. (1) A crowdfunding offering declared exempt under RCW 21.20.880 may be renewed by filing a renewal notice no later than thirty days prior to the expiration of the original exempt offering period declared by the director.

(2) A renewal notice shall consist of the following:

(a) A report of sales as of the most recent practicable date;

(b) A copy of the issuer's updated Washington Crowdfunding Form;

(c) The issuer's financial statements as of the end of the issuer's most recent fiscal year, prepared in accordance with generally accepted accounting principles in the United States. If the date of the most recent fiscal year end is more than ninety days prior to the date of renewal, the issuer must also submit an unaudited balance sheet and unaudited statement of income or operations prepared in accordance with generally accepted accounting principles in the United States for the issuer's most recent fiscal quarter; and

(d) The filing fee prescribed in WAC 460-99C-260.

(3) A crowdfunding offering shall not be considered renewed until the director has declared the renewal offering exempt.

NEW SECTION

WAC 460-99C-110 Minimum target offering amount. (1) The issuer shall specify a minimum target offering amount and deadline to raise the minimum target offering amount in its Washington Crowdfunding Form. The issuer must demonstrate to the director that the minimum target offering amount, together with other sources of financing, is sufficient to implement the business plan of the issuer. If the proceeds are insufficient, the director may require a revised minimum target offering amount.

(2) The deadline by which the issuer must raise its minimum target offering amount may be no longer than twelve months from the date the offering is declared exempt by the director.

NEW SECTION

WAC 460-99C-120 Investor right of cancellation. (1) In an offering conducted under RCW 21.20.880, an investor may cancel an investment commitment for any reason until such time as the target minimum offering amount has been raised.

(2) If there is a material change to the terms of the offering or to the information provided by the issuer in the Washington Crowdfunding Form before the minimum target offering amount has been raised, the issuer must give or send to any investor who has made an investment commitment notice of the material change and notice that the investor may cancel an investment commitment for any reason until such time as the target minimum offering amount has been raised.

NEW SECTION

WAC 460-99C-130 Escrow agreement provisions. (1) The issuer must enter into an escrow agreement with an independent escrow agent, as defined in WAC 460-99C-020, located in the state of Washington that includes the following terms:

(a) All offering proceeds shall be maintained in an account controlled by the escrow agent;

(b) All offering proceeds will be released to the issuer only when the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the Washington Crowdfunding Form;

(c) If the proceeds do not meet the minimum requirements by the deadline set forth in the Washington Crowdfunding Form, the escrow agent must:

(i) Release and return the proceeds directly to the investors;

(ii) Pay to investors, on a pro rata basis, any interest earned on the proceeds; and

(iii) Not deduct any expenses, including fees of the escrow agent.

(d) No creditor or affiliate of the issuer, portals engaged by the issuer, or escrow agent will have any claim to the escrowed proceeds;

(e) The escrow agent agrees to maintain its independence from the issuer, any portal assisting with the offering, and the officers, directors, managing members, and affiliates of the issuer or any portal assisting with the offering.

(f) The director may inspect the records of the impound account maintained by the escrow agent at any reasonable time at the location of the records, and copy any record that is inspected.

(2) The escrow agreement must be signed by an officer of the issuer and an authorized representative of the escrow agent.

(3) The escrow agent may not be affiliated with the issuer, any portal assisting with the offering, or any officers, director, managing member, or affiliate of the issuer or any portal assisting with the offering.

NEW SECTION

WAC 460-99C-140 Issuer compliance with investor limitations. Prior to accepting investor funds or an irrevocable commitment to invest, the issuer must obtain the following from each investor:

(1) Evidence of residency of the investor in the state of Washington;

(2) A copy of the Investor Certifications and Acknowledgements Form prescribed by the director that has been either manually or electronically signed by the investor.

NEW SECTION

WAC 460-99C-150 Aggregate investment limitations. (1) In each sale of securities in reliance on the crowdfunding exemption under RCW 21.20.880, the issuer must reasonably believe that the aggregate amount of securities sold to any investor by one or more issuers offering or selling securities under the crowdfunding exemption during the twelve-month period preceding the date of the sale, together with the securities to be sold by the issuer to the investor, does not exceed the lesser of:

(a) Two thousand dollars or five percent of the annual income or net worth of the investor, whichever is greater, if either the annual income or the net worth of the investor is less than one hundred thousand dollars; or

(b) Ten percent of the annual income or net worth of the investor, as applicable, up to one hundred thousand dollars, if either the annual income or net worth of the investor is one hundred thousand dollars or more.

(2) For the purpose of determining the annual income of an investor under this section, the annual income of an investor shall be the investor's lowest annual net income out of the two most recently completed calendar or fiscal years, provided that the investor has a reasonable expectation of having at least that amount of net income in the current calendar or fiscal year.

(3) For the purpose of calculating the net worth of an investor under this section:

(a) The investor's primary residence shall not be included as an asset;

(b) Indebtedness that is secured by the investor's primary residence, up to the estimated fair market value of that primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of the sale of securities exceeds the amount outstanding sixty days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

(c) Indebtedness that is secured by the investor's primary residence in excess of the estimated fair market value of the primary residence shall be included as a liability.

NEW SECTION

WAC 460-99C-160 Evidence of residency. (1) At or before the time an issuer accepts any funds or an irrevocable commitment to invest by any person in an offering conducted in reliance on the crowdfunding exemption under RCW 21.20.880, either the issuer or an agent representing the issuer must obtain evidence of the residency of the person in the state of Washington.

(2) For purposes of subsection (1) of this section, the following is a nonexclusive list of prima facie evidence of the residency of any person provided, however, that the issuer or its agent does not have knowledge that such person is not a resident of the state of Washington:

(a) A valid driver's license, chauffeur's license, or official personal identification card issued by the state of Washington;

(b) A current Washington voter registration;

(c) A concealed weapons permit;

(d) A homeowner's insurance policy or invoice showing the address of the insured property or residence;

(e) A home utility bill (such as gas, electricity, water, garbage, landline telephone, or cable) or hook-up work order dated within the past sixty days. A utility bill or work order is not acceptable if two unrelated people are listed;

(f) Mortgage documents;

(g) A property tax bill or statement dated within the past twelve months;

(h) The person's name and address in a current phone book made by a telephone book publisher;

(i) A moorage bill or contract showing the person lives on a boat in a marina in the state of Washington;

(j) A federal or state government agency-issued check;

(k) A tribal ID that contains the person's current residential address;

(l) A filed property deed or title for the person's current residence;

(m) An auto insurance policy;

(n) A Washington state business license;

(o) Business mail dated within the past sixty days. Mail must include the person's first and last name, and must be from state or federal revenue departments, the Social Security Administration, the U.S. Treasury, or the Internal Revenue Service. It may not be addressed "in care of," "for," or "parent of";

(p) Medical records paid by insurance or a medical bill;

(q) A medicaid card or department of social and health services medical coupon;

(r) A pay stub that contains the person's name, the person's current residence address, the employer's name, and the employer's phone number or address;

(s) A professional license;

(t) A selective service card showing a Washington state address;

(u) A professionally filed tax return or filed copy sent to the person by the Internal Revenue Service for the most recent tax filing year;

(v) A W-2 form for the previous year;

(w) A Washington state vehicle registration.

NEW SECTION

WAC 460-99C-170 Restrictions on resale. (1) Securities issued in reliance on the crowdfunding exemption in RCW 21.20.880 may not be transferred by the purchaser during a one-year period beginning on the date of purchase, unless the securities are transferred:

(a) To the issuer of the securities;

(b) To an accredited investor;

(c) Pursuant to an effective registration statement under the Securities Act of Washington, chapter 21.20 RCW; or

(d) To a member of the family of the purchaser or the equivalent, or in connection with the death or divorce or other similar circumstances, in the discretion of the director.

(2) Securities issued under the crowdfunding exemption in RCW 21.20.880 are also restricted by the requirements for the federal exemption from registration for intrastate offerings under section 3 (a)(11) of the federal Securities Act of 1933, 15 U.S.C. 77c (a)(11), and securities and exchange commission Rule 147, 17 C.F.R. 230.147, including restrictions on transfer of securities by the purchaser.

Note: Rule 147 generally provides that during the period in which securities that are part of an issue are being offered and sold by the issuer, and for a period of nine months from the date of last sale by the issuer of such securities, all resales of any part of the issue, by any person, shall be made only to persons residing within the state of Washington. Issuers are cautioned to carefully review and implement safeguards to ensure their compliance with the restrictions contained in Rule 147, as well as the restrictions contained in RCW 21.20.880.

NEW SECTION

WAC 460-99C-180 Quarterly reporting requirements. For as long as securities issued under the crowdfunding exemption in RCW 21.20.880 remain outstanding, the issuer shall provide a quarterly report to the issuer's shareholders by making such report publicly accessible, free of charge, at the issuer's internet web site address within forty-five days of the end of each fiscal quarter. The report must contain the following information:

(1) Executive officer and director compensation, including specifically the cash compensation earned by the executive officers and directors since the previous report and on an annual basis, and any bonuses or other compensation, including stock options or other rights to receive equity securities of the issuer or any affiliate of the issuer, received by them;

(2) The names of the issuer's owners of twenty percent or more of a class of outstanding securities, directors, officers, managing members and/or other persons occupying similar status or performing similar functions on behalf of the issuer;

(3) A brief analysis by management of the issuer of the business operations and financial condition of the issuer.

NEW SECTION

WAC 460-99C-190 Final sales report. Upon completion of an offering made in reliance on the crowdfunding exemption in RCW 21.20.880, an issuer shall file a final sales report in the form prescribed by the director no later than thirty days after the last sale in the offering with the director that includes the following information:

(1) The time period in which the offering was open;

(2) The number of shares or units sold in the offering;

(3) The number of investors that purchased shares or units in the offering; and

(4) The dollar amount sold in the offering.

NEW SECTION

WAC 460-99C-200 Integration. (1) All sales that are part of the same offering in reliance on these rules must meet all of the terms and conditions of these rules. Offers and sales that are made more than six months before the start of an offering or are made more than six months after completion of an offering, will not be considered part of that offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under these rules, other than those offers or sales of securities under an employee benefit plan.

(2) The following factors should be considered in determining whether offers and sales should be integrated for purposes of the crowdfunding exemption under these rules:

(a) Whether the sales are part of a single plan of financing;

(b) Whether the sales involve issuance of the same class of securities;

(c) Whether the sales have been made at or about the same time;

(d) Whether the same type of consideration is received; and

(e) Whether the sales are made for the same general purpose.

NEW SECTION

WAC 460-99C-210 Activities of portals. (1) A portal shall require, at a minimum, the following information from an issuer planning a crowdfunding offering under RCW 21.20.880 prior to offering services to the issuer or forwarding the issuer's materials to the director:

(a) A description of the issuer, including type of entity, location, and business plan, if any;

(b) The issuer's intended use of proceeds from the crowdfunding offering under RCW 21.20.880;

(c) Identities of officers, directors, managing members and ten percent beneficial owners, as applicable;

(d) A description of any outstanding securities; and

(e) A description of any litigation or legal proceedings involving the issuer, its officers, directors, managing members, or ten percent beneficial owners, as applicable.

(2) Upon receipt of the information set forth in subsection (1) of this section, the portal may offer services to the issuer that the portal deems appropriate or necessary to meet the criteria for the exemption. Such activities may include:

(a) Assistance with the development of a business plan;

(b) Ministerial assistance in completion of crowdfunding exemption filings under these rules;

(c) Referral to legal services;

(d) Referral to business consulting and accounting services to assist with compiling and reporting financial information required by these rules;

(e) Other technical assistance in preparation for a crowdfunding offering by the issuer; and

(f) Submission of exemption materials to the director.

(3) Portals are prohibited from engaging in the following activities:

(a) Providing investment advice or recommendations if the portal is not registered or exempt from registration as an investment adviser;

(b) Soliciting purchases, sales, or offers to buy securities offered in connection with its services unless the portal is a broker-dealer registered with the division;

(c) Compensating employees, agents, or other persons for the solicitation of purchases, sales, or offers in connection with its services unless the portal is a broker-dealer registered with the division;

(d) Holding, managing, possessing, handling investor funds or securities, or otherwise acting in the manner of an escrow agent on behalf of an issuer; or

(e) Engaging in conduct constituting that of an underwriter or any other activity that constitutes purchasing securities for the purpose of distribution.

NEW SECTION

WAC 460-99C-220 Bad actor disqualification. (1)

The crowdfunding exemption under RCW 21.20.880 shall not be available if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner, or managing member of the issuer; any beneficial owner of twenty percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of making an exemption filing under RCW 21.20.880; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the offering of securities; or any director, executive officer or other officer participating in the offering of any such solicitor, general partner, or managing member of such solicitor:

(a) Has been convicted, within ten years before making an exemption filing under RCW 21.20.880 or five years, in the case of issuers, their predecessors, and affiliated issuers, of any felony or misdemeanor:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the securities and exchange commission or a state securities commission (or an agency or officer of a state performing like functions); or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities;

(b) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before making an exemption filing under RCW 21.20.880, that, at the time of filing, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the securities and exchange commission or a state securities commission (or an agency or officer of a state performing like functions); or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities;

(c) Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

(i) At the time of making an exemption filing under RCW 21.20.880, bars the person from:

(A) Association with an entity regulated by such commission, authority, agency, or officer;

(B) Engaging in the business of securities, insurance or banking; or

(C) Engaging in savings association or credit union activities; or

(ii) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before making an exemption filing under RCW 21.20.880;

(d) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to the Securities Act of Washington, chapter 21.20 RCW, or any other state's securities law, within five years prior to making an exemption filing for an offering under RCW 21.20.880;

(e) Is currently subject to any state administrative enforcement order or judgment entered by the Washington state administrator of securities or any other state's securities administrator within five years prior to making an exemption filing for an offering under RCW 21.20.880 or is subject to any state's administrative enforcement order or judgment in which fraud or deceit including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered

within five years prior to making an exemption filing for an offering under RCW 21.20.880;

(f) Is subject to an order of the Securities and Exchange Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) or 78o-4(c)) or section 203 (e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3 (e) or (f)) that, at the time of making an exemption filing under RCW 21.20.880:

(i) Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;

(ii) Places limitations on the activities, functions or operations of such person; or

(iii) Bars such person from being associated with any entity or from participating in the offering of any penny stock;

(g) Is subject to any order of the Securities and Exchange Commission entered within five years before making an exemption filing under RCW 21.20.880 that, at the time of filing, orders the person to cease and desist from committing or causing a violation or future violation of:

(i) Any scienter-based anti-fraud provision of the federal securities laws, including without limitation section 17 (a)(1) of the Securities Act of 1933 (15 U.S.C. 77q (a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and 17 C.F.R. 240.10b-5, section 15 (c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o (c)(1)) and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)), or any other rule or regulation thereunder; or

(ii) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e).

(h) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(i) Has filed (as a registrant or issuer), or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the securities and exchange commission that, within five years before such sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

(j) Is subject to a United States Postal Service false representation order entered within five years before the making of an exemption filing under RCW 21.20.880, or is, at the time of such filing, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

(2) For purposes of subsection (1) of this section, "final order" shall mean a written directive or declaratory statement issued by a federal or state agency described in subsection (1)(c) of this section under applicable statutory authority that provides for notice and an opportunity for hearing, which

constitutes a final disposition or action by that federal or state agency.

(3) Subsection (1) of this section shall not apply:

(a) Upon a showing of good cause and without prejudice to any other action by the director, if the director determines that it is not necessary under the circumstances that an exemption be denied;

(b) If, before the relevant filing, the court or regulatory authority that entered the relevant order, judgment or decree advises in writing (whether contained in the relevant judgment, order or decree or separately to the director or its staff) that disqualification under subsection (1) of this section should not arise as a consequence of such order, judgment, or decree; or

(c) If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed under subsection (1) of this section. An issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.

(4) For purposes of subsection (1) of this section, events relating to any affiliated issuer that occurred before the affiliation arose will be not considered disqualifying if the affiliated entity is not:

(a) In control of the issuer; or

(b) Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such event.

NEW SECTION

WAC 460-99C-230 Disqualification based on reporting failures. An issuer that has sold securities in reliance on RCW 21.20.880 and has not complied with the quarterly reporting requirements set forth in WAC 460-99C-180 during the twelve months immediately preceding the filing of the Washington Crowdfunding Form is ineligible to offer securities in reliance on RCW 21.20.880.

NEW SECTION

WAC 460-99C-240 Books and records—Inspection rights. (1) An issuer that has filed or is required to file under the crowdfunding exemption must keep and maintain written or electronic records relating to offers and sales of securities made in reliance on the crowdfunding exemption for at least six years following the termination of the offering. These records shall include:

(a) The issuer's Washington Crowdfunding Form and all exhibits, together with all amendments thereto;

(b) Evidence of residency from each investor in the offering;

(c) A manually or electronically signed copy of the Investor Certifications and Acknowledgements Form for each investor in the offering;

(d) Final sales reports filed with the director; and

(e) Quarterly reports and all other communications with shareholders.

(2) The director may access, inspect, review, copy, and remove for inspection any records described in subsection (1) of this section.

NEW SECTION

WAC 460-99C-250 Advertising—Filing requirements. (1) All advertising directed to or to be furnished to investors in an offering under RCW 21.20.880 shall be filed with the director no later than seven days prior to publication or distribution.

(2) The following forms and types of advertising are permitted without the necessity for filing or prior authorization by the administrator, unless specifically prohibited.

(a) So-called "tombstone" advertising, containing no more than the following information:

- (i) Name and address of issuer;
- (ii) Identity or title of security;
- (iii) Per unit offering price, number of shares and amount of offering;
- (iv) Brief, general description of business;
- (v) Name and address of broker-dealer or underwriter, or address where offering circular or prospectus can be obtained; and

(vi) Date of issuance.

(b) Dividend notices, proxy statements and reports to shareholders, including periodic financial reports.

(c) Sales literature, advertising or market letters prepared in conformity with the applicable regulations and in compliance with the filing requirements of the SEC, FINRA, or an approved securities exchange.

NEW SECTION

WAC 460-99C-260 Filing fees. The following fees apply to crowdfunding filings:

- (1) The fee for filing an initial Washington Crowdfunding Form with the director is six hundred dollars.
- (2) The renewal filing fee is one hundred dollars.

WSR 14-21-003

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 1, 2014, 2:36 p.m., effective November 1, 2014]

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

Purpose: Revise and update WAC 308-96A-096 to require that a natural person present an unexpired driver's license only upon initial vehicle registration.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96A-096.

Statutory Authority for Adoption: RCW 46.01.110, 46.16A.220.

Adopted under notice filed as WSR 14-17-080 on August 18, 2014.

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

Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: October 1, 2014.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-17-033, filed 8/8/06, effective 9/8/06)

WAC 308-96A-096 Registration requirements. (1) What is required when registering a vehicle in Washington?

(a) The name of each registered owner(=) (natural person or business) of the vehicle and, if the vehicle is subject to a lien or other security interest, the name of each secured party;

(b) The registered owner's primary residence street address (~~((at the choice of the registered owner,))~~) a mailing address if different from the residence address can also be given); ~~((and))~~

(c) The primary secured party's mailing address; and

(d) ~~((For natural persons))~~ When initially registering the vehicle, each registered owner who is a natural person must meet one of the following requirements:

(i) ~~((Presentation of))~~ Present an unexpired Washington state driver's license; or

(ii) ~~((Certification))~~ Certify that he or she is:

(A) A Washington resident who does not operate a motor vehicle on public roads; or

(B) Exempt from the requirement to obtain a Washington state driver's license under RCW 46.20.025((-

~~For purposes of this section, shared or joint ownership includes all registered owners shown on the active vehicle record)); or~~

(iii) Provide evidence that, in the department's view, satisfactorily demonstrates a valid and compelling reason for not being able to meet this requirement.

(2) For ~~((the))~~ purposes of this section, "present(=)" means:

(a) If registering in person, to bring and display the unexpired Washington state driver's license to the department or its agents and subagents and for each additional registered owner who is a natural person shown on the vehicle record, a photocopy of, or to provide in writing, the license number and expiration date from an unexpired Washington state driver's license.

~~(b) ((For internet transactions, to enter the license number and expiration date from an unexpired Washington state driver's license.~~

(e)) If registering by mail, to provide in writing the license number and expiration date from an unexpired Washington state driver's license.

(3) For ~~((the))~~ purposes of this section, "valid and compelling" reasons include:

(a) Driving privilege has been withdrawn by the department or a court.

(b) A co-owner is not available. Circumstances to include, but not be limited to, being incarcerated or out-of-state due to work assignment or personal need.

(c) A co-owner is deceased.

(d) Persons who are divorced and the registered owner awarded the vehicle presents a divorce decree showing the vehicle was awarded to them.

(e) Active military stationed in a foreign country or otherwise not available to provide the information.

(f) Military personnel who are at least sixteen years of age, including a spouse or dependent, who have in their immediate possession a valid driver's license issued by the jurisdiction designated as their home of record.

(g) Other reasons determined by the director or his or her designee to be valid and compelling.

(4) For ~~((the))~~ purposes of this section, a "natural person" may be a resident of this state even though that person has or claims residency in another state or intends to leave this state at some future time. ~~((A natural person will be presumed))~~ The department will presume a natural person is a resident if he or she meets at least two of the following conditions ((are met)):

(a) ~~((You maintain))~~ Maintains a residence in this state for personal use;

(b) ~~((You have))~~ Has a Washington state driver's license or a Washington state resident hunting or fishing license;

(c) ~~((You use))~~ Uses a Washington state address for federal income tax or state tax purposes;

(d) ~~((You have))~~ Has previously maintained a residence in this state for personal use and ~~((have))~~ has not established a permanent residence outside the state of Washington (for example, a person who retires and lives in a motor home or vessel which is not permanently attached to any property);

(e) ~~((You claim))~~ Claims this state as residence for obtaining eligibility to hold a public office or for judicial actions;

(f) ~~((You are))~~ Is a custodial parent with a child attending public school in this state;

(g) The department may consider factors other than those listed in this subsection to determine that a person intends to be located in or be a resident of this state. However, the department may not consider those factors alone to presume residency((:)).

~~((H))~~ (5) A natural person who is a resident of Washington may not form a corporation, trust or other entity in another jurisdiction for the purpose of evading Washington vehicle registration.

~~((5))~~ When registering a vehicle with joint or shared ownership, you must present the following for each registered owner shown on the active vehicle record:

~~((a))~~ The license number from an unexpired Washington state driver's license; or

~~((b))~~ Certification that you or the co-owner is a Washington resident who does not operate a motor vehicle on public roads; or

~~((c))~~ Certificate that you or the co-owner is exempt from the requirement to obtain a Washington driver's license under RCW 46.20.025.

WSR 14-21-017

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed October 2, 2014, 12:22 p.m., effective November 2, 2014]

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

Purpose: Chapter 246-650 WAC, Newborn screening, the rules adopt amendments from SHB 2544, chapter 18, Laws of 2014. The law requires each hospital, and all health care providers attending a birth outside of a hospital to collect and submit a sample blood specimen for all newborns no more than forty-eight hours after the birth of the newborn. The department public health lab must receive the sample blood specimen within seventy-two hours after the collection, excluding closed days.

Citation of Existing Rules Affected by this Order: Amending WAC 246-650-010, 246-650-020, and 246-650-040.

Statutory Authority for Adoption: Chapter 70.83 RCW

Adopted under notice filed as WSR 14-14-066 on June 27, 2014.

Changes Other than Editing from Proposed to Adopted Version: The board adopted the language edit in WAC 246-650-040 (2)(c) to state "The time taken by health care providers to notify parents and guardians after being notified by the department about infant screening tests that indicate a suspicion of abnormality that requires further diagnostic evaluation. Notification times will be summarized and reported in increment of days." This explains "prompt."

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: August 13, 2014.

Michelle A. Davis
Executive Director

AMENDATORY SECTION (Amending WSR 13-24-072, filed 11/26/13, effective 1/1/14)

WAC 246-650-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

For the purposes of this chapter:

(1) "Amino acid disorders" means disorders of metabolism characterized by the body's inability to correctly process amino acids or the inability to detoxify the ammonia released during the breakdown of amino acids. The accumulation of amino acids or their by-products may cause severe complications including mental retardation, coma, seizures, and possibly death. For the purpose of this chapter amino acid disorders include: Argininosuccinic acidemia (ASA), citrullinemia (CIT), homocystinuria (HCY), maple syrup urine disease (MSUD), phenylketonuria (PKU), and tyrosinemia type I (TYR I).

(2) "Board" means the Washington state board of health.

(3) "Biotinidase deficiency" means a deficiency of an enzyme (biotinidase) that facilitates the body's recycling of biotin. The result is biotin deficiency, which if undetected and untreated, may result in severe neurological damage or death.

(4) "Congenital adrenal hyperplasia" means a severe disorder of adrenal steroid metabolism which may result in death of an infant during the neonatal period if undetected and untreated.

(5) "Congenital hypothyroidism" means a disorder of thyroid function during the neonatal period causing impaired mental functioning if undetected and untreated.

(6) "Cystic fibrosis" means a life-shortening disease caused by mutations in the gene encoding the cystic fibrosis transmembrane conductance regulator (CFTR), a transmembrane protein involved in ion transport. Affected individuals suffer from chronic, progressive pulmonary disease and nutritional deficits. Early detection and enrollment in a comprehensive care system provides improved outcomes and avoids the significant nutritional and growth deficits that are evident when diagnosed later.

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

(8) "Fatty acid oxidation disorders" means disorders of metabolism characterized by the inability to efficiently use fat to make energy. When the body needs extra energy, such as during prolonged fasting or acute illness, these disorders can lead to hypoglycemia and metabolic crises resulting in serious damage affecting the brain, liver, heart, eyes, muscle, and possibly death. For the purpose of this chapter fatty acid oxidation disorders include: Carnitine uptake defect (CUD), long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCHADD), medium-chain acyl-CoA dehydrogenase deficiency (MCADD), trifunctional protein deficiency (TFP), and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD).

(9) "Galactosemia" means a deficiency of enzymes that help the body convert the simple sugar galactose into glucose resulting in a buildup of galactose and galactose-1-PO₄ in the blood. If undetected and untreated, accumulated galactose-1-

PO₄ may cause significant tissue and organ damage often leading to sepsis and death.

(10) "Hemoglobinopathies" means a group of hereditary blood disorders caused by genetic alteration of hemoglobin which results in characteristic clinical and laboratory abnormalities and which leads to developmental impairment or physical disabilities.

(11) "Organic acid disorders" means disorders of metabolism characterized by the accumulation of nonamino organic acids and toxic intermediates. This may lead to metabolic crisis with ketoacidosis, hyperammonemia and hypoglycemia resulting in severe neurological and physical damage and possibly death. For the purpose of this chapter organic acid disorders include: 3-OH 3-CH₃ glutaric aciduria (HMG), beta-ketothiolase deficiency (BKT), glutaric acidemia type I (GA 1), isovaleric acidemia (IVA), methylmalonic acidemia (CblA,B), methylmalonic acidemia (*mutase deficiency*) (MUT), multiple carboxylase deficiency (MCD), and propionic acidemia (PROP).

(12) "Newborn" means an infant born in ~~((a hospital))~~ any setting in the state of Washington ~~((prior to discharge from the hospital of birth or transfer))~~.

(13) "Newborn screening specimen/information form" means the information form provided by the department including the filter paper portion and associated dried blood spots. A specimen/information form containing patient information is "health care information" as ~~((defined by the Uniform Health Care Information Act, RCW 70.02.010(7)))~~ used in chapter 70.02 RCW.

(14) "Significant screening test result" means a laboratory test result indicating a suspicion of abnormality and requiring further diagnostic evaluation of the involved infant for the specific disorder.

(15) "Severe combined immunodeficiency (SCID)" means a group of congenital disorders characterized by profound deficiencies in T- and B- lymphocyte function. This results in very low or absent production of the body's primary infection fighting processes that, if left untreated, results in severe recurrent, and often life-threatening infections within the first year of life.

AMENDATORY SECTION (Amending WSR 13-24-072, filed 11/26/13, effective 1/1/14)

WAC 246-650-020 Performance of screening tests.

(1) Hospitals ~~((providing))~~ and other providers of birth and delivery services or neonatal care to infants shall:

(a) Inform parents or responsible parties, by providing a departmental information pamphlet or by other means, of:

(i) The purpose of screening newborns for congenital disorders;

(ii) Disorders of concern as listed in WAC 246-650-020(2);

(iii) The requirement for newborn screening;

(iv) The legal right of parents or responsible parties to refuse testing because of religious tenets or practices as specified in RCW 70.83.020; and

(v) The specimen storage, retention and access requirements specified in WAC 246-650-050.

(b) Obtain a blood specimen for laboratory testing as specified by the department from each newborn (~~(prior to discharge from the hospital or, if not yet discharged,)~~) no later than (~~(five days of age)~~) forty-eight hours following birth.

(c) Use department-approved newborn screening specimen/information forms and directions for obtaining specimens.

(d) Enter all identifying and related information required on the specimen/information form following directions of the department.

(e) In the event a parent or responsible party refuses to allow newborn screening, obtain signatures from parents or responsible parties on the department specimen/information form.

(f) Forward the specimen/information form with dried blood spots or signed refusal to the Washington state public health laboratory so that it will be received no later than (~~(the day after collection or refusal signature)~~) seventy-two hours following collection of the specimen, excluding any day that the state laboratory is closed.

(2) Upon receipt of specimens, the department shall:

(a) Record the time and date of receipt;

(b) Perform appropriate screening tests for:

(i) Biotinidase deficiency;

(ii) Congenital hypothyroidism;

(iii) Congenital adrenal hyperplasia;

(iv) Galactosemia;

(v) Hemoglobinopathies;

(vi) Cystic fibrosis;

(vii) The amino acid disorders: Argininosuccinic acidemia (ASA), citrullinemia (CIT), homocystinuria, maple syrup urine disease (MSUD), phenylketonuria (PKU), and tyrosinemia type I (TYR 1);

(viii) The fatty acid oxidation disorders: Carnitine uptake defect (CUD), long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCHADD), medium chain acyl-coA dehydrogenase deficiency (MCADD), trifunctional protein deficiency (TFP), and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD);

(ix) The organic acid disorders: 3-OH 3-CH₃ glutaric aciduria (HMG), beta-ketothiolase deficiency (BKT), glutaric acidemia type I (GA 1), isovaleric acidemia (IVA), methylmalonic acidemia (CblA,B), methylmalonic acidemia (*mutase deficiency*) (MUT), multiple carboxylase deficiency (MCD), propionic acidemia (PROP);

(x) Severe combined immunodeficiency (SCID);

~~((b))~~ (c) Report significant screening test results to the infant's attending physician or family if an attending physician cannot be identified; and

~~((e))~~ (d) Offer diagnostic and treatment resources of the department to physicians attending infants with presumptive positive screening tests within limits determined by the department.

(3) Once the department notifies the attending health care provider of significant screening test results, the attending health care provider shall notify the department of the date upon which the results were disclosed to the parent or guardian of the infant. This requirement expires January 1, 2020.

AMENDATORY SECTION (Amending WSR 03-24-026, filed 11/24/03, effective 12/25/03)

WAC 246-650-040 Reports to the board and the public. (1) The department shall report to the board annually the following information concerning tests conducted (~~(pursuant to)~~) under this section:

~~((1))~~ (a) The costs of tests as charged by the department;

~~((2))~~ (b) The results of each category of tests, by county of birth and ethnic group, as reported on the newborn screening form and, if available, birth certificates; and

~~((3))~~ (c) Follow-up procedures and the results of such follow-up procedures.

(2) The department shall compile an annual report for the public that includes:

(a) The compliance rate of each hospital meeting the deadlines established under RCW 70.83.020 for newborn screenings;

(b) The performance rate of each individual hospital;

(c) The time taken by health care providers to notify parents and guardians after being notified by the department about infant screening tests that indicate a suspicion of abnormality that requires further diagnostic evaluation. Notification times will be summarized and reported in increments of days.

(3) The reports must be made available in a format that does not disclose the identifying information related to any infant, parent or guardian, or health care provider.

(4) The report must be posted in an accessible location on the department of health's web site.

(5) Subsections (2) through (4) of this section expire January 1, 2020.

WSR 14-21-034

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 7, 2014, 9:03 a.m., effective November 7, 2014]

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

Purpose: This rule-making order amends WAC 16-401-060 Annual assessment—Grapevines, by adopting a ten cent per vine annual assessment limit on grapevines as a result of a petition submitted by the Washington Association of Wine Grape Growers. This is not a fee increase.

Citation of Existing Rules Affected by this Order: Amending WAC 16-401-060.

Statutory Authority for Adoption: RCW 15.13.310 and 15.14.015.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 14-17-117 on August 20, 2014.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: October 7, 2014.

Don R. Hover
Director

AMENDATORY SECTION (Amending WSR 03-09-112, filed 4/22/03, effective 5/23/03)

WAC 16-401-060 Annual assessment—Grapevines. As provided in RCW 15.13.310, an annual assessment of five percent, not to exceed \$0.10 per grapevine, on the gross sale price of the wholesale market value for all grapevine propagation material produced in Washington, and sold within the state or shipped from the state by any licensed nursery dealer, is established.

WSR 14-21-035

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 7, 2014, 9:05 a.m., effective November 7, 2014]

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

Purpose: This rule-making order amends chapter 16-462 WAC, Grape planting stock—Registration and certification, by:

- (1) Defining certification levels;
- (2) Adding grapevine virus A, grapevine red blotch virus, grapevine vein clearing virus, and *Xylella fastidiosa* as regulated pests;
- (3) Repealing the required testing for nematodes of the genus *Longidorus* prior to planting registered vines; and
- (4) Improving language clarity.

These changes are being adopted to better align with the model grapevine standard of the National Clean Plant Network as a result of a petition submitted by the Washington Association of Wine Grape Growers.

Citation of Existing Rules Affected by this Order: Amending WAC 16-462-010, 16-462-015, 16-462-020, 16-462-021, 16-462-022, 16-462-025, 16-462-030, 16-462-035, and 16-462-050.

Statutory Authority for Adoption: RCW 15.14.015.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 14-17-118 on August 20, 2014.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 9, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 9, Repealed 0.

Date Adopted: October 7, 2014.

Don R. Hover
Director

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-010 Grape planting stock program—General. (1) Grapevines or parts of grape plants may be designated as registered stock or certified stock, if they and the stock from which they were produced have been inspected, indexed, and tested in accordance with procedures and requirements outlined in this chapter and found to be in compliance with all standards and requirements established in this chapter.

(2) The issuance of a state of Washington plant tag, stamp, or other document under this chapter means only that the tagged, stamped, or otherwise documented planting stock has been subjected to standards and procedures described in this chapter and determined to be in compliance with its standards and requirements. The department disclaims all expressed or implied warranties, including without limitation, implied warranties of merchantability and fitness for particular purpose, regarding all plants, plant parts, and plant materials under this chapter.

(3) The department is not responsible for disease, genetic disorders, off-type, failure of performance, mislabeling, or otherwise, in connection with this chapter. No grower, nursery dealer, government official, or other person is authorized to give any expressed or implied warranty, or to accept financial responsibility on behalf of the department regarding this chapter.

(4) Participation in the grape planting stock certification program is voluntary.

AMENDATORY SECTION (Amending WSR 11-01-092, filed 12/15/10, effective 1/15/11)

WAC 16-462-015 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

"Certified grape planting stock" means vines, rooted cuttings, cuttings or grafted plants taken or propagated directly from foundation vines or registered vines in compliance with the provisions of this chapter.

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of the department of agriculture or the director's designee.

"Foundation block" means a planting of grapevines established, operated, and maintained by Washington State University, or other sources approved in writing by the director, that are indexed and found free from viruses designated in this chapter and that are not off-type.

"Generation 1 (G1)" means original mother plants indexed for the viruses of concern by the Clean Plant Center Northwest at Washington State University or an equivalent facility approved by the department. The Clean Plant Center Northwest web site is: <http://healthyplants.wsu.edu/grape-program-at-cpcnw/>.

"Generation 2 (G2)" means grapevines propagated from G1 mother plants and grown in accordance with the requirements of this chapter.

"Generation 3 (G3)" means grapevines propagated from G1 or G2 mother plants and grown in accordance with the requirements of this chapter.

"Generation 4 (G4)" means grapevines propagated from G1, G2, or G3 mother plants and grown in accordance with this chapter. This is material most often grown for commercial vineyards.

"Index" means testing for virus infection by making a graft with tissue from the plant being tested to an indicator plant, or by any other testing method approved by the department.

"Indicator plant" means any herbaceous or woody plant used to index or determine virus infection.

"Mother vine" means a grapevine used as a source for propagation material.

"National Clean Plant Network (NCPN)" means the national network of clean plant centers established in 2008 and supported by the United States department of agriculture. The NCPN web site is: <http://nationalcleanplantnetwork.org/>.

"Off-type" means appearing under visual examination to be different from the variety listed on the application for registration and certification, or exhibiting symptoms of a genetic or nontransmissible disorder.

"Registered block" means a planting of registered grapevines maintained by a nursery and used as a source of propagation material for certified grapevines.

"Registered vine" means any ~~(vine propagated from a foundation block)~~ G2 or G3 grapevine approved by the director, identified to a single ~~(vine)~~ grapevine source, and registered with the Washington state department of agriculture, in compliance with provisions of this chapter.

"Tissue culture" means aseptically removing a vegetative shoot tip from growth arising from a dormant cutting ~~((from a foundation plant))~~ or from green growth (i.e., softwood) from a ~~((foundation))~~ plant during the growing season and aseptically transferring this shoot tip to a suitable vessel containing an appropriate culture medium.

"Virus-like" means a graft-transmissible disorder with symptoms resembling a characterized virus disease, including, but not limited to, disorders caused by viroids and phytoplasmas.

NEW SECTION

WAC 16-462-018 Certification levels. All propagative material produced under this program must be derived from

Generation 1 stock and grown under conditions that mitigate the risk of reinfection. Generation 1 level material is produced at the Clean Plant Center-Northwest (CPC-NW) at Washington State University, or other grapevine foundation facilities within the National Clean Plant Network (NCPN) and approved by the department. The accession numbers relating to the single grapevine source at CPC-NW or other approved facilities must be retained for tracking purposes. At each stage of propagation, progeny plants drop to a lower certification level.

AMENDATORY SECTION (Amending WSR 11-01-092, filed 12/15/10, effective 1/15/11)

WAC 16-462-020 Requirements for participation in the grape planting stock program. (1) The applicant shall be responsible, subject to the approval of the department, for the selection of the location and the proper maintenance of registered blocks and planting stock.

(2) The applicant must maintain records identifying the foundation source of registered ~~((vines))~~ grapevines and certified planting stock ~~((The applicant must make))~~ and provide these records ~~((available))~~ to the department upon request.

(3) The applicant shall take suitable precautions in cultivation, irrigation, movement and use of equipment, and in other farming practices, to guard against spread of soil-borne pests to planting stock entered in this program. The applicant shall keep all registered blocks and certified planting stock clean cultivated except for approved cover crops.

(4) Following notification by the department, the applicant shall remove and destroy immediately any registered ~~((vine))~~ grapevine or certified planting stock found to be off-type or affected by a virus or virus-like disease or a quarantine pest.

AMENDATORY SECTION (Amending WSR 11-01-092, filed 12/15/10, effective 1/15/11)

WAC 16-462-021 Requirements for registered blocks. (1) All registered grapevines must be identified by the number assigned to the single ~~((vine))~~ grapevine source in the foundation block from which they were taken.

(2) With the exception of practices allowed in subsections (3), (4), and (5) of this section, registered plants must be propagated directly from cuttings taken from a ~~((foundation block))~~ G1 grapevine.

(3) Plants propagated from a ~~((foundation block by tissue culture))~~ G1 grapevine and grown entirely under laboratory or greenhouse conditions may serve as a source of softwood cuttings or shoot tip culture used to establish a registered block ~~((or registered))~~ of G2 grapevines.

(4) G3 registered grapevines may be propagated from ~~((other))~~ G2 registered grapevines within the same registered block for the purpose of increasing the size of the ~~((registered))~~ block or for replacement grapevines ~~((if the mother vine was propagated directly from a foundation vine))~~.

(5) Participating nurseries must obtain ~~((a permit))~~ written permission from the department to propagate ~~((registered))~~ G3 grapevines from ~~((other registered))~~ G2 grapevines for the purpose of establishing or increasing other reg-

istered blocks within the nursery (~~(--All of)~~) if the following conditions (~~(must be)~~) are complied with:

(a) The mother vines were (~~(propagated directly from foundation vines)~~) G2 grapevines;

(b) Propagation occurs (~~(under controlled conditions adequate to prevent the introduction of pests)~~) in a laboratory or insect proof greenhouse by tissue culture or softwood cuttings; and

(c) The mother vine is no more than two years old, or the department has determined the mother vine is free of regulated viruses.

(6) Prior to planting a registered (~~(vines)~~) block, the growing area and its contiguous borders of not less than ten feet must be tested for the presence of the nematodes of the genus *Xiphinema* (and *Longidorus*), which can be virus vectors. If (~~(either)~~) a *Xiphinema* nematode is detected, the growing area must be fumigated in accordance with rates and practices recommended by Washington State University. This treatment must be carried out under the supervision of the department.

(7) Registered blocks must be located at least one hundred feet from noncertified or nonregistered grapevines. This does not apply to registered stock grown in a fully enclosed greenhouse, screenhouse or laboratory, providing the facility does not contain noncertified grapevines.

AMENDATORY SECTION (Amending WSR 11-01-092, filed 12/15/10, effective 1/15/11)

WAC 16-462-022 Requirements for certified planting stock. (1) Certified planting stock, including all components of budded or grafted plants, must be propagated from cuttings taken from (~~(registered or foundation)~~) G1, G2, or G3 grapevines.

(2) Cuttings from registered blocks must be sorted and kept separate by variety and selection number or clone.

(3) Treatment to control nematodes and other soil-borne pests may be required at any time by the department.

(4) All certified planting stock other than greenhouse grown plants must comply with the grades and standards for Washington certified grape planting stock as listed in WAC 16-462-055.

(5) Certified stock must be separated from noncertified grapevines by one of the following distances. This requirement does not apply to certified stock grown in a fully enclosed greenhouse, screenhouse or laboratory, providing the facility does not contain noncertified grapevines.

(a) Ten feet for any land treated to control nematodes; or

(b) Twenty feet for land not specifically treated to control nematodes.

(6) Certification is based solely on compliance with the requirements prescribed in WAC 16-462-050 and other requirements of this chapter.

AMENDATORY SECTION (Amending WSR 11-01-092, filed 12/15/10, effective 1/15/11)

WAC 16-462-025 Foundation, registered, and certified grape planting stock—Inspections. (1) Inspections and indexing of registered grapevines and certified planting stock will be performed by the department at times determined to

be suitable for the detection of virus and virus-like disease symptoms. (~~(Washington State University)~~) The Clean Plant Center Northwest will inspect and index the foundation block (G1).

(2) The department will index registered grapevines by methods consistent with those utilized by the (~~(Washington State University grapevine foundation program)~~) Clean Plant Center Northwest.

(3) The department will conduct at least two inspections of registered grapevines during each growing season.

(4) The department will inspect certified planting stock at least three times per year, twice during the growing season and once during or after harvest.

(5) The department will refuse or withdraw registration or certification for any planting stock that is infested or infected with any regulated pest.

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-030 Certified grape planting stock—Application and fees. (1) The applicant shall furnish all information requested on the application form and shall give consent to the department to take samples from any planting stock enrolled in the program as registered or certified grapevines for inspection or indexing.

(2) Application for registration and certification shall be filed with the department by January 1 of each year accompanied by a one hundred seventy-five dollar application fee.

(3) Inspection, phytosanitary certification, indexing and testing fees are due upon completion of services.

(4) Fees for inspection(~~(s)~~) and phytosanitary certification(~~(s)~~ and testing) shall be assessed at the appropriate rate established in chapter(~~(s)~~) 16-401 (~~(and)~~) WAC Fees for indexing shall be assessed at the appropriate rate established in chapter 16-470 WAC. Mileage for inspections and other on-site services shall be charged at a rate established by the state office of financial management.

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-035 Certified grape planting stock—Tagging and identity. (1) Certification tags issued by the department must be securely attached by the grower to each certified grape planting stock(~~(, including rooted cuttings, cuttings and grafted plants)~~).

(2) Any person selling Washington certified grape planting stock is responsible for the identity of such planting stock. Persons issued tags authorized by this chapter must account by variety for stock produced and sold. They must keep and allow the department to inspect and copy records necessary to verify this.

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-050 ((Certified grape planting stock—))Requirements. Certified plants must be free of Grapevine fanleaf virus, Grapevine leafroll-associated viruses, ((grapevine corky bark disease agent,)) Grapevine virus A, Grape-

vine virus B, Grapevine rupestris stem pitting virus, Arabis mosaic virus, Tomato ringspot virus, ((grape phylloxera, and vine mealy bug)) Grapevine red blotch virus, Grapevine vein clearing virus, Xylella fastidiosa, Daktulosphaira vitifoliae, and Planococcus ficus. ((H)) Certified plants must also be free of nematode root knots ((nematode)), crown gall, and other visible diseases or serious pest injuries.

**WSR 14-21-036
PERMANENT RULES**

DEPARTMENT OF AGRICULTURE

[Filed October 7, 2014, 9:08 a.m., effective November 7, 2014]

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

Purpose: This rule-making order repeals chapter 16-481 WAC, Grape insect pests, and amends chapter 16-483 WAC, Grape virus quarantine, by:

(1) Combining the grape virus quarantine and the grape insect pests rules into one chapter under chapter 16-483 WAC, Grape pest quarantine;

(2) Adding grapevine virus A and *Xylella fastidiosa* to the list of quarantined pests;

(3) Updating the name of the corky bark disease agent to grapevine virus B; and

(4) Updating and improving language clarity.

These changes are being adopted as a result of a petition submitted by the Washington Association of Wine Grape Growers.

Citation of Existing Rules Affected by this Order: Repealing chapter 16-481 WAC; and amending WAC 16-483-001, 16-483-010, 16-483-020, 16-483-030, 16-483-040, and 16-483-050.

Statutory Authority for Adoption: RCW 17.24.011 and 17.24.041.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 14-17-124 on August 20, 2014.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 2, Amended 6, Repealed 8.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 6, Repealed 8.

Date Adopted: October 7, 2014.

Don R. Hover
Director

Chapter 16-483 WAC

GRAPE ((VIRUS)) PEST QUARANTINE

AMENDATORY SECTION (Amending WSR 00-23-096, filed 11/21/00, effective 12/22/00)

WAC 16-483-001 ((~~Grape virus quarantine~~)) Establishing a quarantine. ((The production of wine grapes, juice grapes, and grape planting stock are important industries in the state of Washington. The director has determined that these industries are threatened by the introduction and establishment of the virus diseases known as leafroll, fanleaf and corky bark that are not known to occur in the state of Washington. The presence of these virus diseases cannot be determined by the most rigorous visual examination of dormant grape planting stock. The introduction and establishment of these virus diseases would entail great economic loss to the grape industries of the state. To minimize this risk, the director, under the authority provided in chapter 17.24 RCW, has established a quarantine setting forth rules for the importation of grape planting stock into the state of Washington.))

(1) A quarantine is established against harmful pests of grapevines that could endanger the grape industries of Washington.

(2) Quarantine pests include:

(a) Grapevine fanleaf virus;

(b) Grapevine leafroll associated viruses;

(c) Grapevine virus A;

(d) Grapevine virus B;

(e) Xylella fastidiosa;

(f) Grapevine phylloxera (Daktulosphaira vitifoliae);

and

(g) Vine mealybug (Planococcus ficus).

AMENDATORY SECTION (Amending WSR 00-05-105, filed 2/16/00, effective 3/18/00)

WAC 16-483-010 ((~~Grape virus quarantine~~—~~Quarantine~~)) Area under quarantine. The area((s)) under quarantine includes all states, districts, and territories of the United States ((outside of the territorial borders of the state of Washington)).

AMENDATORY SECTION (Amending WSR 00-05-105, filed 2/16/00, effective 3/18/00)

WAC 16-483-020 ((~~Grape virus quarantine~~—~~Regulated articles~~)) Regulated articles. ((H)) Grape planting stock ((is)) including live plants, hardwood cuttings, softwood cuttings, and any other plant parts capable of propagation except fruit are regulated under the terms of this quarantine.

AMENDATORY SECTION (Amending WSR 00-23-096, filed 11/21/00, effective 12/22/00)

WAC 16-483-030 ((~~Grape virus quarantine~~—~~Regulations~~)) Restrictions. Grape planting stock will be admitted into the state of Washington provided the following provisions are complied with:

(1) An official certificate issued by the plant protection organization of the state, district, or territory of origin certifying that the grapevines meet the requirements of this chapter must accompany the grape planting stock into the state.

(2) The grape planting stock has been certified in accordance with the regulations of an official grapevine certification program that includes inspection and testing by methods approved by the director for grapevine fanleaf virus, grapevine leafroll ((and corky bark virus diseases. An official certificate issued by the plant protection organization of the state of origin certifying that the grapevines meet the requirements of this chapter must accompany the grape planting stock into the state.

(2) All shipments of grape planting stock must be plainly marked with the contents on the outside of the package or container.

(3) Persons shipping or transporting grape planting stock into this state from areas under quarantine shall notify the department by mail or telefacsimile prior to shipment. The notification must include the nature of the grape planting stock (such as live plants, hardwood cuttings, softwood cuttings, rootstocks, or other similar categories), the quantity in each shipment, the expected date of arrival, the name of the intended receiver and the destination. The person to whom the articles are shipped shall hold the articles until the grape planting stock is inspected and/or released by the department)) associated viruses, grapevine virus A, grapevine virus B, and *Xylella fastidiosa*.

(3) Each shipment of grapevines, grape rootstock, or softwood cuttings from a state infested with grapevine phylloxera or vine mealybug require one of the following statements on the certificate:

(a) The grapevines, rootstock, or softwood cuttings were grown in and shipped from an area known to be free from grape phylloxera and vine mealybug; or

(b) The grapevines, rootstock, or softwood cuttings were grown under an approved sterile media system; or

(c) For small shipments (five hundred articles or less), softwood cuttings were inspected by a state, district, or territory plant regulatory official and were found to be free from grape phylloxera and vine mealybug; or

(d) The grapevines, rootstock, or softwood cuttings were subject to one of the two treatments in subsection (4) of this section or other treatments determined to be effective and are approved in writing by the director. The treated grapevines must be stored in a manner after treatment that would prevent reinfestation.

(4) Acceptable treatments for grapevine insect pests include:

(a) Hot water treatment. Dormant, rooted grapevines or rootstock shall be washed to remove all soil or other propagative media. Dormant rooted plants or rootstock shall be immersed in a hot water bath for a period of not less than three minutes nor more than five minutes at a temperature of not less than 125°F (52°C) nor more than 130°F (55°C) at any time during immersion; or

(b) Methyl bromide fumigation. Grapevines, rootstock, or softwood cuttings may be treated by methyl bromide fumigation. The fumigation shall be in an approved gastight fumigation chamber, equipped with a heating unit, fan for disper-

sal of gas and clearing the chamber of gas after fumigation, and interior thermometer readable from the outside. Fumigation shall be with a dosage of two pounds (0.908 kg) of methyl bromide per one thousand cubic feet (twenty-eight cubic meters) for a period of three hours at a temperature of between 65°F (18.3°C) and 70°F (21.1°C). The fan shall be operated for a period of ten minutes after the injection of the gas.

(5) All shipments of grapevines, rootstock, or softwood cuttings from a quarantine area shall be plainly marked with the contents on the outside of the package or container as "grapevines," "grape rootstock," or "grape cuttings."

NEW SECTION

WAC 16-483-033 Equipment cleaning requirements.

(1) All equipment used for cultivation or harvesting of grapes in the grape insect pest quarantine areas must be thoroughly washed or steam cleaned to remove all soil and plant material prior to entry into the state of Washington. Such equipment shall be subject to inspection by authorized inspectors of the department.

(2) Any equipment found to be in violation of this cleaning requirement shall be subject to detention by the department until such equipment is thoroughly cleaned at the expense of the owner or shipper or provisions are made by the owner or shipper to transport the equipment directly out of the state.

NEW SECTION

WAC 16-483-037 Notification requirement. Persons bringing grapevines into the state must first notify the department by U.S. mail, e-mail, or telefacsimile to: Plant Protection Division, Washington State Department of Agriculture, 1111 Washington Street S.E., P.O. Box 42560, Olympia, WA 98504-2560; e-mail: PlantServices@agr.wa.gov; fax: 360-902-2094, prior to the shipment of grapevines or cuttings under the grape pest quarantine into this state from an infested area. Such notice shall include, but not be limited to, the approximate number of grapevines, rootstock, or softwood cuttings; the shipper; the consignee; the method of treatment used, if applicable; and the approximate date of delivery.

AMENDATORY SECTION (Amending WSR 00-05-105, filed 2/16/00, effective 3/18/00)

WAC 16-483-040 ((Grape virus quarantine—))Disposition of ((material)) products shipped in violation of this quarantine—Violations. ((The department will refuse admittance into the state grape planting stock not meeting the requirements of this chapter. For grape planting stock shipped into the state in violation of this chapter, the department will give the owner or the owner's responsible agent the option of destroying the material or immediately sending it out of the state.)) At the option and expense of the owner, the department will return to the point of origin or destroy any grapevines shipped into the state of Washington in violation of this chapter.

AMENDATORY SECTION (Amending WSR 00-05-105, filed 2/16/00, effective 3/18/00)

WAC 16-483-050 Grape (~~(virus)~~) pest quarantine—Exemption. The restrictions on the movement of regulated articles set forth in this chapter do not apply to grape planting stock imported for experimental or trial purposes by the United States Department of Agriculture or Washington State University: Provided, (~~(a permit issued by)~~) the (~~(director)~~) director's written permission is first obtained.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 16-481-010	Establishing quarantine.
WAC 16-481-015	Definitions.
WAC 16-481-020	Quarantine area.
WAC 16-481-025	Regulated products.
WAC 16-481-030	Conditions governing shipments— External.
WAC 16-481-050	Equipment cleaning requirements.
WAC 16-481-060	Notification requirements.
WAC 16-481-070	Disposition of products shipped in violation of this quarantine—Viola- tions.

WSR 14-21-040
PERMANENT RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed October 7, 2014, 11:56 a.m., effective November 7, 2014]

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

Purpose: **Phase 4.7 ACA WACs**, the health care authority (HCA) is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates HCA as the single state agency responsible for the administrations and supervision of Washington's medicaid program (Washington apple health (WAH)).

Citation of Existing Rules Affected by this Order: Amending WAC 182-508-0001 and 182-509-0300.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Adopted under notice filed as WSR 14-11-055 on May 16, 2014.

Changes Other than Editing from Proposed to Adopted Version: In WAC 182-505-0117, added new subsection (1), "For the purposes of this rule, minor means a person under the age of nineteen." In WAC 182-505-0117(4), revised sub-

section as follows, "To ensure reimbursement from the U.S. Department of Health and Human Services, every pregnant minor applicant for WAH for kids must provide[...]."

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 2, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 0.

Date Adopted: October 7, 2014.

Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-505-0117 Washington apple health—Eligibility for pregnant minors. (1) For the purposes of this rule, "minor" means a person under the age of nineteen.

(2) A pregnant minor who meets Washington state residency requirements under WAC 182-503-0520 and 182-503-0525 is eligible for the Washington apple health (WAH) for kids program.

(3) The medical assistance unit (MAU) of a pregnant minor is the pregnant minor.

(4) There are no income standards and no resource tests for a pregnant minor to be eligible for WAH for kids.

(5) To ensure reimbursement from the U.S. Department of Health and Human Services, every pregnant minor applicant for WAH for kids must provide her Social Security number unless she is exempt under WAC 182-503-0515 and provide her citizenship or immigration status. The immigration status of a pregnant minor who is an undocumented alien (see WAC 182-503-0530) will not be disclosed to any third party.

(6) The assignment of rights as described in WAC 182-503-0540 does not apply to pregnant minors.

(7) A pregnant minor covered by the WAH for kids program will have a one year certification period unless she has her nineteenth birthday during her pregnancy, at which time she will be automatically enrolled in the WAH for pregnant women program. Under the WAH for pregnant women program, her coverage will continue through the end of her pregnancy and she will be eligible for extended medical coverage for postpartum care through the end of the month of the sixtieth day after the end of her pregnancy.

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

WAC 182-508-0001 (~~(Medical assistance coverage)~~) Washington apple health—Coverage options for adults

not (~~covered under family medical programs~~) eligible under MAGI methodologies.

~~((1) An adult who does not meet the institutional status requirements as defined in WAC 388-513-1320 and who does not receive waiver services as described in chapter 388-515 WAC is considered for categorically needy (CN) coverage under this chapter. Individuals excluded from this section have rules applied to eligibility from chapter 388-513 WAC. Under this section an individual is eligible for CN coverage when the individual:~~

~~(a) Meets citizenship/immigrant, residency, and Social Security number requirements as described in WAC 182-503-0505; and~~

~~(b) Has CN countable income and resources that do not exceed the income and resource standards in WAC 182-512-0010; and~~

~~(c) Is sixty-five years of age or older, or meets the blind and/or disability criteria of the federal SSI program.~~

~~(2) An adult not meeting the conditions of subsection (1)(b) of this section is eligible for CN medical coverage if the individual:~~

~~(a) Is a current beneficiary of Title II of the Social Security Act (SSA) benefits who:~~

~~(i) Was a concurrent beneficiary of Title II and supplemental security income (SSI) benefits;~~

~~(ii) Is ineligible for SSI benefits and/or state supplementary payments (SSP); and~~

~~(iii) Would be eligible for SSI benefits if certain cost-of-living (COLA) increases are deducted from the client's current Title II benefit amount:~~

~~(A) All Title II COLA increases under P.L. 94-566, section 503 received by the individual since their termination from SSI/SSP; and~~

~~(B) All Title II COLA increases received during the time period in (d)(iii)(A) of this subsection by the individual's spouse or other financially responsible family member living in the same household.~~

~~(b) Is an SSI beneficiary, no longer receiving a cash benefit due to employment, who meets the provisions of section 1619(b) of Title XVI of the SSA;~~

~~(c) Is a currently disabled individual receiving widow's or widower's benefits under section 202 (e) or (f) of the SSA if the disabled individual:~~

~~(i) Was entitled to a monthly insurance benefit under Title II of the SSA for December 1983;~~

~~(ii) Was entitled to and received a widow's or widower's benefit based on a disability under section 202 (e) or (f) of the SSA for January 1984;~~

~~(iii) Became ineligible for SSI/SSP in the first month in which the increase provided under section 134 of P.L. 98-21 was paid to the individual;~~

~~(iv) Has been continuously entitled to a widow's or widower's benefit under section 202 (e) or (f) of the SSA;~~

~~(v) Would be eligible for SSI/SSP benefits if the amount of that increase, and any subsequent COLA increases provided under section 215(i) of the SSA, were disregarded;~~

~~(vi) Is fifty through fifty-nine years of age; and~~

~~(vii) Filed an application for medicaid coverage before July 1, 1988.~~

~~(d) Was receiving, as of January 1, 1991, Title II disabled widow or widower benefits under section 202 (e) or (f) of the SSA if the individual:~~

~~(i) Is not eligible for the hospital insurance benefits under medicare Part A;~~

~~(ii) Received SSI/SSP payments in the month before receiving such Title II benefits;~~

~~(iii) Became ineligible for SSI/SSP due to receipt of or increase in such Title II benefits; and~~

~~(iv) Would be eligible for SSI/SSP if the amount of such Title II benefits or increase in such Title II benefits under section 202 (e) or (f) of the SSA, and any subsequent COLA increases provided under section 215(i) of the act were disregarded.~~

~~(e) Is a disabled or blind individual receiving Title II Disabled Adult Childhood (DAC) benefits under section 202(d) of the SSA if the individual:~~

~~(i) Is at least eighteen years old;~~

~~(ii) Lost SSI/SSP benefits on or after July 1, 1988, due to receipt of or increase in DAC benefits; and~~

~~(iii) Would be eligible for SSI/SSP if the amount of the DAC benefits or increase under section 202(d) of the DAC and any subsequent COLA increases provided under section 215(i) of the SSA were disregarded.~~

~~(f) Is an individual who:~~

~~(i) In August 1972, received:~~

~~(A) Old age assistance (OAA);~~

~~(B) Aid to blind (AB);~~

~~(C) Aid to families with dependent children (AFDC); or~~

~~(D) Aid to the permanently and totally disabled (APTD);~~

~~and~~

~~(ii) Was entitled to or received retirement, survivors, and disability insurance (RSDI) benefits; or~~

~~(iii) Is eligible for OAA, AB, AFDC, SSI, or APTD solely because of the twenty percent increase in Social Security benefits under P.L. 92-336.~~

~~(3) An adult who does not meet the institutional status requirement as defined in WAC 388-513-1320 and who does not receive waiver services as described in chapter 388-515 WAC is considered for medically needy (MN) coverage under this chapter. Individuals excluded from this section have rules applied to eligibility from chapter 388-513 WAC. Under this section an individual is eligible for MN coverage when the individual:~~

~~(a) Meets citizenship/immigrant, residency, and Social Security number requirements as described in WAC 182-503-0505; and~~

~~(b) Has MN countable income that does not exceed the income standards in WAC 182-512-0010, or meets the excess income spenddown requirements in WAC 388-519-0110; and~~

~~(c) Meets the countable resource standards in WAC 182-519-0050; and~~

~~(d) Is sixty-five years of age or older or meets the blind and/or disability criteria of the federal SSI program.~~

~~(4) MN coverage is available for an aged, blind, or disabled ineligible spouse of an SSI recipient. See WAC 388-519-0100 for additional information.~~

~~(5) An adult may be eligible for the alien emergency medical program as described in WAC 182-507-0110.~~

~~(6) An adult is eligible for the aged, blind, or disabled program when the individual:~~

~~(a) Meets the requirements of the aged, blind, or disabled program in WAC 388-400-0060 and 388-478-0033; or~~

~~(b) Meets the SSI-related disability standards but cannot get the SSI cash grant due to immigration status or sponsor deeming issues. An adult may be eligible for aged, blind, or disabled cash benefits and CN medical coverage due to different sponsor deeming requirements.~~

~~(7) An adult is eligible for the medical care services (MCS) program when the individual:~~

~~(a) Meets the requirements under WAC 182-508-0005; or~~

~~(b) Meets the aged, blind, or disabled requirements of WAC 388-400-0060 and is a qualified alien as defined in WAC 388-424-0001 who is subject to the five-year bar as described in WAC 388-424-0006(3); or a nonqualified alien as defined in WAC 388-424-0001; or~~

~~(c) Meets the requirements of the ADATSA program as described in WAC 182-508-0320 and 182-508-0375.~~

~~(8) An adult receiving MCS who resides in a county designated as a mandatory managed care plan county must enroll in a plan, pursuant to WAC 182-538-063.) (1) This chapter provides information on eligibility determinations for adults who:~~

~~(a) Need a determination of eligibility on the basis of being aged, blind, or disabled;~~

~~(b) Need a determination of eligibility based on the need for long-term institutional care or home and community-based services;~~

~~(c) Are excluded from coverage under a modified adjusted gross income (MAGI)-based program as referenced in WAC 182-503-0510 on the basis of medicare entitlement;~~

~~(d) Are not eligible for health care coverage under chapter 182-505 WAC due to citizenship or immigration requirements; or~~

~~(e) Are not eligible for health care coverage under chapter 182-505 WAC due to income which exceeds the applicable standard for coverage.~~

~~(2) The agency determines eligibility for Washington apple health (WAH) noninstitutional categorically needy (CN) coverage under chapter 182-512 WAC for an adult who is age sixty-five or older, or who meets the federal blind or disabled criteria of the federal SSI program, and:~~

~~(a) Meets citizenship/immigration, residency, and Social Security number requirements as described in chapter 182-503 WAC; and~~

~~(b) Has CN countable income and resources that do not exceed the income and resource standards in WAC 182-512-0010.~~

~~(3) The agency determines eligibility for WAH health care for workers with disabilities (HWD) CN coverage for adults who meet the requirements described in WAC 182-511-1050, as follows:~~

~~(a) Are age sixteen through sixty-four;~~

~~(b) Meet citizenship/immigration, residency, and Social Security number requirements as described in chapter 182-503 WAC;~~

~~(c) Meet the federal disability requirements described in WAC 182-511-1150;~~

~~(d) Have net income that does not exceed the income standard described in WAC 182-511-1060; and~~

~~(e) Are employed full- or part-time (including self-employment) as described in WAC 182-511-1200.~~

~~(4) The agency determines eligibility for WAH long-term care CN coverage for adults who meet the institutional status requirements defined in WAC 182-513-1320 under the following rules:~~

~~(a) When the person receives coverage under a MAGI-based program and needs long-term care services in an institution, the agency follows rules described in chapter 182-514 WAC;~~

~~(b) When the person meets aged, blind, or disabled criteria as defined in WAC 182-512-0050 and needs long-term care services, the agency follows rules described in:~~

~~(i) Chapter 182-513 WAC, for an adult who resides in an institution; and~~

~~(ii) Chapter 182-515 WAC, for an adult who is determined eligible for WAH home and community-based waiver services.~~

~~(5) The agency determines eligibility for WAH noninstitutional CN or medically needy (MN) health care coverage for an adult who resides in an alternate living facility under rules described in WAC 182-513-1305.~~

~~(6) The agency determines eligibility for WAH-CN coverage under institutional rules described in chapters 182-513 and 182-515 WAC for an adult who:~~

~~(a) Has made a voluntary election of hospice services;~~

~~(b) Is not otherwise eligible for noninstitutional CN or MN health care coverage or for whom hospice is not included in the benefit service package available to the person; and~~

~~(c) Meets the aged, blind, or disabled criteria described in WAC 182-512-0050.~~

~~(7) The agency uses the following rules to determine eligibility for an adult under the WAH-MN program:~~

~~(a) Noninstitutional WAH-MN is determined under chapter 182-519 WAC for an adult with countable income that exceeds the applicable CN standard; and~~

~~(b) WAH-MN long-term care coverage is determined under WAC 182-514-0255 for an adult age nineteen or twenty who:~~

~~(i) Meets institutional status requirements described in WAC 182-513-1320;~~

~~(ii) Does not meet blind or disabled criteria described in WAC 182-512-0050; and~~

~~(iii) Has countable income that exceeds the applicable CN standard.~~

~~(c) WAH-MN long-term care coverage is determined under WAC 182-513-1395 for an aged, blind, or disabled adult who resides in an institution and has countable income that exceeds the special income level (SIL).~~

~~(8) An adult is eligible for WAH-MN coverage when he or she:~~

~~(a) Meets citizenship/immigration, residency, and Social Security number requirements as described in WAC 182-503-0505;~~

~~(b) Has MN countable income that does not exceed the effective MN income standards in WAC 182-519-0050, or meets the excess income spenddown requirements in WAC 182-519-0110;~~

(c) Meets the countable resource standards in WAC 182-519-0050; and

(d) Is sixty-five years of age or older or meets the blind or disabled criteria of the federal SSI program.

(9) WAH-MN coverage is available for an aged, blind, or disabled ineligible spouse of an SSI recipient. See WAC 182-519-0100 for additional information.

(10) An adult who does not meet citizenship or alien status requirements described in WAC 182-503-0535 may be eligible for the WAH alien emergency medical program as described in WAC 182-507-0110.

(11) An adult is eligible for the state-funded medical care services (MCS) program when he or she meets the requirements under WAC 182-508-0005.

(12) A person who is entitled to medicare is eligible for coverage under a medicare savings program or the state-funded buy-in program when he or she meets the requirements described in chapter 182-517 WAC.

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

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

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

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

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

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

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

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

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

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

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

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

WSR 14-21-044

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed October 7, 2014, 1:14 p.m., effective November 7, 2014]

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

Purpose: This rule currently provides incorrect citations to WAC 458-12-080 and 458-12-080(2). The department is proposing to correct these citations to WAC 458-12-060 and 458-12-060(4), respectively.

Statutory Authority for Adoption: RCW 84.08.010 and 84.08.070.

Other Authority: RCW 84.04.090.

Adopted under notice filed as WSR 14-14-127 on July 2, 2014.

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

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

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

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

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

Date Adopted: October 7, 2014.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 93-08-049, filed 4/2/93, effective 5/3/93)

WAC 458-12-010 Definition—Property—Real. The term "real property" is defined in RCW 84.04.090; this definition should be consulted as a matter of course in all cases where the meaning of "real property" is in doubt. As there defined, "real property" includes but is not limited to the following:

(1) All land, whether platted or unplatted.

(2) All buildings, structures or permanent improvements built upon or attached to privately owned land.

(3) Any fixture permanently affixed to and intended to be annexed to land or permanently affixed to and intended to be a component of a building, structure, or improvement on land, including machinery and equipment which become fixtures. Intent is to be gathered from all the surrounding circumstances at the time of annexation or installation of the

item, including consideration of the nature of the item affixed, the manner of annexation and the purpose for which the annexation is made and is not to be gathered exclusively from the statements of the annex or, installer, or owner as to his or her actual state of mind.

(a) Such items shall be considered as permanently affixed when they are owned by the owner of the real property and:

(i) They are securely attached to the real property; or

(ii) Although not so attached, the item appears to be permanently situated in one location on real property and is adapted to use in the place it is located. For example a heavy piece of machinery or equipment set upon a foundation without being bolted thereto could be considered as affixed.

(b) Such items shall not be considered as affixed when they are owned separately from the real property unless an agreement specifically provides that such items are to be considered as part of the real property and are to be left with the real property when the occupant vacates the premises.

(c) Whenever the property taxable status of engines, machinery, equipment or fixtures is questioned by the assessor, the taxpayer may be required to list such items in the manner provided by chapter 84.40 RCW and WAC (~~458-12-080~~) 458-12-060. The assessor shall make the determination of whether such property is real, and shall amend the taxpayer's statement as provided by WAC (~~458-12-080(2)~~) 458-12-060(4).

(d) The explanations relating to fixtures under subsection (3) of this section are for purposes of clarification and may not answer the question as to whether an item is a fixture in all cases. In the event these explanations do not clearly indicate whether the item is a fixture, the numerous decisions of the Washington appellate courts regarding fixtures should be consulted.

(4) Privately owned easements and easement-like privileges, irrespective of whether the servient estate is public or privately owned land. However, easements of public service corporations other than railroads are personal property by reason of RCW 84.20.010.

(5) Leases of real property and leasehold interests therein having a term coextensive with the life of the tenant.

(6) Title to minerals in place which belongs to someone other than the surface owner. Such a title to minerals in place is a "mineral right" but must be distinguished from mineral leases and permits, which do not give title to minerals in place and which are intangible *personal* property. Mineral rights, as defined herein, are realty regardless of whether they were created by grant or reservation.

(7) Standing timber growing on land which belongs to the same person as the timber.

(8) Water rights, whether riparian, appropriative, or in the nature of an easement.

(9) Buildings and similar permanent improvements erected or made by a tenant on land which he does not own, and title to which is not reserved in the tenant by the lease or some other landlord-tenant agreement. Such buildings and improvements become the landlord's real property.

(10) All life estates in real property, whether created by grant or a reservation. A person has such a life estate when he has a right to the possession, occupation and use of a piece of

realty, and to the crops, rents and profits produced by it, during his or her natural life.

(11) All possessory rights in realty which are coextensive with the natural life of their holder. Such possessory rights are analogous to leases, and since leases for life are realty, possessory rights for life are also realty.

WSR 14-21-045

PERMANENT RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Docket UT-131239, General Order R-575—Filed October 7, 2014, 2:29 p.m., effective November 7, 2014]

In the matter of amending and adopting rules in chapter 480-123 WAC, relating to universal service.

ORDER CORRECTING TEXT OF WAC 480-123-100, 480-123-110, 480-123-120, and 480-123-150 SUBMITTED FOR ADOPTION.

1 On May 22, 2014, the Washington utilities and transportation commission (commission) filed with the code reviser an order amending and adopting rules permanently in chapter 480-123 WAC (adoption order or order), relating to universal service. The order is filed at WSR 14-12-008. The effective date for the adoption of the rules is June 22, 2014.

2 The commission recently learned that certain changes reflected in the adoption order were erroneously omitted in the rules submitted for adoption. Specifically, the changes were set out in paragraph 43 of the adoption order as follows:

- WAC 480-123-100(b), correct 253(h) to 251(h) and add immediately thereafter, "or has been designated as an incumbent local exchange carrier by the Federal Communications Commission";
- WAC 480-123-110 (1)(h), delete the word "calendar";
- WAC 480-123-110(3), delete the phrase "in conjunction with its application for certification as an eligible telecommunications carrier,";
- WAC 480-123-120, in the first sentence, replace "a calendar year" with "an annual"; in the second sentence, replace "that" with "each" and add the following phrase at the end of the sentence: "of eligibility, except as otherwise authorized by the commission"; and
- WAC 480-123-150 (2)(a)(v), replace "division" with "section" to accurately name public counsel.

3 The commission has authority to take this action pursuant to RCW 80.01.040(4), 80.36.630, 80.36.650, 80.36.660, 80.36.670, 80.36.680, 80.36.690, and 80.36.700.

4 This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

5 Failure to include the changes set forth in paragraph 43 of the adoption order, submitted to the code reviser on May 22, 2014, constitutes an oversight. Accordingly the commis-

sion enters this order to correct the omissions. A copy of the corrected rules reflecting the intended changes referenced above in paragraph 2 are shown below this order as Appendix A.

6 The commission adopts these rules on the date this order is entered.

ORDER

7 THE COMMISSION ORDERS:

8 The commission amends and adopts WAC 480-123-100, 480-123-110, 480-123-120, and 480-123-150 to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

DATED at Olympia, Washington, October 7, 2014.

Washington Utilities and Transportation Commission

David W. Danner, Chairman
Philip B. Jones, Commissioner
Jeffrey D. Goltz, Commissioner

Docket UT-131239

Appendix A

NEW SECTION

WAC 480-123-100 Prerequisites for requesting program support. (1) Wireline communications providers. A wireline communications provider may seek support from the program if the provider satisfies all of the following requirements:

(a) The provider is a local exchange company as defined in WAC 480-120-021 that serves less than forty thousand access lines within the state;

(b) The provider is an incumbent local exchange carrier as defined in 47 U.S.C. Sec. 251(h) or has been designated as an incumbent local exchange carrier by the Federal Communications Commission;

(c) The provider offers basic residential and business exchange telecommunications services as set forth in WAC 480-120-021 and RCW 80.36.630;

(d) The provider's rates for residential local exchange service, plus mandatory extended area service charges, are no lower than the local urban rate floor established by the commission as the benchmark rate based on the Federal Communications Commission's most current calculation of a national local urban rate floor pursuant to 47 C.F.R. Sec. 54.318 in the year in which the provider files a petition for support; provided that, if the provider's rates exceed the benchmark, the provider may not seek support from the program for the purpose of reducing those rates towards or to the benchmark; and

(e) The provider has been designated by the commission as an eligible telecommunications carrier for purposes of receiving federal universal service support pursuant to 47 C.F.R. Part 54 Subpart D – Universal Service Support for High Cost Areas, with respect to the service areas for which the provider is seeking program support.

(2) **Wireless communications providers.** A wireless communications provider may seek support from the pro-

gram if the provider satisfies all of the following requirements:

(a) The provider is licensed by the Federal Communications Commission to offer commercial mobile radio service within the state of Washington;

(b) The provider serves fewer than the equivalent of forty thousand access lines in Washington; and

(c) The provider has been designated by the commission as an eligible telecommunications carrier for purposes of receiving federal universal service support pursuant to 47 C.F.R. Part 54 Subpart D – Universal Service Support for High Cost Areas, with respect to the service areas for which the provider is seeking program support.

(3) In calculating access lines or equivalents under this section, the access lines or equivalents of all affiliates must be counted as a single threshold, if the lines or equivalents are located in Washington; provided that only the wireline access lines of the affiliates of a provider seeking support as a wireline carrier will count toward the single threshold for that provider, and only the wireless access line equivalents of the affiliates of a provider seeking support as a wireless carrier will count toward the single threshold for that provider.

NEW SECTION

WAC 480-123-110 Petitions for eligibility to receive program support. (1) Wireline communications providers. A wireline communications provider that satisfies the prerequisites in WAC 480-123-100 may petition the commission to receive support from the program. The provider must petition the commission each year to be eligible to receive support from the program the following year. The petition must include the following information:

(a) The name of the legal entity that provides communications services and is seeking program support;

(b) A corporate organization chart showing the relationship between the legal entity identified in (a) of this subsection and all affiliates as defined in RCW 80.16.010 and a detailed description of any transactions between the provider and those affiliates recorded in the provider's operating accounts;

(c) A service area map or detailed reference to any maps on file with the commission showing the provider's Washington service area;

(d) A demonstration that the provider's customers are at risk of rate instability or service interruptions or cessation in the absence of support from the program;

(e) Detailed financial information and supporting documentation in a form prescribed by the commission for the provider's total Washington regulated operations for the two calendar years prior to the year in which the provider is filing the petition including, but not limited to, the following:

(i) The provider's balance sheet and statements of income and retained earnings or margin from, or in the same format and detail required in, Rural Utilities Service (RUS) Form 479;

(ii) The provider's consolidated audited financial statements; if the provider does not have consolidated audited financial statements prepared in the normal course of its busi-

ness, the provider must submit financial statements reviewed by a certified public accountant;

(iii) Information demonstrating the provider's earned rate of return on a total Washington unseparated regulated operations basis for each of the two prior years;

(iv) Information demonstrating the provider's earned return on equity on a total company (regulated and nonregulated) Washington basis for each of the two prior years;

(v) Information detailing all of the provider's revenues from the statements of income and retained earnings or margin section of RUS Form 479 for the two prior years; if the provider does not submit RUS Form 479, the provider must file with the commission the same revenue information specified in this subsection that is required to complete the applicable portion of that form;

(vi) Information detailing the amounts of any corporate operations adjustments to existing high-cost loop and interstate common line support mechanisms the Federal Communications Commission required of the provider for the two prior years or a statement under penalty of perjury from a company officer of the provider with personal knowledge and responsibility certifying that no such adjustments apply to the provider;

(vii) Any additional supporting information the commission requests to enable it to analyze the provider's financial results for program purposes; and

(viii) A statement under penalty of perjury from a company officer of the provider with personal knowledge and responsibility certifying that the provider complies with state and federal accounting, cost allocation, and cost adjustment rules pertaining to incumbent local exchange companies;

(f) A complete copy of the FCC Form 481 the provider filed with the Federal Communications Commission for the calendar year preceding the year in which the provider is filing the petition; if the provider does not submit FCC Form 481 to the Federal Communications Commission, the provider must file with the commission the same information required to complete that form;

(g) Information detailing the number of residential and business local exchange access lines the provider served as of December 31st for each of the prior two years and the monthly rate charged to each customer category; and

(h) A statement under penalty of perjury from a company officer of the provider certifying that if it receives program support the provider will continue to provide communications services pursuant to its tariffs on file with the commission throughout its service territory in Washington for which it is seeking and receives program support during the entirety of the year in which the provider is applying for support from the program.

(2) **Wireless communications provider.** A wireless communications provider that meets the requirements in WAC 480-123-100 may petition the commission to receive support from the program. The provider must petition the commission each year to be eligible to receive support from the program the following year. The petition must include the same type of information for the same periods required of wireline communications providers in subsection (1) of this section. The first time a wireless communications provider seeks to file such a petition, the provider must first submit its

request to file the petition to the advisory board, pursuant to any guidelines the advisory board will adopt, detailing how the provider will compile and supply the information required by this rule. The advisory board will make a recommendation to the commission, and the commission will determine the precise information the provider must file in support of its petition.

(3) **Information already on file with the commission.**

To the extent that the provider has filed any of the information required under this rule, the provider need not include that same information in its petition so long as the provider identifies the docket number, documents, and location within those documents in which the provider included that information.

(4) **Timing of petitions.** A provider must file a complete petition that fully complies with this section no later than August 1st if the company seeks support from the program for the following calendar year. Program support is available annually until the expiration of the program on June 30, 2019.

(5) **Certification.** One or more company officers responsible for the provider's business and financial operations must certify in the form of a statement under penalty of perjury that the information and representations made in the petition are accurate and that the provider has not knowingly withheld any information required to be provided to the commission pursuant to the rules governing the program. The provider must file this certification with its petition.

NEW SECTION

WAC 480-123-120 Eligibility and distributions from the program. The commission will authorize distributions from the program on an annual basis. Each eligible provider will receive a single distribution for the year after January 1st of each year of eligibility, except as otherwise authorized by the commission.

(1) **Eligibility.** A wireline communications provider that complies with the requirements in this chapter is eligible to receive distributions from the program if the provider demonstrates that its financial circumstances are such that its customers are at risk of rate instability or service interruptions or cessations absent a distribution to the provider that will allow the provider to maintain rates reasonably close to the benchmark the commission has established. In making that determination, the commission will consider the provider's earned rate of return on a total Washington company books and unseparated regulated operations basis, the provider's return on equity, the status of the provider's existing debt obligations, and other relevant factors including, but not limited to, the extent to which the provider is planning or implementing operational efficiencies and business plan modifications to transition or expand from primary provision of legacy voice telephone service to broadband service or otherwise reduce its reliance on support from the program.

(2) **Calculation of support amount.** The amount that a wireline communications provider eligible to receive support from the program may receive in a calendar year shall not exceed the sum of the following:

(a) The amount the provider received in 2012 from the former traditional USF fund established in Docket U-85-23,

et al., and administered by the Washington exchange carrier association; and

(b) The cumulative reduction in support from the Connect America Fund incurred by the provider up through and including the year for which program support is distributed to the provider to the extent the program contains sufficient funds.

(3) **Distribution to wireless communications providers.** The advisory board will make a recommendation to the commission on eligibility and distribution calculations for any wireless communications provider that seeks support from the program, and the commission will determine that provider's eligibility and the amount of support, if any, the provider may receive consistent with RCW 80.36.650 and commission rules.

(4) **Total requests in excess of available funds.** If the total requests for support for a calendar year exceed the program funds available for that year, the commission will distribute the available funds to eligible carriers on a pro rata basis. The commission may seek a recommendation from the advisory board on the best pro rata distribution methodology to use.

(5) **Commission determination.** The commission will consider petitions from companies seeking support from the program and will make the necessary eligibility and distribution determinations in response to those petitions prior to January 1st of the calendar year in which funds from the program will be distributed.

NEW SECTION

WAC 480-123-150 Advisory board. (1) **Establishment.** The commission will establish an industry and consumer advisory board to provide recommendations to the commission on the implementation and management of the program.

(2) **Membership.** The commission secretary is authorized to solicit nominations and approve membership on the board.

(a) The board will be comprised of members representing the following interests:

(i) One from incumbent local exchange companies serving fewer than forty thousand access lines in Washington;

(ii) One from incumbent local exchange companies serving more than forty thousand access lines in Washington;

(iii) One from competitive local exchange companies serving customers in Washington;

(iv) One from wireless communications providers offering service in Washington;

(v) One from the public counsel section of the office of the attorney general of Washington; and

(vi) One from the commission staff.

(b) Commission staff and public counsel shall have permanent membership on the board. The commission will appoint industry members for a term of three years, at the expiration of which the industry members are eligible for appointment to a subsequent three-year term.

(3) **Duties.** The board shall:

(a) Have a consultative role on matters directly referred to it by the commission;

(b) Conduct meetings no less than once per year;

(c) Conduct all meetings as public meetings in accordance with the Open Public Meetings Act, chapter 42.30 RCW; and

(d) Prepare and submit to the commission a written report on matters brought to it for consideration including, where appropriate, a recommendation to the commission on potential resolution of such matters.

(4) **Initiating board action.** The commission alone may initiate board action other than the execution of administrative duties, which the board may conduct on its own initiative. Any person who seeks board participation in program issues or matters must petition the commission to initiate board action.

WSR 14-21-047

PERMANENT RULES

HORSE RACING COMMISSION

[Filed October 7, 2014, 3:09 p.m., effective November 7, 2014]

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

Purpose: Allows association employees to participate in handicapping contests for promotional purposes only.

Citation of Existing Rules Affected by this Order: Amending WAC 260-48-960.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 14-18-056 on August 29, 2014.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: October 7, 2014.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 12-03-074, filed 1/13/12, effective 2/13/12)

WAC 260-48-960 Handicapping contests. A licensed class 1 racing association may operate a handicapping contest at which the participants may be charged an entry fee. All paid-entry handicapping contests must be conducted in accordance with the provisions of this rule. The executive secretary may approve handicapping contests provided they meet the following criteria:

(1) A handicapping contest is defined as a competitive event, where participants, using individual skill to evaluate a variety of factors including the past performance of horses to determine the relative qualities and abilities of horses in a race, attempt to outperform other participants in selecting the finish of horses. Participants who are most successful in selecting horses become eligible to win prizes as prescribed in the official rules of the contest. Prizes and format are pre-defined and at the discretion of the class 1 racing association.

(2) A class 1 racing association desiring to offer a paid-entry handicapping contest must first apply for and receive approval from the commission to conduct a handicapping contest. The class 1 racing association must apply to the commission for approval of each and every contest. The class 1 racing association must include with its application the proposed rules for conducting the handicapping contest and the determination of prizes. The class 1 racing association will obtain written approval to operate the handicapping contest prior to the acceptance of any entry fees regarding said contest.

(3) The class 1 racing association approved to operate a handicapping contest will distribute at least ninety-five percent of the entry fees as prizes to the winners. Nothing in this section will preclude an operator from providing additional prizes or promotions.

(4) The entry fee to enter a handicapping contest will be set by the class 1 racing association. The entry fee and a description of all goods and services to be awarded as part of the handicapping contest must be fully disclosed to each participant prior to paying the entry fee. In addition, all prizes, including amenities such as airfare, meals and lodging, will also be fully disclosed to each participant prior to paying the entry fee.

(5) Races that are the subject of a handicapping contest must be races on which the class 1 racing association is authorized to conduct parimutuel wagering.

(6) The officers and employees of the class 1 racing association operating a handicapping contest, and their immediate families are prohibited from participating in any handicapping contest unless approved under this subsection. Commissioners and employees of the commission are also prohibited from participating in any handicapping contest in Washington. Employees of the class 1 racing association may participate in a handicapping contest, provided it is for promotional purposes only and are not eligible for any prizes awarded. Participation must be approved by the executive secretary.

(7) The class 1 racing association will provide the commission a report on every handicapping contest including a record of all entry fees collected, the number of participants for each contest, the amount the class 1 racing association paid in prizes, and the name and address of each winning participant.

(8) Any violation of this section will be referred to the executive secretary. The executive secretary will have sole authority to ensure compliance with this rule, conduct hearings on violations, and determine penalties. Any decision of the executive secretary may be challenged as provided in WAC 260-08-675.

WSR 14-21-056
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed October 8, 2014, 11:22 a.m., effective November 8, 2014]

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

Purpose: Amends WAC 181-87-055 to comply with statute changes related to marijuana (Initiative Measure 502, 2012) and the state board of pharmacy name change to the pharmacy quality assurance commission (HB 1609, chapter 19, Laws of 2013).

Citation of Existing Rules Affected by this Order: Amending WAC 181-87-055.

Statutory Authority for Adoption: RCW 28A.410.210.

Other Authority: Initiative Measure 502, and HB 1609, chapter 19, Laws of 2013.

Adopted under notice filed as WSR 14-16-092 on August 5, 2014.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: October 8, 2014.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-87-055 Alcohol or controlled substance abuse. Unprofessional conduct includes:

(1) Being under the influence of alcohol, marijuana or of a controlled substance, as defined in chapter 69.50 RCW, on school premises or at a school-sponsored activity involving students, following:

(a) Notification to the education practitioner by his or her employer of concern regarding alcohol or substance abuse affecting job performance;

(b) A recommendation by the employer that the education practitioner seek counseling or other appropriate and available assistance; and

(c) The education practitioner has had a reasonable opportunity to obtain such assistance.

(2) The possession, use, or consumption on school premises or at a school sponsored activity of a Schedule 1 controlled substance, as defined by the state (~~(board of)~~) pharmacy quality assurance commission, or a Schedule 2 controlled substance, as defined by the state (~~(board of)~~) pharmacy quality assurance commission, without a prescription authorizing such use.

(3) The consumption of an alcoholic beverage on school premises or at a school sponsored activity involving students if such consumption is contrary to written policy of the school district or school building.

(4) The possession of marijuana or marijuana-infused product on school premises or at a school sponsored activity involving students if such possession violates Washington law or is contrary to written policy of the school district or school building.

(5) The use or consumption of marijuana or marijuana-infused product on school premises or at a school sponsored activity.

WSR 14-21-063

PERMANENT RULES

HIGHLINE COLLEGE

[Filed October 9, 2014, 10:57 a.m., effective November 9, 2014]

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

Purpose: (1) Highline Community College is reverting to its formal name, Highline College, for all official and unofficial agency identification. It is necessary to replace all references to Highline Community College in Title 132I WAC with Highline College.

(2) The campus safety and security office's name is changing to the Highline public safety department and the public safety and emergency management director is the department leader. References to the campus safety and security office and the campus safety and security supervisor in Title 132I WAC are being replaced with the new titles.

(3) The time requirement for denying a request for public records is being changed to two days from the current ten days in WAC 132I-276-045(3).

Citation of Existing Rules Affected by this Order: Amending WAC 132I-116-020, 132I-116-030, 132I-116-040, 132I-116-050, 132I-116-070, 132I-116-100, 132I-116-150, 132I-116-170, 132I-116-190, 132I-116-200, 132I-116-222, 132I-116-230, 132I-116-240, 132I-116-260, 132I-116-270, 132I-116-275, 132I-116-300, 132I-276-010, 132I-276-017, 132I-276-020, 132I-276-045, 132I-276-080, 132I-160-010, 132I-160-020, 132I-160-032, 132I-160-033, 132I-160-035, 132I-160-045, 132I-160-065, 132I-160-110, 132I-130-010, 132I-130-030, 132I-120-010, 132I-120-020, 132I-120-030, 132I-120-100, 132I-120-101, 132I-120-102, 132I-120-105, 132I-120-315, 132I-120-330, 132I-120-520, 132I-280-015, 132I-124-010, 132I-140-010, 132I-140-012, 132I-140-110, 132I-140-120, 132I-140-140, 132I-140-150, 132I-133-010, 132I-131-010, 132I-168A-010, 132I-168A-050, 132I-134-010, and 132I-132-010.

Statutory Authority for Adoption: Chapter 34.05 RCW et seq. and RCW 28B.50140 [28B.50.140] (10) and (13).

Adopted under notice filed as WSR 14-16-050 on July 29, 2014.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 56, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 56, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 56, Repealed 0.

Date Adopted: October 6, 2014.

Larry Yok
Vice-President
for Administration

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-020 Definitions. As used in this document, the following words shall mean:

(1) **Campus:** Any property or facility over which Highline (~~(Community)~~) College exercises control as the owner, lessee, or tenant.

(2) **College:** Highline (~~(Community)~~) College, or any additional community college hereafter established with Community College District 9, state of Washington, and collectively, those responsible for its control and operations.

(3) **College community:** Trustees, students, employees, and guests on college owned or controlled facilities.

(4) **College facilities:** Includes any or all property controlled or operated by the college.

(5) **Student:** Includes all persons attending or enrolled at the college, both full time and part time.

(6) (~~(Campus safety and security supervisor)~~) **Public safety and emergency management director:** An employee of Highline Community College District 9, state of Washington, who is responsible to the vice-president for administration for (~~(campus)~~) security, safety, parking, and traffic control at the college's campus.

(7) **Registered vehicle:** A vehicle registered with the (~~(campus safety and security office)~~) public safety department.

(8) **Motor vehicle:** An automobile, truck, motor-driven cycle, scooter, or any vehicle powered by an engine or motor.

(9) **Nonmotorized vehicle:** Bicycles, skateboards, and other vehicles not equipped with engines or motors.

(10) **Visitor:** Any person(s), other than currently enrolled students or college employees, who is on the campus as a guest(s) or to visit the campus for meetings and/or other purposes.

(11) **School year:** Unless otherwise designated, the time period commencing with the summer quarter of the (~~(com-~~

munity)) college calendar year and extending through the subsequent fall, winter, and spring quarters.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-030 Applicable parking and traffic rules and regulations—Areas affected. The following rules and regulations apply to all persons operating vehicles on Highline ((Community)) College's campus.

(1) The motor vehicle and other traffic laws of the state of Washington.

(2) The municipal traffic code of the city of Des Moines, state of Washington, to the extent that the college owns or controls property located within the city of Des Moines.

(3) The municipal traffic code of the city of Kent to the extent the college owns or controls property within the city of Kent.

(4) Any other municipal traffic codes applicable to college owned or controlled property that is located outside of the boundaries of the cities identified in subsections (2) and (3) of this section.

(5) The Highline ((Community)) College parking and traffic regulations, as set forth in this chapter, shall be applicable to all properties owned or controlled by Highline ((Community)) College. In case of conflict with the state, county or municipal motor vehicle laws, those laws shall govern and take precedence over the college's parking and traffic regulations.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-040 Parking and traffic responsibility. The vice-president for administration is responsible for parking and traffic management on campus. In general, the responsibility is delegated to the ((safety and security supervisor)) public safety and emergency management director. All duly appointed public safety ((and security)) employees of Highline ((Community)) College shall have the authority to enforce all college parking and traffic regulations under the supervision of the public safety ((and security)) supervisor.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-050 Permits required for vehicles on campus. No person shall park or leave any motor vehicle, whether attended or unattended, upon the campus of Highline ((Community)) College without a permit issued by the ((safety and security office)) public safety department unless the vehicle is parked in a parking space designated for visitors. All persons parking on the campus will be given a reasonable time to secure a temporary or permanent permit from the ((safety and security office)) public safety department.

(1) A valid permit is:

(a) A current Highline ((Community)) College vehicle permit displayed in accordance with instructions.

(b) A temporary or guest permit authorized by the ((safety and security office)) public safety department and displayed in accordance with instructions.

(2) Parking permits are not transferable, except as provided in WAC 132I-116-100.

(3) The college reserves the right to refuse the issuance of a parking permit to any applicant.

(4) Visitors may park in designated "visitor" parking spaces without securing a permit. Visitor parking spaces are not available for use by currently enrolled students or college employees, provided that no motor vehicle shall occupy a "visitor" parking space in excess of the posted time limit.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-070 Authorization for issuance of permits. The ((safety and security office)) public safety department is authorized to issue parking permits to students, faculty, staff members, visitors and guests of the college pursuant to the following regulations:

(1) Students may be issued a parking permit upon the registration of their motor vehicles with the ((safety and security office)) public safety department at the beginning of each academic quarter.

(2) Full-time and part-time faculty and staff members may be issued a parking permit upon the registration of their motor vehicles at the time they begin their employment at the college.

(3) Full-time faculty and staff personnel may be issued a second motor vehicle permit for another personally owned motor vehicle. A condition of issuance is that at no time will more than one vehicle be parked on campus.

(4) Car pool permits may be issued to faculty, staff, and students. A car pool is defined as being from two to five persons. One transferable permit will be issued by the ((safety and security office)) public safety department for each car pool. This permit is transferable only among the registered members of the car pool. This permit will be displayed in accordance with the instructions provided with the permit. A condition of issuance is that at no time will more than one vehicle owned by members of the pool be parked on campus.

(5) The ((safety and security office)) public safety department may issue temporary and special parking permits when such permits are necessary to enhance the business or operation of the college.

(6) Permit-holders may obtain temporary parking permits at the ((safety and security office)) public safety department without charge for an unregistered vehicle when necessary due to the nonavailability of their registered vehicles.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-100 Transfer of permits. Parking permits are transferable between vehicles registered to the permit holder. Permits may be reissued as authorized by the ((safety and security supervisor)) public safety and emergency management director or designee.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-150 Parking within designated spaces. (1) Vehicles on the Highline (~~(Community)~~) College campus shall be parked in designated parking areas only. These areas are marked by a curb, white lines, or signs. Parking on or over a line constitutes a violation.

(2) No motor vehicle may be parked in posted "no parking" and "fire lane" zones, within ten feet of a fire hydrant; on any area that has been landscaped or designed for landscaping; or on any paved walkway or unpaved pathway designated for pedestrian use. This prohibition shall not apply to vehicles operated by the college maintenance or (~~(safety and security)~~) public safety employees, by persons who have received express authorization from the (~~(safety and security office)~~) public safety department, or emergency response vehicles.

(3) No motorcycles, motorized bicycles, scooters, or bicycles shall be parked inside a building, against a building or handrails, or sidewalk or other pedestrian pathway. Bicycles must be secured to racks as provided.

(4) Motor vehicles that have been parked in excess of seventy-two hours and that appear to be inoperable or abandoned may be impounded and stored at the expense of the owner and/or operator thereof, pursuant to WAC 132I-116-222.

(5) Persons seeking to park on campus longer than seventy-two hours must apply and receive authorization from the (~~(safety and security office)~~) public safety department.

(6) All vehicles shall follow traffic arrows and other markings established for the purposes of directing traffic on campus.

(7) No vehicle shall be parked so as to occupy any portion of more than one parking space or stall as designated within the parking area. The fact that other vehicles may have been so parked as to require the vehicle parked to occupy a portion or more than one space or stall shall not constitute an excuse for violation of this section.

(8) No vehicle shall be parked on the campus except in those areas set aside and designated pursuant to WAC 132I-116-140.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-170 Night parking. Students, faculty, and staff with a valid parking permit may park in any area (~~(A or B spaces)~~) on a first-come first-serve basis between the hours of 4:00 p.m. and 10:45 p.m., provided that disabled parking spaces remain restricted to motor vehicles displaying a valid disabled parking permit parking placard or license plate from an authorized governmental agency.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-190 Regulatory signs and directions. The (~~(safety and security supervisor)~~) public safety director or designee is authorized to erect signs, barricades, and other structures and to paint marks or other directions upon the

entry ways and streets on campus and upon the various parking lots owned or operated by the college. Such signs, barricades, structures, markings, and directions shall be made and placed as to best effectuate the objectives of these rules and regulations, in the opinion of the vice-president for administration or his or her designee. Drivers of vehicles shall observe and obey the signs, barricades, structures, markings, and directions erected pursuant to this section. Drivers shall also comply with the directions from (~~(safety and security)~~) public safety personnel including commissioned law enforcement officers in the control and regulation of traffic.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-200 Vehicle operation. (1) No vehicle shall be operated on the campus at a speed in excess of ten miles per hour or as posted. No vehicle of any type shall at any time use the campus parking lots for testing, racing, or other unauthorized activities.

(2) No vehicle shall be operated in such a negligent or reckless manner as to place person(s) or property in danger of injury or grievous harm.

(3) Upon a roadway designated for one-way traffic, a vehicle shall be driven only in the direction designated at all or such times as shall be indicated by official traffic control devices.

(4) No motorized vehicle shall be operated on pedestrian walkways or pathways with the exception of official college vehicles, emergency response vehicles, and vehicles granted permission to do so by the (~~(safety and security office)~~) public safety department.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-222 Impounding of vehicles. Any vehicle parked on campus in violation of these regulations, including the motor vehicle and other traffic laws of the state of Washington and the traffic code of the cities of Des Moines and Kent as incorporated in WAC 132I-116-030, may be impounded and towed to an impound lot by a duly authorized towing company under contract to provide towing services to the college. The expense of such impounding and storage shall be charged to the owner or operator of the vehicle and paid by him prior to its release. The college and its employees shall not be liable for loss or damage of any kind resulting from such immobilization, impounding, and/or storage.

Circumstances in which vehicles may be impounded include, but are not limited to the following:

(1) Blocking a roadway in a manner that impedes vehicular or pedestrian traffic;

(2) Blocking a walkway in a manner that impedes pedestrian traffic;

(3) Blocking a fire lane or impeding access to a fire hydrant including parking within ten feet of a fire hydrant;

(4) Creating a safety hazard in the opinion of the (~~(safety and security supervisor)~~) public safety and emergency management director or (~~(his or her)~~) designee;

(5) Blocking a legally parked car;

- (6) Parking in a marked "tow-away" or "no parking" zone;
- (7) Having an accumulation of four or more outstanding college parking/traffic violations;
- (8) Illegally parking in a handicapped parking space;
- (9) Parking anywhere other than a designated parking area; or
- (10) Parking on campus for more than seventy-two hours without prior authorization from the ~~((safety and security office))~~ public safety department.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-230 Report of accident. The operator of any vehicle involved in an accident on campus resulting in injury to or death of any person or damage to either vehicles of \$500.00 or more, shall within twenty-four hours report such accident to the ~~((safety and security office))~~ public safety department. This does not relieve any person so involved in an accident from their responsibility to file a state of Washington motor vehicle accident report within twenty-four hours after such accident.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-240 Specific traffic and parking regulations and restrictions authorized. Upon special occasions or during emergencies, the ~~((safety and security supervisor))~~ public safety and emergency management director or designee is authorized to impose additional traffic and parking regulations and restrictions consistent with the objectives specified in WAC 132I-116-010.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-260 Issuance of traffic citations. Upon the violation(s) of any of the parking and traffic rules and regulations contained in chapter 132I-116 WAC, the ~~((safety and security))~~ public safety personnel are authorized to issue citations, setting forth the date, the approximate time, permit number, license number, name of permit holder, infraction, ~~((safety and security))~~ name of the public safety employee, and schedule of fines. Parking citations may be served by attaching or affixing a copy thereof in some prominent place outside such vehicle or by personally serving the operator.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-270 Fines and penalties. (1) Fines may be levied for any violations of the rules and regulations contained in chapter 132I-116 WAC.

In addition to a fine imposed under these regulations, illegally parked vehicle(s) may be subject to impound pursuant to WAC 132I-116-222.

(2) A schedule of parking and traffic fines and penalties shall be adopted by the board of trustees.

(3) An accumulation of unpaid citations that are more than twenty calendar days overdue from the date of the citation(s) by a student may be cause for disciplinary action, and the chief student affairs officer (CSAO) may initiate disciplinary proceedings against such students. No disciplinary action shall be taken until the student has completed the appeal process or waived his or her appeal rights.

(4) An accumulation of unpaid citations that are more than twenty calendar days overdue from the date of the citation(s) by faculty or staff members shall be turned over to the financial services office for the collection of fines. The collection process shall not commence until the faculty or staff member has completed the appeal process or waived his or her appeal rights.

(5) Parking and traffic citations will be processed by the campus ~~((safety and security office))~~ public safety department. Parking and traffic fines are to be paid to the cashier's office.

(6) Parking and traffic fines shall be charged for offenses according to the schedule established by the board of trustees.

(7) In the event a student fails or refuses to pay a fine, the following may result:

(a) Student may have a hold placed on his or her record and may not be eligible to register;

(b) Student may not be able to obtain a transcript or his or her grades or credits;

(c) Student may not receive a degree;

(d) Student may be denied future parking privileges;

(e) Student's vehicle may be impounded;

(f) Student's debt may be turned over to a collection agency in accordance with the college's collection policy.

(8) Parking and traffic fines are due twenty calendar days from the date of citation. Provided that if timely appeal is filed, such fine shall be due twenty calendar days from the date of service upon the violator of the order terminating the appeal.

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-275 Schedule of fines and penalties. Highline ~~((Community))~~ College parking and traffic fine schedule is listed in the Highline ~~((Community))~~ College budget book on file in the Highline ~~((Community))~~ College library and adopted by the board of trustees.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-116-300 Appeal of fines and penalties. Any citation for violation of these rules and regulations, may be appealed. The appeal must be submitted in writing, within twenty calendar days from the date of the citation, to the ~~((safety and security supervisor))~~ public safety and emergency management director or designee, who will:

(1) Review the appeal and confer with the appellant to determine whether a satisfactory solution, to all parties, can be reached without further administrative action. If a solution satisfactory to all parties cannot be reached, the ~~((safety and security supervisor))~~ public safety and emergency management director or his designee will issue and serve the appel-

lant with a brief written order explaining why the appeal was denied. Service shall be in person or by first class mail. For purposes of this regulation, service by mail will be deemed complete on the third business day after the order is deposited in the mail.

(2) An appeal of the ~~((safety and security supervisor's))~~ public safety and emergency management director's or designee's order may be submitted in writing to the college's vice-president for administration or designee within twenty-one calendar days after service of the public safety ~~((and security))~~ supervisor's order is complete. The written appeal must be accompanied by a copy of the ~~((security supervisor's))~~ public safety and emergency management director's or designee's order. Within twenty calendar days from the receipt of any such appeal, the college's vice-president for administration or designee shall render a written decision. This decision will be final.

(3) The final legal recourse for an appellant is to the Washington state superior court system.

(4) In the event that the appeal involves an impounded vehicle, the vehicle's owner shall have the right to a hearing before the ~~((safety and security supervisor or his or her))~~ public safety and emergency management director or designee within forty-eight hours of a request, or on the next business day if the forty-eight hour period terminates on a weekend or holiday. The vehicle's owner shall also be entitled to a release of the vehicle upon payment of a bond to the college in the amount of the sum of the impoundment costs and the total of all fines due and owing. If at the hearing it is shown that the vehicle was improperly impounded, the owner of the vehicle shall be entitled to a refund of the costs of impoundment. The vehicle's owner may appeal the ~~((safety and security supervisor's))~~ public safety and emergency management director's or designee's order as provided in WAC 132I-116-300(2).

(5) In all appeals under this section, the appellant carries the burden of proof, which shall be a preponderance of the evidence.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-010 Purpose. ~~((1) Highline Community College serves its community and the general public by providing opportunities for all persons seeking educational and personal enrichment. The college delivers innovative education and training opportunities to foster personal and professional success in a multicultural society.~~

Highline Community College is committed to the following values:

Access: We believe education should be available to all who seek it.

Collaboration: We value teamwork, joint responsibility and ownership.

Community: We value our community and are dedicated to serving its educational needs.

Diversity: We respect the rights and perspectives of the diverse populations who live, learn and work in our community.

Excellence: We strive for the highest quality in all our programs and services.

Integrity: We believe in honesty and trustworthiness in all our college practices.

Internationalization: We value a global perspective and respect cultural differences.

Learning: We develop an interactive, creative, and learner-centered environment that supports student success.

~~(2) Students have the responsibility to observe and help maintain appropriate conditions in the classroom, on campus, and when officially representing the college in the larger community. Allegiance to these core values and the civility statement (WAC 132I-120-100(1)) allows Highline Community College to offer a learning environment that prepares students to engage actively and responsibly as citizens in the local and global communities.~~

~~(3) Highline Community College has jurisdiction to take appropriate disciplinary action when any student acts in a manner that violates this code at any college-sponsored program or event. Jurisdiction is defined in WAC 132I-120-530. The purpose of these rules is to prescribe standards of conduct for students of Highline Community College District No. 9; the violations of which may constitute sufficient cause for disciplinary action as described in accordance with the procedures established in WAC 132I-120-010 through 132I-120-530.~~

~~(4) A student's application for admission or registration constitutes acceptance of the responsibility to comply with the general policies and regulations established by the college and to meet the expectations described in this document.)~~ As a public institution of higher education serving a diverse community in a multicultural world and global economy, Highline College promotes student engagement, learning, and achievement, integrates diversity and globalism throughout the college, sustains relationships within its communities, and practices sustainability in human resources, operations, and teaching and learning.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-020 General policies. (1) Highline ~~((Community))~~ College is an agency of the state of Washington and adheres to all local, state, and federal laws. The college is obligated to demonstrate respect for the laws by cooperating in their enforcement.

(2) Highline ~~((Community))~~ College cannot and will not establish regulations which would abridge constitutional rights.

(3) Proper procedures are established to maintain conditions conducive to the effective performance of the function of the college, to protect students from unfair imposition of penalties, and to assure due process. Highline ~~((Community))~~ College is granted the right by law to adopt rules deemed necessary to govern its operations.

(4) If these rules are broken, the college has the right and the obligation to take action that is in the best interest of the college and that is commensurate with the constitutional rights of the individual.

(5) Highline ~~((Community))~~ College reserves the right to impose the provisions of this chapter and provide further sanctions before or after law enforcement agencies, courts, or

other agencies have imposed penalties or otherwise disposed of a case. College proceedings are not subject to challenge on the ground that criminal or civil charges involving the same incident have been dismissed or reduced or in which the defendant has been found not guilty or not liable. In addition, the college reserves the right to refer incidents to the appropriate civilian authorities or law enforcement agencies.

(6) The associated students of Highline ((Community)) College have the right to participate in the formulation and review of all policies pertaining to student rights and responsibilities and its enforcement as described in the student code of conduct.

(7) Rules of conduct and procedures of enforcement shall be printed and made available to all students via the internet and in hard copy upon request.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 1321-120-030 Definitions. (1) As used in these rules, the following words and phrases shall mean:

(a) "Anabolic steroids" means synthetic derivatives of testosterone or any isomer, ester, salt, or derivative that acts in the same manner on the human body.

(b) "Androgens" means testosterone in one of its forms or a derivative, isomer, ester, or salt that acts in the same manner on the human body.

(c) ((ASHCC)) ASHC refers to the associated students of Highline ((Community)) College, the official student government association.

(d) "Assembly" refers to any overt activity engaged in by three or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person or group.

(e) "Board of trustees" means the board members appointed by the governor of the state of Washington who have final authority for the governance of Highline ((Community)) College.

(f) "Chief student affairs officer (CSAO)" means the college administrator who reports to the college president, who serves as the college's student judicial affairs administrator, and who is responsible for administering the student rights and responsibilities code. The CSAO may designate a student judicial affairs administrator to fulfill this responsibility.

(g) "College" means Highline ((Community)) College ((HCC)), or any additional community college hereafter established with Community College District 9, state of Washington, and collectively, those responsible for its control and operation.

(h) "College community" means trustees, students, staff, faculty, and visitors on college owned or controlled facilities.

(i) "College facilities" means and includes any or all property controlled and/or operated by the college.

(j) "Day" means a calendar day. The effective date of any provision of these rules shall be the day other than a Saturday, Sunday or holiday.

(k) "Faculty complaint process" is the process through which students may seek resolution of complaints against faculty members about instructional matters. The faculty complaint process is explained fully in the *Complaints*

Against Faculty Members section 807 of the Highline College Education Association (HCEA) ((HCC)) negotiated agreement. Written procedures for the faculty complaint process are available in the office of the chief student affairs officer, and in the academic affairs administrative offices.

(l) "Human growth hormones" means growth hormones, or a derivative, isomer, ester, or salt that act in the same manner on the human body.

(m) "Initial disciplinary hearing" means a meeting between the chief student affairs officer or designee and accused party to review the charges and evidence of any code violation and give opportunity for the accused party to give their account of the incident(s) under investigation.

(n) "President" means the chief executive officer of the college appointed by the board of trustees, and for the purposes of these rules includes "acting president" or the delegated authority in the absence of the president.

(o) "Student" means and includes any person enrolled at the college, or a person seeking admission or accepted to the college for admission.

(p) "Student group" means a number of students who have not met the formal requirements to be officially recognized as a student organization.

(q) "Student code of conduct" means the ((HCC)) Highline College student rights and responsibilities.

(r) "Student organization" means a number of students who have met the formal requirements of clubs and organizations recognition as provided by the associated students of Highline ((Community)) College ((ASHCC)) ASHC.

(s) "Summary suspension hearing" means a short, concise, and timely hearing administered in emergencies, following a student being summarily suspended from attending a class or classes.

(t) "Student judicial affairs administrator" means the chief student affairs officer or designee.

(2) All other terms have their natural meaning unless the context dictates otherwise.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 1321-120-100 College community expectations.

(1) Civility statement. Members of Highline ((Community)) College community accept the responsibility to promote a learning and working environment which ensures mutual respect, civility, honesty, and fairness. Members of the college community are expected to uphold the college's values and ethics necessary to maintain a positive campus climate, which includes health, safety and welfare of the campus community. To be active participants in the process of education, college community members will strive to adhere to the following expectations:

(a) To be positive contributors to the college, the city of Des Moines, and the surrounding community.

(b) To conduct themselves with civility and be held accountable as members of the ((HCC)) Highline College community.

(c) To be honest and take responsibility for treating others with respect and dignity.

(d) To be open to the concepts of leadership, diversity, and wellness.

(e) To be open-minded and prepared to learn.

(2) Educational expectations. Students who choose to attend Highline ((Community)) College also choose to participate actively in the adult learning process offered by the college. As a process, learning is not a product or commodity, which is bought and sold, but rather, it is a relationship between instructors who are willing to teach, staff who are willing to support, and students who are willing to learn. Therefore, the responsibility for learning is shared equally between students, staff, and faculty.

(3) Student responsibilities. The college is responsible for providing its students with an educational environment rich in the high quality resources needed by students to attain their individual educational goals. In return, students are responsible for making themselves aware of the full breadth of the resources available, for the timely choosing and appropriate use of these resources, and for the specific behavioral tasks necessary for attaining the desired learning outcomes. Student responsibilities include but are not limited to the following: To actively participate in the learning process by adhering to the college's policies, practices, and procedures; attending all class sessions; utilizing campus resources; participating actively in the advising process; seeking timely assistance in meeting educational goals; and assuming responsibility for the selection of courses to achieve those goals.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-120-101 Student code of conduct. (1) Code of conduct. As members of the college community, students are expected to obey all college rules and regulations and are prohibited from engaging in any unlawful conduct. Any student who, either as a principal actor, aid, abettor, or accomplice as defined in RCW 9A.08.020, as now law or hereafter amended, violates any local, state or federal law, interferes with the personal rights or privileges of others or the educational process of the college, or violates the code of conduct which includes, but is not limited to, the categories listed below, shall be subject to disciplinary action as provided in this chapter (see WAC 132I-120-410).

(a) Personal offenses.

(i) Assault, reckless endangerment, intimidation, or interference upon another person in the manner set forth in RCW 9A.36.010 through 9A.36.050, or 28B.10.570 through 28B.10.572, as now law or hereafter amended.

(ii) Disorderly, disruptive, or abusive behavior which interferes with the rights of others or obstructs or disrupts teaching, learning, research, or administrative functions.

(iii) Inattentiveness, inability, or failure to follow the reasonable instructions of any college employee acting within their professional responsibility, thereby infringing upon the rights and privileges of others.

(iv) Refusal to comply with any lawful order to leave the college campus or any portion thereof by college personnel when necessary for the college to achieve its purpose of providing educational programs and services.

(v) Unauthorized assembly, obstruction, or disruption which materially and substantially interferes with vehicular or pedestrian traffic, classes, hearings, meetings, the educational and administrative functions of the college, or the rights and privileges of others.

(vi) Filing of a formal complaint falsely accusing another member of the college community with violating a provision of this chapter.

(vii) Falsely reporting an emergency, such as by setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

(viii) Submitting information known to be false, misinterpreted, or fraudulent to college officials or on college records.

(ix) Engaging in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where such behavior offends the recipient or a third party, causes discomfort or humiliation, or creates an intimidating, offensive, or hostile work or learning environment.

(x) Stalking behavior in which a student repeatedly engages in a course of conduct directed at another person and makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her family; where the threat is reasonably determined by the college to seriously alarm, torment, or terrorize the person; and where the threat is additionally determined by the college to serve no legitimate purpose.

(xi) Destruction or alteration of any evidence that could be used during an investigation or college proceeding.

(xii) Any malicious act or behavior which causes harm to any person's physical or mental well-being. Harassment includes intentionally and repeatedly following or contacting another person in a manner that alarms, annoys, intimidates, harasses, or causes substantial emotional distress.

(b) Property offenses.

(i) Actual or attempted theft or robbery (RCW 9A.56.-010 through 9A.56.060 and 9A.56.100) of property or services belonging to the college or college community member including but not limited to knowingly possessing stolen property.

(ii) Malicious mischief that causes damage to or destruction of any college facility or other public, private, or personal property.

(iii) Unauthorized use of college equipment, supplies, and facilities for personal gain.

(iv) Unauthorized use of a motorized vehicle, skateboard, bicycle, or other personal vehicle on campus pedestrian walkways.

(v) Unauthorized entry, access, or presence upon the property of the college or into a college facility or portion thereof which has been closed, reserved, restricted, or placed off limits or unauthorized possession or use of key, access code, or password to any college facility or system.

(vi) Misuses of information technology. The following is prohibited: Failure to comply with laws, regulations, license agreements, or contracts governing use of college networks, software and hardware; abuse of communal resources; and, use of college computing resources for illegal or unautho-

rized commercial purposes or personal gain. It is the obligation of college students to be aware of their responsibilities as outlined in the *Computing Resources Appropriate Use Policy*, which is available on the Highline ((Community)) College web site. Failure to comply may result in loss of access to college computing resources, as well as administrative, civil or criminal action under Washington state or federal law.

(c) Status offenses.

(i) Forgery, falsification, or alteration of official documents, records, or correspondence.

(ii) Refusal to provide positive identification (e.g., student or state identification card; valid driver's license) when requested by any identified college official.

(d) Offenses pertaining to drugs/alcohol/smoking.

(i) Smoking outside of the designated smoking areas.

(ii) Possession or consumption of alcoholic beverages on college property or at a college-sponsored event is prohibited unless attendees are over the age of twenty-one and an alcohol permit has been obtained.

(iii) Controlled substances. Using, possessing, delivering, selling or being under the influence of legend drugs, including anabolic steroids, androgens, or human growth hormones, as defined by RCW 69.41.010 and 69.41.300 or any other controlled substance as defined in RCW 69.50.101 as now law or hereafter amended, except upon valid prescription or order of a practitioner is subject to additional sanctions, including disqualification from participation in college-sponsored athletic events. For the purpose of this regulation, "sale" shall include the statutory meaning defined in RCW 69.04.005 as now law or hereafter amended.

(e) Other misconduct: Any other conduct or action in which the college can demonstrate a clear and distinct threat to college property, the educational process, or any other legitimate function of the college or the health or safety of any member of the college community.

(2) Violation of any of the above regulations may also constitute violation of criminal laws or ordinances of various cities, municipalities, counties, the state of Washington, or the United States and may subject a violator to criminal sanctions in addition to any sanctions imposed by the college.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-120-102 Academic honesty. (1) Students attending Highline ((Community)) College are expected to participate as responsible members of the college community, which includes assuming full responsibility for maintaining honesty and integrity in all work submitted for credit and in any other work assigned by faculty.

(2) Violations of academic honesty include, but are not limited to:

(a) Plagiarism: The unauthorized use or close imitation of the words, ideas, data, images, or product of another and the representation of them as one's own original work.

(b) Cheating: Use or attempted use of unauthorized materials, information, or study aids; an act of deceit by which a student attempts to misrepresent academic skills or

knowledge; unauthorized or attempted unauthorized copying or collaboration.

(c) Fabrication: Intentional misrepresentation or invention of any information, such as falsifying research, inventing or exaggerating data, or listing incorrect or fictitious references.

(d) Collusion: Assisting another to commit an act of academic dishonesty, such as paying or bribing someone to acquire a test or assignment, or increase the score on a test or assignment; taking a test or doing an assignment for someone else; allowing someone to do these things for one's own benefit.

(e) Academic misconduct: Intentionally violating college policies, such as altering grades, misrepresenting one's identity, failing to report known incidents of academic dishonesty, or participating in obtaining or distributing any part of a test or any information about a test.

(3) Penalties for academic dishonesty.

(a) All suspected academic dishonesty will be reported, with evidence attached, to the chief student affairs officer as a means of tracking.

(b) If a student commits academic dishonesty, any one or a combination of the following sanctions may be imposed by the faculty member:

(i) Verbal or written warning.

(ii) A grade of 0% (0.0) or otherwise lowered grade for the assignment, project, or test.

(iii) The following sanction may be imposed by the faculty member only after a formal hearing is conducted by the chief student affairs officer, and the chief student affairs officer approves the sanction:

A grade of 0% (0.0) or otherwise lowered grade for the course, overriding a student's withdrawal from the course.

(c) In accordance with the Highline student rights and responsibilities code (WAC 132I-120-410), the chief student affairs officer may issue a formal disciplinary warning letter for a student's first reported offense of academic dishonesty. The warning letter may be issued in lieu of a formal hearing; however, it will not be reported to transfer institutions or other requesting agencies.

(d) In accordance with the Highline student rights and responsibilities code (WAC 132I-120-410), the chief student affairs officer will summon a student to a formal hearing for a second or subsequent offense of academic dishonesty.

(e) Disciplinary actions for second or subsequent offenses of academic dishonesty include, but are not limited to, the sanctions outlined in WAC 132I-120-410, which may be imposed upon students according to the procedure outlined in WAC 132I-120-421.

(4) Academic dishonesty complaint and hearing procedures.

(a) The faculty member observing or investigating the apparent act of academic dishonesty shall document the incident by writing down the time, date, place, and a description of the act and/or any other pertinent information.

(b) The faculty member may collect evidence to corroborate the allegation.

(c) The faculty member shall provide the student an opportunity to explain the incident.

(d) The faculty member shall explain to the student the procedures and penalties for academic dishonesty and shall give the student a copy of the Highline ((Community)) College academic honesty policy.

(e) The faculty member may resolve the matter informally by determining an appropriate sanction, which may include a verbal or written warning, or a grade of 0% (0.0) or otherwise lowered grade on an assignment, project, or test, or no further action.

(f) The faculty member shall submit a copy of the Academic Dishonesty Report form to the office of the chief student affairs officer. The report shall be kept on file and may be presented as evidence for more stringent sanctions, should the student commit subsequent violation(s) of the academic honesty policy.

(g) If the faculty member wishes to initiate more stringent sanctions in addition to lowering or failing an assignment and/or verbal or written warning (e.g., assign a failing grade for the course), or if the student has committed more than one academic dishonesty offense, the student must be entitled to a formal hearing with the chief student affairs officer or his or her designee. Following a formal hearing, sanctions imposed by the chief student affairs officer may range from no further action (no failing grade for the course) to dismissal from the college (WAC 132I-120-410). The chief student affairs officer may not overturn the sanctions imposed by the faculty member ((d)(i) and (ii) of this subsection).

(h) The faculty member shall submit a copy of the Academic Dishonesty Report form and any additional evidence to the chief student affairs officer within ten days of the alleged act of academic dishonesty, which initiates the formal hearing process.

(i) Within ten days of receiving an Academic Dishonesty Report form, the chief student affairs officer or designee shall notify the student in writing of the date, time and location of the hearing. At the hearing, the student shall meet with the chief student affairs officer or designee to hear the charges and present his/her side of the case. If the student chooses not to attend or fails to appear, the hearing will be conducted in the student's absence.

(j) The chief student affairs officer or designee will consider any evidence submitted within seven days of the hearing, and interview persons as warranted. The chief student affairs officer or designee determines if the action recommended by the faculty member is appropriate.

(k) Within ten days of the hearing, the chief student affairs officer or designee shall send written notification of the results to the student and faculty member. The decision of the chief student affairs officer or designee is final. (With permission, contents of this policy were adapted from "Academic Integrity Policy," Portland Community College, Portland, Oregon.)

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-120-105 Student rights. The following rights are guaranteed to each student within the limitations of statutory law and college policy as deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary or capricious, but are responsible for meeting the standards of academic performance established by their instructors. Grade complaints are administered through the *Complaints against Faculty Members* section 807 of the Highline College Education Association (HCEA) ((HCE)) negotiated agreement.

(d) Students have the right to a learning environment that is free from unlawful discrimination, inappropriate and disrespectful conduct, and sexual harassment.

(2) Due process.

(a) It is guaranteed that students have the right to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this student rights and responsibilities code is entitled to procedural due process as set forth in this chapter.

(3) Distribution and posting. Students may distribute or post printed or published material subject to official written procedures available in the student programs office. All free publications not in violation of state and/or federal laws may be distributed from authorized public areas subject to time, place, and manner as determined by the college. Students distributing printed materials are responsible for litter control of all distributed material.

(4) Off-campus speakers. Recognized student organizations shall have the right to invite outside speakers to speak on campus subject to the availability of campus facilities, funding, and compliance with the college procedures available in the student programs office.

(5) Commercial activities. The use of college grounds or facilities for commercial or private gain is prohibited except with the approval of the student programs office consistent with vending and fund-raising guidelines. Commercial activities which generate contractual and/or financial debt relationships with students are prohibited. The college reserves the right to charge commercial vendors for the use of college facilities.

(6) Sale of merchandise. All merchandise offered for commercial sale may be sold only through the college bookstore or college food services except when approved by the student programs office or affiliated academic department as part of the cocurricular experience.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-120-315 Right of assembly. (1) Students have the right to conduct or participate in any assembly as

defined in WAC 132I-120-030 on facilities that are generally available to the public provided that such assemblies:

- (a) Are conducted in an orderly manner;
- (b) Do not unreasonably interfere with classes, scheduled meetings or ceremonies, or college sponsored events;
- (c) Do not unreasonably interfere with pedestrian or vehicular traffic; or

(d) Do not cause destruction or damage to college property.

(2) College groups are encouraged to notify the ~~((campus safety and security office))~~ public safety department no later than forty-eight hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility or college.

(3) Assemblies which violate these rules may be ordered to disperse by college.

(4) Any campus community member who violates any provision of this rule may be required to leave the campus or facility and may be issued a no trespass admonishment.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-330 Rights of ownership of works. It shall be the policy of Highline ~~((Community))~~ College that employees of the college shall not use students' published or unpublished works for personal gain without written consent of the student.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-520 Function of the review committee. (1) The review committee will establish procedures for review and possible revision of these rules.

(2) All proposed amendments shall be submitted to the chief student affairs officer, who will send copies of each proposal to members of the review committee for their consideration. The review committee will hear and consider all proposed amendments and publish proposed recommendations for review by the Highline ~~((Community))~~ College ~~((HCC))~~ policy development council.

(3) After completion of the above steps, the recommendations for revision of these rules shall be made to the president, who, upon approval and review by the college counsel, shall make final recommendation to the board of trustees.

(4) Upon approval of the board of trustees, the new rules shall be published and be made immediately available to the college community.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-124-010 Smoking. It shall be the policy of Highline ~~((Community))~~ College, consistent with its efforts to promote wellness, fitness, and a campus environment conducive to work, study, and activities for staff, students, and the public to maintain a smoke/tobacco free indoor campus environment. Use of tobacco products is permitted on campus outside of the buildings. Receptacles for smoking materi-

als are provided and all are urged to use them to maintain litter free campus grounds.

The college recognizes the rights of those who choose to use tobacco and as such does not prohibit the use of tobacco products; it does, however, restrict the use of these materials to areas outside college facilities and vehicles.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-130-010 Tuition and fee schedules. Chapter 28B.15 RCW sets the parameters for tuition and fee levels at state community colleges. The legislature establishes the tuition and fee rates each biennium. The tuition and fee rates charged by Highline are based on this legislation, the specific amounts to be charged are transmitted to Highline ~~((Community))~~ College by the state board for community college education.

AMENDATORY SECTION (Amending WSR 95-09-072, filed 4/19/95, effective 5/20/95)

WAC 132I-130-030 Tuition and fee waivers. (1) Highline College may periodically establish tuition and fee waivers as authorized by state law and by the state board for community and technical colleges. This will be done in accordance with chapter 131-28 WAC and under regular college fiscal processes. Information regarding specific waivers will be available as provided in WAC 132I-130-020.

(2) Upon an applicant's request, individual determinations on tuition and fee waivers will be reviewed by the college (registrar), in a brief adjudicative proceeding under RCW 34.05.482 through 34.05.494.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-131-010 Scholarships. Detailed information concerning the criteria, eligibility, procedures for application, and other information regarding scholarships may be obtained at the following address:

Highline ~~((Community))~~ College
Attn: Scholarships
P.O. Box 98000
2400 South 240th Street
Des Moines, WA 98198-9800

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-132-010 Financial aid. Federal, state, and private financial aid applications and information may be obtained at the following address:

Highline ~~((Community))~~ College
Attn: Office of Financial Aid
P.O. Box 98000
2400 South 240th Street
Des Moines, WA 98198-9800

Award of federal and state aid will be made in accordance with applicable federal and state laws and regulations.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-133-010 Organization—Operation—Information. (1) Organization. Community College District No. 9 is established in Title 28B RCW as a public institution of higher education. The institution is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who is the chief executive officer of the institution. The president establishes the structure of the administration.

(2) Operation. The administrative office is located at the following address:

Highline (~~Community~~) College
P.O. Box 98000
2400 South 240th Street
Des Moines, WA 98198-9800

The office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.

(3) Information. Additional and detailed information concerning the educational operations and course offerings may be obtained from the catalog, copies of which are available at the following address:

Highline (~~Community~~) College
P.O. Box 98000
2400 South 240th Street
Des Moines, WA 98198-9800

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-134-010 Rules coordinator. The rules coordinator for this institution shall have an office located at the office of the (~~director of personnel~~) vice-president for administration, with the following mailing address:

Highline (~~Community~~) College
Office of the Vice-President for Administration
P.O. Box 98000
2400 South 240th Street
Des Moines, WA 98198-9800

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-140-010 Purpose. The trustees of Highline (~~Community~~) College believe that educational and community service opportunities are extended to the community when the college's buildings, grounds, and facilities are made available for use by the students, faculty, administration, staff, and the community. This use shall not interfere with regular college activities and shall be in accordance with the public interest and welfare, all applicable state and federal laws, and shall be in the best interest(s) of the college as interpreted by the administration of Highline (~~Community~~) College and/or the board of trustees.

College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals an unlimited license to engage in activity that limits, interferes with, or otherwise disrupts the normal activities for and to which the college's facilities and grounds are dedicated. Accordingly, the college is a designated public forum opened for the limited purposes recited herein and further subject to the time, place, and manner limitations and restrictions set forth in this policy.

The purpose of the time, place, and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups and noncollege groups who are interested in using the campus for the purposes of constitutionally protected speech, assembly or expression. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein.

Intended or actual use in conflict with these policies or construed to be in any way detrimental to the college's best interests and/or original intent for that facility are strictly prohibited.

Nothing in this chapter is intended to alter the students' right of assembly as set forth in WAC 132I-120-315.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-140-012 Use of facilities. (1) Subject to the regulations and requirements of this policy, both college and noncollege groups may use the campus limited forums as specified in WAC 132I-140-013(2) for First Amendment activities between the hours of 7:00 a.m. and 11:00 p.m.

(2) Noncollege groups shall not affix or attach posters and signs to any college structure or equipment. Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.

(3) Noncollege groups shall not use amplified sound systems nor shall they bring any other equipment such as, but not limited to, chairs, tables and staging.

(4) College groups are encouraged to notify the (~~campus safety and security office~~) public safety department no later than forty-eight hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility or college.

(5) College group events shall not last longer than eight hours from beginning to end unless permission is granted by the appropriate vice-president. Such permission must be made without consideration of the viewpoint of the activity.

(6) All sites used for First Amendment activities shall be cleaned 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 cost of restoring the facility to its preevent condition and for the repair of damaged property.

(7) All fire, safety, sanitation, and 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.

(8) The event must not be conducted in such a manner that it obstructs vehicular, bicycle, pedestrian or other traffic or otherwise interferes 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, faculty, employees or invitees to the college.

(9) 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 providing 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.

(10) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, cooking activities or storing personal belongings or the erection of tents or other shelters or structures used for purposes of personal habitation.

(11) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities unless:

(a) Such activities serve educational purposes at the college; and

(b) Such activities are under the sponsorship of a college department or office or officially chartered student club; or

(c) Such activities are licensed by the college by a facilities rental agreement or other contractual arrangement.

(12) The event must also be conducted in accordance with any other applicable college policies and regulations, local ordinance and state or federal laws.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-140-110 Right to deny use of facilities. (1) The trustees authorize the college to rent facilities to individuals or groups either affiliated or unaffiliated with the college. Procedures related to the rental of college facilities, including pricing and insurance requirements, are available in the ((hospitality)) conference services office.

(2) The trustees reserve the right to deny facility use to noncollege individuals or groups whose activities are inconsistent with the open and public nature of Highline ((Community)) College or where such use would conflict with the purpose of local state and federal laws.

(3) If at any time actual use of college facilities by the individual or group constitutes an unreasonable disruption of the normal operation of the college, such use shall immediately terminate, all persons engaged in such use shall immediately vacate the premises, and leave the college property upon command of the appropriate college official.

(4) Use of college facilities shall be conditioned upon compliance with all college rules and regulations. The college reserves the right to deny use of college facilities to any individual or group who violates or has a history of violating college rules and regulations.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-140-120 Basis of fee assessment. (1) The basis for establishing and charging use fees reflects the college's assessment of the present market, the cost of operations, and the degree to which the proposed event advances the college's educational mission. Groups or organizations affiliated with the college should be permitted access to facilities at the lowest charge on the fee schedule which may include complimentary use. A current fee schedule is available at the ((hospitality)) conference services office.

(2) The college does not wish to compete with any private enterprise. Therefore individuals or groups not affiliated with the college shall be charged for facility use according to the fee schedule established by the board of trustees; provided that the president or his or her designee may grant a reduced rate when the presence of such individual or group advances the college's educational mission.

(3) Any individual or group desiring to rent college facilities shall sign a rental agreement. In the case of a group, an authorized representative of the group shall sign the rental agreement. By a group signing the agreement, the signatory specifies he or she has authority to enter into agreement on behalf of the group and if the group fails to pay the amount due, the signatory becomes responsible for all charges arising from the rental agreement. Any such charges may include an interest payment for overdue accounts as specified on the rental agreement but not less than one percent per month.

(4) The college reserves the right to require an advance deposit up to one hundred percent of the rental fee.

(5) The college reserves the right to make pricing changes without prior written notice.

(6) The primary purpose of college facilities is to serve the instructional programs of the college including, but not limited to, college events and activities. The board of trustees reserves the right to cancel any permit and refund any payments for use of college facilities and equipment if the group's use of college facilities and/or equipment would violate any federal, state, local law, or college law, regulation, or rule or when the planned use could subject the college to any unreasonable risk of liability.

(7) In the event of a cancellation of a facility use permit by the applicant, that group is liable for all college costs and expenses in preparing the college facility for its use.

(8) All admission charges must be approved by the college prior to issuance of a facility use permit.

(9) Individuals or groups using the college's facilities shall conduct all activities in accordance with all applicable local, state, and federal laws including the rules and regulations adopted by the college in Title 132I WAC and as specified in the rental agreement. The college assumes no responsibility for consequences of any act or omission of any third party. The individual or group is responsible for damages

incurred by third parties (including invitees, licensees, guests, employees, and members of the group) during their possession of the premises. The college assumes no liability for damage or loss of personal property or equipment left in any rental space during or after the event. The individual or group assumes full responsibility for the conduct of its invitees, licensees, guests, patrons, members, employees, or third parties hired to provide services for the individual or group.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-140-140 Supervision during activity. (1) Signatories of the rental agreement as well as adult organization leaders are responsible for group conduct and are expected to remain with their group during all activities at college facilities. The trustees reserve the right to require a staff member to represent the college at any activity on college facilities. Such service shall be paid at the current rate, by the individual or group requesting use of the facility, and does not relieve the individual or group from safeguarding the college's property.

(2) The (~~campus safety and security~~) public safety staff or some other authority of the college will open and lock all rented facilities. Keys to buildings or facilities will not be issued or loaned on any occasion to any individual or group not affiliated with the college.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-140-150 Care and maintenance of facilities and equipment. (1) College-owned equipment shall not be removed from college facilities for loan or rental. Individuals or groups wishing to use equipment in connection with a rental should make arrangements through the (~~hospitality~~) conference services office at the time of application for a rental agreement. Further rental and operational restrictions may be outlined when the rental agreement is signed.

(2) Individuals or groups renting college facilities are responsible for providing special equipment and clothing that may be necessary to protect college property from damage (e.g., tennis shoes must be worn on gymnasium floors).

(3) Individuals and groups allowed use of college facilities are required to leave the premises in the same condition as when the individuals and groups were admitted to its use. After facility use, individuals and groups are required to arrange for proper disposal of decorations and other refuse when restoring the facility to its original condition.

(4) Custodial and other services beyond those regularly scheduled to support normal college activities may be required for specific activities by outside groups, based on the size of group, the complexities of the event, or the facilities being used. Needed custodial services beyond that normally scheduled will result in that individual or groups being charged at the established rate. All extra custodial time required as a result of the individual's or group's use of the facility will be charged to the individual or group, including those receiving complimentary usage.

(5) The (~~campus safety and security~~) public safety staff should be contacted for problems with facilities. The (~~cam-~~

~~pus safety and security~~) public safety staff will monitor any permit violations.

(6) Any moving of college equipment for facility use will be under permission and supervision of the college.

(7) Any decoration or use of a college facility that may result in permanent damage or injury to that facility is strictly prohibited.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-160-010 Purpose. The purpose of these policies and procedures is to establish a standard set of admission and registration practices that are necessary and appropriate for the administration of Highline (~~Community~~) College. For admission information contact the Admission Office, Highline (~~Community~~) College, 2400 South 240th Street, P.O. Box 98000, Des Moines, Washington 98198-9800 or see the college web site. For registration information contact the registrar's office at the same address.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-160-020 Definitions. The following terms are defined below:

(1) Applicants: Persons seeking admission to Highline (~~Community~~) College.

(2) Students: Applicants granted admission to Highline (~~Community~~) College.

(3) Veterans: Applicants or students who are eligible to receive Department of Veterans' Affairs Educational Benefits.

(4) Vietnam veterans: Veterans who have documented service in Cambodia, Laos, Thailand, or Vietnam during the period of August 5, 1964, to April 11, 1975.

(5) International students: Applicants or students who are not United States citizens and who attend Highline (~~Community~~) College on a student visa.

(6) Newly admitted students: Students who have not previously attended Highline (~~Community~~) College.

(7) Currently enrolled students: Students who are registered in credit courses in the current quarter.

(8) Former students: Students who were registered in credit courses in a previous quarter but who are not currently enrolled in credit courses.

(9) Resident students: Students who meet the definition according to RCW 28B.15.012. A copy of the Revised Code of Washington is available in the Highline (~~Community~~) College library.

(10) Nonresident students: Students who meet the definition according to RCW 28B.15.012(3). A copy of the Revised Code of Washington is available in the Highline (~~Community~~) College library.

(11) Registration by appointment: The initial period of registration for each quarter. Currently enrolled students are assigned days and times to register based upon the number of credits earned at Highline (~~Community~~) College.

(12) Late registration: Enrollment after the tenth class day.

(13) Open enrollment: Class registration for which no appointments are necessary.

(14) GED: The General Educational Development test of the American Council on Education.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 1321-160-032 Admission policy for applicants who are currently enrolled in a common school district or private high school. Highline ((Community)) College admits applicants who are concurrently enrolled in a common school district or accredited private school and Highline ((Community)) College. These applicants must meet the requirements in WAC 1321-160-045.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 1321-160-033 Admission requirements. There are some guidelines in addition to the general admission policy (WAC 1321-160-025). These are:

(1) Highline ((Community)) College recommends, but does not require, that new students with less than forty-five transferable college-level credits take placement tests for advising, placement, and retention purposes.

(2) Specific courses may require demonstration of proficiency by assessment test scores or previous college course work.

(3) Some programs have selective admission requirements and procedures due to limited space or other requirements. These requirements and procedures are updated annually and may differ for each program. Contact the Highline ((Community)) College office of admissions, for specific information.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 1321-160-035 Admission procedures. Applicants become newly admitted students by completing and submitting a Highline ((Community)) College application form, either on the web or in person. Students who wish to transfer credit from other accredited institutions to Highline ((Community)) College should have official transcripts mailed to the records office.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 1321-160-045 Admission requirements for applicants who are currently enrolled in a common school district or private high school. Applicants who are currently enrolled in a common school district or accredited private school and Highline ((Community)) College must:

(1) Be currently enrolled as juniors or seniors in a common school district or accredited private school. Students enrolled in a home school are not eligible for admission;

(2) Take the entire placement test((-);

(3) Demonstrate college level skills on the placement test;

(4) Have permission from their high school principal; applicants under the age of eighteen must also have permission of a parent or legal guardian;

(5) Be in good standing at their high school (may not be on academic or disciplinary warning, probation, suspension, or dismissal status);

(6) Enroll for classes at the designated time; and

(7) Pay any outstanding charges such as, but not limited to, tuition, fees, books and supplies.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 1321-160-065 Registration procedures. There are two categories of registration procedures. One category applies to matriculated students, the other to those enrolled in continuing education courses. In both cases, registration is not completed until the student submits all required registration materials and pays all tuition and fees in full.

(1) The college provides a schedule of dates and times to register.

(2) Currently enrolled and returning students are assigned the first set of registration appointments based on the number of credits earned at Highline ((Community)) College.

(3) Newly admitted students register during open enrollment.

(4) Late registration occurs after the tenth day of classes.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 1321-160-110 Refunds. Refunds resulting from official withdrawal from courses will be computed as follows for state supported courses:

(1) One hundred percent. The refund will be one hundred percent of the amount paid if an official withdrawal form is received in the registration office before the sixth day of instruction of the quarter for which the fees have been paid. The deadlines vary for summer quarter courses, late-starting courses, or short courses. Deadlines are available from the college web site.

(2) Canceled courses. When Highline ((Community)) College cancels a course, the college will refund the total amount paid for the course unless the student enrolls in a course to replace the canceled course. If the new course is for fewer credits, the college will refund the difference.

(3) Forty percent. Highline ((Community)) College will refund forty percent of the total amount paid if an official withdrawal form is received in the registration office on or after the sixth day of instruction, provided such withdrawal occurs within the first twenty calendar days following the beginning of instruction. The deadlines vary for summer quarter courses, late-starting courses, or short courses. Deadlines are published on the college web site.

(4) Continuing education classes. To obtain refunds for continuing education courses, withdrawals must be received forty-eight hours before the first scheduled course meeting. Other refunds, except for course cancellation, will be made at the discretion of the continuation education director.

(5) Fees considered "nonrefundable" will be so designated in college materials and/or web sites.

Chapter 132I-168A WAC

HIGHLINE ((COMMUNITY)) COLLEGE LIBRARY

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-168A-010 Purpose of the library. (1) Highline ((Community)) College library, through its role of supporting free expression and free access to ideas, assists the college in achieving the college's mission of superior education for its diverse community. The library provides both on-site and remote access to information and knowledge. The library endeavors to provide access to books and other materials of value for their wide range of information, interest, viewpoints and enlightenment on the problems and issues of our times. Just as the library's doors remain open to all individuals, regardless of age, ability, gender, sexual orientation, race, religion, national origin or socio-political views, so the library's collection remains open to all material regardless of author's age, ability, gender, sexual orientation, race, religion, national origin or socio-political viewpoint. Further, Highline ((Community)) College library, as part of an educational institution in a democratic society, perceives itself as challenger to all attempts at censorship and/or proscription of views of either patron or creator.

(2) The library maintains, and makes available to all users, written policies and procedures on:

- (a) Collection development;
- (b) Hours of service;
- (c) Circulation periods;
- (d) Availability of resources;
- (e) Borrowing and access;
- (f) Fees;
- (g) Consideration and complaint processes; and
- (h) Protection of library records.

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-168A-050 Library use. Consistent with a community college as an active and integral part of the community, the library's materials and services are a public resource available to the surrounding community. Within this principle, the library's primary clientele are students, faculty, and staff of Highline ((Community)) College. The library also welcomes students from other Washington community and technical colleges and the community at large. The resources of the library are also available for sharing with other libraries within the state and globally.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-276-010 Access to public records. This chapter shall be known as Highline ((Community)) College rules on public records.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-276-017 Definitions. (1) "Public record" includes any written information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, e-mail, electronically maintained documents and every other means of recording any form of communication or representation, including letters, words, pictures, sounds or symbols, combination thereof and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, disks, drums and other documents.

(3) Highline ((Community)) College is an agency organized by statute pursuant to chapter 28B.50 RCW and shall hereinafter be referred to as the "college."

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-276-020 Purpose. The purpose of this chapter is to ensure compliance by Highline ((Community)) College with chapter 42.17 RCW while at the same time preserving the orderly operation of the community college district and the privacy of the students and employees of the college.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 132I-276-045 Review of denials of public records request. (1) Any person who objects to the denial of a request for a public record may petition, in writing, for prompt review of such decision.

(2) The written request by a person requesting review of a decision denying a public record shall be submitted to the president or his designee.

(3) Within ((ten)) two business days after receiving the written request for review of a decision denying a public record, the president or his or her designee, shall complete such review.

(4) During the course of the review the president or his or her designee shall consider the obligations of the district to fully comply with the intent of chapter 42.56 RCW insofar which requires providing full public access to official records, but shall also consider both the exemptions provided in chapter 42.56 RCW and the provisions of the statute which require the college to protect public records from damage or disorganization, prevent excessive interference with essential functions of the agency, and prevent any unreasonable invasion of personal privacy by deleting identifying details.

AMENDATORY SECTION (Amending WSR 12-16-111, filed 8/1/12, effective 9/1/12)

WAC 1321-276-080 Office hours. For purposes of this chapter, the regular office hours of Highline ((Community)) College are available on the college web site.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 1321-280-015 Definition of a student. A student is defined as any person who is or has been officially registered at Highline ((Community)) College and with respect to whom the college maintains education records or personally identifiable information.

WSR 14-21-068

PERMANENT RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed October 10, 2014, 7:53 a.m., effective November 10, 2014]

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

Purpose: WAC 246-817-770 General anesthesia and deep sedation, the rule adds end-tidal carbon dioxide monitoring requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 246-817-770.

Statutory Authority for Adoption: RCW 18.32.0365 and 18.32.640.

Other Authority: RCW 18.32.002.

Adopted under notice filed as WSR 14-11-015 on May 9, 2014.

A final cost-benefit analysis is available by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

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

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

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

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

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

Date Adopted: July 18, 2014.

Robert R. Shaw, D.M.D., Chair
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-770 General anesthesia and deep sedation. Deep sedation and general anesthesia must be administered by an individual qualified to do so under this chapter.

(1) Training requirements: To administer deep sedation or general anesthesia, the dentist must meet one or more of the following criteria:

(a) Any provider currently permitted as of the effective date of this revision to provide deep sedation or general anesthesia by the state of Washington will be grandfathered regarding formal training requirements, provided they meet current continuing education and other ongoing applicable requirements.

(b) New applicants with anesthesia residency training will be required to have had two years of continuous full-time anesthesia training meeting the following requirements based on when they began their anesthesia training:

(i) For dentists who began their anesthesia training prior to 2008, training must include two full years of continuous full-time training in anesthesiology beyond the undergraduate dental school level, in a training program as outlined in part 2 of "*Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry*," published by the American Dental Association, Council on Dental Education (last revised October 2005).

(ii) For dentists who begin their anesthesia training in January 2008 or after, must have either received a certificate of completion.

(A) From a dental anesthesiology program accredited by CODA (ADA Commission on Dental Accreditation, "*Accreditation Standards for Advanced General Dentistry Education Programs in Dental Anesthesiology*," January 2007); or

(B) From a dental anesthesiology program approved by the Dental Quality Assurance Commission; or

(C) With a minimum of two years of full-time anesthesia residency training at a medical program accredited by the Accreditation Council for Graduate Medical Education (ACGME).

(c) New applicants who completed residency training in oral and maxillofacial surgery must meet at least one of the following requirements:

(i) Be a diplomate of the American Board of Oral and Maxillofacial Surgery;

(ii) Be a fellow of the American Association of Oral and Maxillofacial Surgeons; or

(iii) Be a graduate of an Oral and Maxillofacial Residency Program accredited by CODA.

(2) In addition to meeting one or more of the above criteria, the dentist must also have a current and documented proficiency in advanced cardiac life support (ACLS).

(3) Procedures for administration:

(a) Patients receiving deep sedation or general anesthesia must have continual monitoring of their heart rate, blood pressure, ~~((and))~~ respiration, and expired carbon dioxide (CO₂). In so doing, the licensee must utilize electrocardio-

graphic monitoring (~~and~~), pulse oximetry, and end-tidal CO₂ monitoring;

(b) The patient's blood pressure and heart rate shall be recorded every five minutes and respiration rate shall be recorded at least every fifteen minutes;

(c) During deep sedation or general anesthesia, the person administering the anesthesia and the person monitoring the patient may not leave the immediate area;

(d) During the recovery phase, the patient must be continually observed by the anesthesia provider or credentialed personnel;

(e) A discharge entry shall be made in the patient's record indicating the patient's condition upon discharge and the responsible party to whom the patient was discharged.

(4) Dental records must contain appropriate medical history and patient evaluation. Anesthesia records shall be recorded during the procedure in a timely manner and must include:

(a) Blood pressure;

(b) Heart rate;

(c) Respiration;

(~~blood oxygen saturation~~) (d) Pulse oximetry;

(e) End-tidal CO₂;

(f) Drugs administered including amounts and time administered;

(g) Length of procedure; and

(h) Any complications of anesthesia.

(5) Equipment and emergency medications: All offices in which general anesthesia (including deep sedation) is administered must comply with the following equipment standards:

(a) An operating theater large enough to adequately accommodate the patient on a table or in an operating chair and permit an operating team consisting of at least three individuals to freely move about the patient;

(b) An operating table or chair which permits the patient to be positioned so the operating team can maintain the airway, quickly alter patient position in an emergency, and provide a firm platform for the administration of basic life support;

(c) A lighting system which is adequate to permit evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit conclusion of any operation underway at the time of general power failure;

(d) Suction equipment capable of aspirating gastric contents from the mouth and pharyngeal cavities. A backup suction device must be available;

(e) An oxygen delivery system with adequate full face masks and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate portable backup system;

(f) A recovery area that has available oxygen, adequate lighting, suction, and electrical outlets. The recovery area can be the operating theater;

(g) Ancillary equipment which must include the following:

(i) Laryngoscope complete with adequate selection of blades, spare batteries, and bulb;

(ii) Endotracheal tubes and appropriate connectors, and laryngeal mask airway (LMA) and other appropriate equipment necessary to do an intubation;

(iii) Oral airways;

(iv) Tonsillar or pharyngeal suction tip adaptable to all office outlets;

(v) Endotracheal tube forceps;

(vi) Sphygmomanometer and stethoscope;

(vii) Adequate equipment to establish an intravenous infusion;

(viii) Pulse oximeter or equivalent;

(ix) Electrocardiographic monitor;

(x) End-tidal CO₂ monitor;

(xi) Defibrillator or automatic external defibrillator (AED) available and in reach within sixty seconds from any area where general or deep anesthesia care is being delivered. Multiple AEDs or defibrillators may be necessary in large facilities. The AED or defibrillator must be on the same floor. (In dental office settings where sedation or general anesthesia are not administered, AEDs or defibrillators are required as defined in WAC 246-817-722.)~~(;)~~

(h) Emergency drugs of the following types shall be maintained:

(i) Vasopressor or equivalent;

(ii) Corticosteroid or equivalent;

(iii) Bronchodilator;

(iv) Muscle relaxant;

(v) Intravenous medications for treatment of cardiac arrest;

(vi) Narcotic antagonist;

(vii) Benzodiazepine antagonist;

(viii) Antihistaminic;

(ix) Anticholinergic;

(x) Antiarrhythmic;

(xi) Coronary artery vasodilator;

(xii) Antihypertensive;

(xiii) Anticonvulsant.

(6) Continuing education:

(a) A dentist granted a permit to administer general anesthesia (including deep sedation) under this chapter, must complete eighteen hours of continuing education every three years.

A dentist granted a permit must maintain records that can be audited and must submit course titles, instructors, dates attended, sponsors, and number of hours for each course every three years.

(b) The education must be provided by organizations approved by the DQAC and must be in one or more of the following areas: General anesthesia; conscious sedation; physical evaluation; medical emergencies; pediatric advanced life support (PALS); monitoring and use of monitoring equipment; pharmacology of drugs; and agents used in sedation and anesthesia.

(c) Hourly credits earned from certification in health care provider basic life support (BLS) and advanced cardiac life support (ACLS) courses may not be used to meet the continuing education hourly requirements for obtaining or renewing a general anesthesia and deep sedation permit, however these continuing education hours may be used to meet the renewal requirement for the dental license.

(7) A permit of authorization is required. See WAC 246-817-774 for permitting requirements.

WSR 14-21-075
PERMANENT RULES
HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed October 10, 2014, 5:34 p.m., effective November 10, 2014]

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

Purpose: Pursuant to Section 213(44) of ESSB 6002, the legislature reinstated the breast and cervical cancer treatment program. This rule is being amended to reflect this legislative action.

Citation of Existing Rules Affected by this Order: Amending WAC 182-505-0120.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, ESSB 6002, chapter 221, Laws of 2014.

Adopted under notice filed as WSR 14-13-081 on June 16, 2014.

Changes Other than Editing from Proposed to Adopted Version: In WAC 182-505-0120 (1)(i), added link to department of health's income standards for the breast, cervical, and colon health program. In WAC 182-505-0120(2), added the sentence "Retroactive coverage is available as provided in WAC 182-504-0005."

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

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

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

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

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

Date Adopted: October 10, 2014.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-505-0120 Washington apple health breast and cervical cancer treatment program (BCCTP) for women—Client eligibility. (1) Effective ~~((July 1, 2004))~~ April 1, 2014, a woman is eligible for categorically needy (CN) coverage under the Washington apple health (WAH) breast and cervical cancer treatment program (BCCTP) only when she:

(a) Has been screened for breast or cervical cancer under the ~~((center for disease control (CDC)))~~ department of

health's breast ((and)), cervical ((cancer early detection)), and colon health program ((BCCEDP)) (BCCHP);

(b) Is found to require treatment for either breast or cervical cancer or for a related precancerous condition;

(c) Is under sixty-five years of age;

(d) Is not ~~((eligible for))~~ covered by another WAH-CN ((medicaid)) program;

(e) Is uninsured or does not otherwise have creditable coverage;

(f) Meets residency requirements as described in WAC ~~((388-468-0005))~~ 182-503-0520;

(g) Meets Social Security number requirements as described in WAC ~~((388-476-0005))~~ 182-503-0515; ((and))

(h) Meets the requirements for citizenship or U.S. national status ~~((as defined in WAC 388-424-0001))~~ or "qualified alien" status as described in WAC ~~((388-424-0006 (1) or (4)))~~ 182-503-0535; and

(i) Meets the income standard set by the BCCHP (the standard may be found at: <http://www.doh.wa.gov/Portals/1/Documents/Pubs/342-090-BCCHPFundingSources.pdf>).

(2) ~~The certification period(s described in WAC 388-416-0015 (1), (4), and (6) apply to the BCCTP. Eligibility) for ((medicaid continues throughout the full course of treatment as certified by the CDC-BCCEDP)) breast and cervical cancer treatment covered under this section is twelve months as provided in WAC 182-504-0015. Renewal of eligibility must be completed prior to the end of each certification period to remain continuously enrolled. Eligibility for BCCTP coverage under subsection (1)(b) of this section continues throughout the course of treatment as certified by the BCCHP. Retroactive coverage is available as provided in WAC 182-504-0005.~~

~~((3) Income and asset limits are set by the CDC-BCCEDP.))~~

WSR 14-21-076
PERMANENT RULES
WASHINGTON STATE PATROL

[Filed October 13, 2014, 8:21 a.m., effective November 13, 2014]

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

Purpose: Update rules to include an automatic tire chain formerly approved by the state commission on equipment in the 1980s.

Citation of Existing Rules Affected by this Order: Amending WAC 204-24-015, 204-24-020, and 204-24-050.

Statutory Authority for Adoption: RCW 46.37.005, 46.37.420.

Adopted under notice filed as WSR 14-17-102 on August 19, 2014.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: September 24, 2014.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 10-19-073, filed 9/16/10, effective 10/17/10)

WAC 204-24-015 Definitions. (1) "All wheel drive" means a vehicle which has four-wheel drive capability and may be driven with all wheels in gear.

(2) "Alternative traction device (ATD)" means pneumatically driven chains which, when engaged, spin under the drive wheels automatically as traction is lost or a traction device differing from metal chains in construction, material or design but capable of providing traction equal to or exceeding that of such metal chains under similar conditions.

(3) "Automatic tire chain" means an air-operated centrifugal force system which deploys short lengths of chain underneath the drive wheels.

(4) "Cable laid rope" means a compound laid rope consisting of several ropes or several layers of strands laid together into one rope.

~~((4))~~ (5) "Cable tire chains" means any ladder-type cable tire chain assemblies designed for use on tires that have been manufactured in accordance with the standards of the Tire & Rim Association, Inc.; 3200 West Market Street; Akron, Ohio 44313.

~~((5))~~ (6) "Cross cable fastener" means any suitable fastener used to attach each cross cable to the side cable. The fastener must be constructed and assembled to prevent accidental detachment.

~~((6))~~ (7) "Cross cable traction reinforcement sleeves" means a device that is constructed of the manufacturer's specified material and of suitable length and width to maximize traction, braking, cornering and longevity.

~~((7))~~ (8) "Fastener" means any suitable connecting device, secured to one end of a side cable constructed so that it can connect to the opposing end and be easily closed (engaged or fastened) and be readily opened (released) by hand.

~~((8))~~ (9) "Link tire chains" means tire chains which consist of at least two chain loops, one on each side of the tire, connected by evenly spaced metal cross chains across the tire tread.

~~((9))~~ (10) "Reinforced cross cables" means stranded cable wrapped or covered to provide increased resistance to abrasive wear. This covering may be either a hard drawn spring wire, a high-carbon steel wire or nylon type 6 or 12. The wrapped or covered cable must be enclosed by traction reinforcement sleeves covering said cable essentially from side connector to side connector. Cross cable must be of specified length and provide proper drape over the tire tread.

~~((10))~~ (11) "Side cable" means stranded cable to complete one full circumference along the tire sidewall.

AMENDATORY SECTION (Amending WSR 08-24-030, filed 11/24/08, effective 12/25/08)

WAC 204-24-020 Standards for tire chains. (1) Link tire chains must meet the National Association of Chain Manufacturers Tire Chain Specifications NACM-5179(TC).

(2) Cable tire chains must be designed for use on tires mounted in accordance with specifications in Society of Automotive Engineers (SAE) Recommended Practice J1232, Class S, and SAE Informational Report J683a. Oversized tires, snow tires, special service, or special traction tires, etc., may require chains of a larger size.

(a) Classifications. Cable tire chains described in this specification must be of the following types as specified for regular and restricted clearances:

- (i) Passenger car;
- (ii) Single light truck;
- (iii) Heavy truck;
- (iv) Special police and emergency vehicle.

(b) Requirements:

(i) Components. Cable tire chain assemblies must consist of two side cables, or two outer and one inner side cable, with reinforced cross cables, cross cable fastener, and fasteners necessary to form a complete assembly.

(ii) Material.

(A) Stranded side and stranded cross cable wire must be constructed of preformed galvanized high-carbon steel with a minimum of 450 pounds breaking strength with seven wires per strand and seven strands per cable. The lay must be a right hand lay.

(B) Wire covering stranded cable must be constructed of high-carbon plow steel wire with a minimum tensile strength of 230,000 pounds per square inch.

(C) Spring wire covering stranded cable must be constructed of harddrawn spring wire with a minimum tensile strength of 200,000 pounds per square inch.

(D) Cables, spring, and plow wire must be manufactured in conformance to SAE Recommended Practice J113.

(E) Cross cable fasteners must be constructed of open hearth, electric furnace, or basic oxygen process steel.

(F) Metallic cross cable traction reinforcement sleeves must be constructed of open hearth, electric furnace, or basic oxygen process steel and shall comply with the following American Society for Testing Materials (ASTM) standards: Standard E6 - Bend Test, Standard E8 - Tension Test, Standard E18 - Test Methods for Rockwell Hardness, and Standard A568 - Table of Chemical Content of Steel.

(G) Nonmetallic cross cable traction reinforcement sleeves shall be constructed of "Zytel" ST-801 nylon or its equivalent.

(H) All side cable fasteners are to be constructed of material that will allow easy installation and removal.

(iii) Spacing of cross cable. The first cross cable must be attached to that point of each side cable nearest the fastener that will permit the fastener to lie in the proper plane when the assembled cable tire chain is applied to the tire. On single cable tire chains, the remainder of the cross cables must be

attached to the side cable at intervals designed to provide for at least one cross cable in contact with the roadway at all times. On dual-triple tire chains, the remainder of the cross cable shall be attached to the outer side cables at like intervals and to the inner side chain with opposing cross cables staggered at the same intervals.

(iv) Tolerances.

(A) Cross cable length. The inside length of all cross cable, including fasteners held in the same plane, must be within a tolerance of minus 1/8 inch to plus 1/8 inch of the specified length indicated by the chain manufacturer's specifications. The length shall be measured by hanging the cross cable vertically on a horizontal pin and measuring the inside to inside length. The number of traction reinforcement sleeves in a cross cable may not vary from the number specified by the manufacturer.

(B) Side cable length. The length of all side cables must be within tolerance of minus 1/8 inch to plus 1/2 inch of the length indicated by the chain manufacturer's specifications.

(C) Stranded cable size. Stranded cable size must be subject to the following tolerances:

(I) Material up to and including .094 inch (2.4 mm) diameter shall not be less than the designated diameter and shall not exceed .010 inch (.25 mm) over the specified diameter.

(II) Material over .094 inch (2.4 mm) diameter shall not be less than the specified diameter and shall not exceed .014 inch (.36 mm) over the specified diameter.

(D) Component dimensions. The dimensions of manufactured components may vary, but the assembled cable chains must meet the tolerances specified in (b)(iv)(A), (B), and (C) of this subsection.

(E) Finish. All cable tire chains must have a rust-resistant finish for protection in transit and storage.

(F) Identification. Each half set of cable tire chains must be permanently marked with the manufacturing company's name, initials or trademark in order that it may be easily identified when not in the original container.

(3) Automatic tire chain system must:

(a) Consist of:

(i) A switch or button located within reach of the driver in the vehicle cab;

(ii) An air valve; and

(iii) An air cylinder and chain wheel with units mounted on the rear suspension in order to apply the chain to make contact with the inside wheel.

(b) Be periodically inspected by the operator for proper mechanical conditions;

(c) Display a sign with letters at least one inch high indicating the vehicle is equipped with the automatic tire chain. The design of the sign must be approved by the manufacturer of the automatic tire chain.

AMENDATORY SECTION (Amending WSR 12-17-116, filed 8/21/12, effective 9/21/12)

WAC 204-24-050 Use of tire chains or other traction devices. (1) Vehicles under 10,000 pounds gross vehicle weight.

When traffic control signs are posted by the department of transportation it will be unlawful for any vehicle to enter the controlled area without having mounted on its drive tires the traction device specified by the sign, which must also meet the requirements of WAC 204-24-040.

(a) Exception for all wheel drive vehicles. When "chains required" signs are posted, all-wheel drive vehicles will be exempt from the chain requirement when all wheels are in gear and are equipped with approved traction devices as specified in WAC 204-24-040 provided that tire chains for at least one set of drive tires are carried in the vehicle.

(b) Alternative traction devices listed on the patrol's web site as being approved for passenger vehicles as outlined in this chapter will be considered approved for use when "chains required" signs are posted.

(2) Vehicles or combinations of vehicles over 10,000 pounds gross vehicle weight rating (GVWR).

When traffic control signs marked "chains required" are posted by the department of transportation it will be unlawful for any vehicle or combination of vehicles to enter the controlled area without having mounted on its tires, tire chains as follows: Provided, That highway maintenance vehicles operated by the department of transportation for the purpose of snow removal and its ancillary functions are exempt from the following requirements if such vehicle has sanding capability in front of the drive tires.

(a) Vehicles or vehicle combinations with two to four axles including but not limited to trucks, truck-tractors, buses and school buses: For vehicles with a single drive axle, one tire on each side of the drive axle must be chained. For vehicles with dual drive axles, one tire on each side of one of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers; one tire on the last axle of the last trailer or semi-trailer, must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(b) Automobile transporters are any vehicle combination designed and used specifically for the transport of assembled (capable of being driven) highway vehicles. For vehicles with single drive axles, one tire on each side of the drive axle must be chained. For vehicles with dual drive axles, one tire on each side of each of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle of the last trailer or semi-trailer must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(c) Vehicle combinations with five axles consisting of a truck tractor with dual drive axles and a tandem axled semi-trailer; all tires on one drive axle may be chained or one tire on each side of each of the drive axles may be chained. Chains must be applied to a minimum of four tires on the drive axles. On the tandem axle semi-trailer, the chained tire may be on either of the last two axles.

(d) Vehicle combinations with five axles, consisting of a truck and trailer, or truck tractor and semi-trailer with a single drive axle, or truck tractor, semi-trailer and full trailer: For vehicles with a single drive axle, all tires on the drive axle must be chained. For vehicles with dual drive axles, all tires on one of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last

axle of the last trailer or semi-trailer must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(e) Vehicle combinations with six or more axles, including but not limited to truck and trailer or truck tractor and semi-trailer or truck tractor semi-trailer and full trailer: For vehicles with a single drive axle, all tires on the drive axle must be chained. For vehicles with dual drive axles where traffic control signs marked "approved traction tires required" are posted, all tires on one of the drive axles must be chained. For vehicles with dual drive axles where traffic control signs marked "chains required" are posted, all tires on one of the drive axles must be chained. In addition, one tire on each side of the additional drive axle must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle must be chained. For vehicles with tandem axle trailers or semi-trailers, the chained tire may be on either of the last two axles.

(f) All vehicles over 10,000 pounds gross vehicle weight rating (GVWR) must carry a minimum of two extra chains for use in the event that road conditions require the use of more chains or in the event that chains in use are broken or otherwise made useless.

(g) Approved chains for vehicles over 10,000 pounds gross vehicle weight rating (GVWR) must have at least two side chains to which are attached sufficient cross chains of hardened metal so that at least one cross chain is in contact with the road surface at all times. Plastic chains will not be allowed.

(h) If automatic tire chains are used, the vehicle must carry regular tire chains for use on the outside tires of the drive axle of all axles equipped with the automatic tire chain.

(i) On the following routes all vehicles and combinations of vehicles over 10,000 gross vehicle weight rating (GVWR) pounds must carry sufficient tire chains to meet the requirements of this chapter from November 1 to April 1 of each year or at other times when chains are required for such vehicles:

(i) I-90 - Between North Bend (MP 32) and Ellensburg (MP 101).

(ii) SR-97 - Between (MP 145) and Junction SR-2.

(iii) SR-2 - Between Dryden (MP 108) and Index (MP 36).

(iv) SR-12 - Between Packwood (MP 135) and Naches (MP 187).

(v) SR-97 - Between the Columbia River (MP 0.00) and Toppenish (MP 59.00).

(vi) SR-410 - From Enumclaw to Naches.

(vii) SR-20 - Between Tonasket (MP 262) and Kettle Falls (MP 342); and SR-20 between Newhalem (MP 120) and Winthrop (MP 192).

(viii) SR-155 - Between Omak (MP 79) and Nespelem (MP 45).

(ix) SR-970 - Between (MP 0) and (MP 10).

(x) SR-14 - Between Gibbons Creek (MP 18.00) and (MP 108.40) intersection of Cliffs Road.

(xi) SR-542 - Mt. Baker highway between (MP 22.91) and (MP 57.26).

(xii) I-82 - Between Ellensburg Exit 3 (MP 3.00) and Selah Exit 26 (MP 26.00).

Vehicles making local deliveries as indicated on bills of lading and not crossing the mountain pass are exempt from this requirement if operating outside of a chain required area.

(3) For the purpose of this section, chained will mean that the tire has either a tire chain approved for use under chapter 204-24 WAC or an alternative traction tire device listed on the patrol's web site as approved for the type of vehicle combination listed in this section.

(4) The Washington state department of transportation or Washington state patrol may prohibit any vehicle from entering a chain/approved traction device control area when it is determined that the vehicle will experience difficulty in safely traveling the area.

WSR 14-21-079

PERMANENT RULES

GAMBLING COMMISSION

[Order 707—Filed October 13, 2014, 10:21 a.m., effective January 1, 2015]

Effective Date of Rule: January 1, 2015.

Purpose: WAC 230-06-045, this rule requires licensees to conduct all gambling activities on the licensed premises with the exception of raffle ticket sales. The change allows all aspects of a raffle to be conducted off the licensed premises, not just ticket sales. Currently most raffle drawings do not take place on the licensed premise and some cannot be conducted there, like the alternative format duck race raffles.

WAC 230-11-105, this rule states that organizations operating raffles that do not have an administrative or business office must have a records custodian that resides in Washington state. The change clarifies the records custodian is responsible for retaining all raffle records in Washington state after the raffle has been completed. The change requires the name, address, and phone number of the records custodian to be reported to us.

Organizations may maintain raffle records outside the state of Washington if they submit a written request. The change requires organizations to include the following in their request:

- The reason records need to be maintained outside of the state of Washington;
- Address where records will be maintained; and
- Name, address, and telephone number of the records custodian.

The change also requires records approved to be maintained outside of Washington state to be delivered to us within seven days of our request.

Citation of Existing Rules Affected by this Order: Amending WAC 230-06-045 and 230-11-105.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0277.

Adopted under notice filed as WSR 14-17-061 on August 15, 2014.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 9, 2014.

Arlene K. Dennistoun
Staff Attorney

AMENDATORY SECTION (Amending WSR 06-17-132, filed 8/22/06, effective 1/1/08)

WAC 230-06-045 Conduct gambling activities on licensed business premises only. (1) Licensees must conduct all gambling activities, except for raffles ((~~ticket sales~~)), on the licensed business premises.

(2) Charitable or nonprofit organizations licensed to conduct bingo and punch board and pull-tab games may sell punch boards and pull-tabs to customers of a licensed card room if the charitable or nonprofit organization:

- (a) Shares a common wall with the card room; and
- (b) Controls all doors, counters, or windows allowing customer access through the common wall between the two premises and the charitable or nonprofit organization can securely close and lock the doors, counters, or windows; and
- (c) Keeps and sells the punch board and pull-tab games and redeems prizes only on their licensed business premises. Punch board and pull-tab players may take already purchased punch boards and pull-tabs into the card room area; and
- (d) Allows only its employees to sell the punch board and pull-tabs; and
- (e) Posts signs at the door, window, or counter common to the two business premises that clearly notify customers of the organization's identity.

AMENDATORY SECTION (Amending WSR 06-20-040, filed 9/26/06, effective 1/1/08)

WAC 230-11-105 Retain and store raffle records. (1) Records for unlicensed raffles must be kept for one year following the date of the raffle drawing.

(2) Records for licensed raffles must be kept for three years from the end of the licensees' fiscal year in which the raffle was completed.

(3) Organizations must keep all records at the main administrative or business office of all organizations that are located in Washington and have the records available for our review or audit.

(4) Organizations that do not have an administrative or business office must have and designate a records custodian that resides in Washington. The records custodian is responsible for retaining all raffle records in Washington state after

the raffle has been completed. The organization will provide us with the following information:

(a) The name, address, and telephone number of the records custodian; and

(b) The address of the location where records will be maintained.

(5) We may allow an organization to maintain records outside the state of Washington if the organization submits a written request. We may withdraw this permission at any time. The request must include the following information:

(a) The reason records need to be maintained outside of the state of Washington;

(b) The name, address, and telephone number of the records custodian; and

(c) The address of the location where records will be maintained.

(6) Records approved to be maintained outside the state of Washington must be delivered to us within seven days of our request.

WSR 14-21-080

PERMANENT RULES GAMBLING COMMISSION

[Order 708—Filed October 13, 2014, 10:21 a.m., effective January 1, 2015]

Effective Date of Rule: January 1, 2015.

Purpose: The change requires Class F and house-banked card room licensees' digital video recording and playback of images to have sufficient magnification and clarity to show fluid motion and allow the viewer to clearly distinguish the value of currency, coins, gaming chips, playing cards, and outcome of the game and effectively monitor in detail all areas requiring video coverage.

- Current Class F and house-banked card room licensees must meet the new requirements only when they install new digital recording equipment.
- If a new Class F or house-banked card room opens, the digital recording equipment must meet the new requirements.
- Existing card rooms that are sold are not required to meet the new requirements until they install new equipment.

Staff worked with Class F and house-banked card room licensees on this rule change.

Citation of Existing Rules Affected by this Order: Amending WAC 230-15-295.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0282.

Adopted under notice filed as WSR 14-17-059 on August 15, 2014.

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

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

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

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

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

Date Adopted: October 9, 2014.

Arlene K. Dennistoun
Staff Attorney

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-295 Digital video recording equipment requirements. Digital recording, including audio recording where required, using a digital recording and storage system, must:

- (1) Record all images on a hard drive; and
- (2) Lock so that access to the erase and reformat functions and system data files is restricted to persons authorized in the internal controls; and
- (3) Provide uninterrupted recording of surveillance, during playback or copying. Licensees may use motion-activated recording; and
- (4) Be capable of copying original images maintaining the original native format; and
- (5) Be stored at a rate of not less than twenty-five images per second; and
- (6) Record images at a minimum resolution of 320 x 240 and display during playback at a minimum resolution of 640 x 480 or meet subsection (11)(d) of this section; and
- (7) Store images in a format that is readable by our computer equipment; and
- (8) Store images in a format that we can verify and authenticate; and
- (9) Include the accurate time and date the video was originally recorded on the recorded images; and
- (10) Be equipped with an uninterruptible power source to allow a proper system shutdown; and
- (11) Meet the additional requirements in this subsection if you open a new Class F or house-banked card room using digital video recording equipment or install new digital video recording equipment in your existing Class F or house-banked card room. However, if you buy an existing card room, you will not be required to meet these requirements until you install new digital video recording equipment.
 - (a) Each user must have a sign in with a unique ID and password that is not shared with other users; and
 - (b) Have an audio or visual indication of a malfunction; and
 - (c) Digital video recording equipment must track at least the following functions, which are available to us and a person designated by the licensee to oversee the equipment (system administrator) by a menu button on the digital video recording system:
 - (i) Date and time users log in and out; and

(ii) Date and time when video signals from gaming cameras are interrupted and when connection is restored; and

(iii) Date, time, and user when video is recorded to removable storage media along with the date, time, and camera being copied; and

(iv) Date and time when the equipment fails to record video or audio when required; and

(v) Date and time when remote access to equipment begins and ends along with the ability to identify the person or organization accessing the equipment and the files accessed during the remote access.

(d) Record and playback images with sufficient magnification and clarity that shows fluid motion and allows the viewer to clearly distinguish the value of currency, coins, gaming chips, playing cards, and outcome of the game and effectively monitor in detail all required areas.

WSR 14-21-081

PERMANENT RULES

GAMBLING COMMISSION

[Order 705—Filed October 13, 2014, 10:22 a.m., effective January 1, 2015]

Effective Date of Rule: January 1, 2015.

Purpose: Nathan Schreiner, Squaxin Island Legal Department, petitioned the gambling commission for a rule change to allow out-of-state licensees without a business office or licensed premise in the state to use registered agent services with locations in the state, instead of requiring licensees to designate a "natural person" as resident agent or provide a "home address" for the agent.

Additionally, the term "resident agent" was replaced by "registered agent," to mirror other statutory provisions relating to registered agents (e.g. RCW 23B.05.010).

Citation of Existing Rules Affected by this Order: Amending WAC 230-03-052 and 230-03-050.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 14-17-058 on August 15, 2014.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: October 9, 2014.

Arlene K. Dennistoun
Staff Attorney

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-03-050 Additional information required from applicants for licensing. (1) Applicants must give us details or copies of the following information on or attached to their application:

(a) The name of the ~~((resident))~~ registered agent as required by state law, and the agent's business ~~((and home))~~ address located in the state; and

(b) Internal Revenue Service tax exemption letter, if one is necessary; and

(c) All lease or rental agreements, whether oral or written, between the applicant and the owner of the site where the applicant will conduct gambling activity; and

(d) Any franchise agreements or other agreements, whether written or oral, between the applicant and distributors or manufacturers of equipment or between the applicant and any other person whose agreements relate to gambling activities or gambling equipment; and

(e) All proposed financing, consulting, and management agreements or contracts between applicant and any gambling service supplier; and

(f) Enough personal information to ensure each substantial interest holder is qualified to hold a license or participate in an authorized gambling activity; and

(g) For commercial applicants: Articles of incorporation, limited liability corporation formation, partnership agreement, and other documents which set out the applicant's business structure; and

(h) For charitable and nonprofit organization applicants: Articles of incorporation and bylaws; or, if not a corporation, a copy of any bylaws and other documents which set out the organizational structure and purposes of the organization.

(2) Applicants must also give us any other information we request within thirty days of the request or within any other time frame we provide.

AMENDATORY SECTION (Amending WSR 08-20-007, filed 9/18/08, effective 1/1/09)

WAC 230-03-052 ~~((Resident))~~ Registered agent to be appointed by out-of-state applicants and licensees. (1) All applicants and licensees that do not have a business office or licensed premises within Washington state must appoint a ~~((resident))~~ registered agent for receiving and accepting service of process and other communications from us.

(2) The ~~((resident))~~ registered agent must have a physical Washington state address at which the agent is available for service of process and be:

(a) A ~~((natural person who is a resident living in Washington state; and~~

~~(b) At least eighteen years old.~~

~~(3) The resident agent's name, business address, and home address must be filed with us))~~ company authorized to conduct business in this state; or

(b) An individual resident of this state who is at least eighteen years old.

WSR 14-21-089

PERMANENT RULES

GAMBLING COMMISSION

[Order 706—Filed October 13, 2014, 5:14 p.m., effective November 13, 2014]

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

Purpose: The rule change increases the dollar limit, from \$3 million to \$6 million, in determining the level of service required by a certified public accountant in preparing financial statements for house-banked card rooms.

Staff worked extensively with licensees on this rule change in 2013 and 2014.

Citation of Existing Rules Affected by this Order: Amending WAC 230-15-740.

Statutory Authority for Adoption: RCW 9.46.070 (12), (14), (21), 9.46.0282.

Adopted under notice filed as WSR 14-17-060 on August 15, 2014.

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

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

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

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

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

Date Adopted: October 9, 2014.

Arlene K. Dennistoun
Staff Attorney

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-740 Preparing required financial statements.

Definitions.

(1) The following definitions apply to all subsections of this rule:

(a) "Financial statements" means documents, including, at least: Balance sheet, statement of income, statement of retained earnings or changes in equity, statement of cash flows, and all required notes or disclosures.

(b) "Card room gross receipts" means all receipts from all house-banked and nonhouse-banked card games offered by the house-banked card room.

(c) "Independent" means there is no relationship that may influence a certified public accountant's impartiality and objectivity in rendering services.

Filing with the commission.

(2) House-banked card game licensees must submit financial statements covering all financial activities of the licensees' business premises for each business year within one hundred twenty days following the end of their business year.

(3) We may authorize a sixty-day extension if a licensee submits a written request explaining the need for the extension.

Audited financial statements - Gross receipts of over ~~((three))~~ six million dollars or when required by another regulatory agency.

(4) Licensees with house-banked card ~~((game))~~ room gross receipts of more than ~~((three))~~ six million dollars for the business year must hire an independent, certified public accounting firm licensed by the Washington state board of accountancy to audit the licensee's financial statements according to Generally Accepted Auditing Standards (GAAS).

Reviewed financial statements - Gross receipts of one to ~~((three))~~ six million dollars.

(5) Licensees with house-banked card room gross receipts of one to ~~((three))~~ six million dollars for the business year must hire an independent, certified public accounting firm licensed by the Washington state board of accountancy to review the licensee's financial statements according to the Statements on Standards for Accounting and Review Services (SSARS) or audit the licensee's financial statements according to GAAS.

Compiled financial statements - Gross receipts of less than one million dollars.

(6) Licensees with house-banked card room gross receipts of less than one million dollars for the business year must hire an independent, certified public accounting firm licensed by the Washington state board of accountancy to compile the licensee's financial statements according to SSARS or audit the licensee's financial statements according to GAAS. This compilation must include all required notes or disclosures on an accrual basis of accounting.

Financial statement preparation.

(7) Licensees must prepare financial statements on a comparative basis. For the first year of operation only, licensees do not have to submit comparative financial statements. Licensees must report gross revenues from each licensed activity separate and apart from all other revenues.

(8) All financial statements must be prepared in accordance with the United States' Generally Accepted Accounting Principles (GAAP).

Consolidated financial statements.

(9) Commonly owned or operated business premises may present consolidated financial statements. Licensees must include consolidated schedules presenting separate financial statements for each licensed card room location.

Change in business year.

(10) Licensees must notify us in writing within thirty days if they change their business year. Licensees must submit financial statements covering the period from the end of the previous business year to the end of the new business year.

WSR 14-21-099
PERMANENT RULES
YAKIMA VALLEY
COMMUNITY COLLEGE

[Filed October 15, 2014, 10:07 a.m., effective January 5, 2015]

Effective Date of Rule: January 5, 2015.

Purpose: The last full review of the student rights and responsibilities at Yakima Valley Community College was in 1998. The rule is outdated and needs to be reviewed/revised to accommodate changes in local, state and federal guidelines.

Citation of Existing Rules Affected by this Order: Repealing WAC 132P-33-060, 132P-33-070, 132P-33-090, 132P-33-120, 132P-33-123, 132P-33-125, 132P-33-170, 132P-33-180, 132P-33-190, 132P-33-200, 132P-33-210, 132P-33-220, 132P-33-230, 132P-33-240, 132P-33-250, 132P-33-260, 132P-33-270, 132P-33-280, 132P-33-290, 132P-33-300, 132P-33-310, 132P-33-320, 132P-33-330, 132P-33-340 and 132P-33-350; and amending WAC 132P-33-010, 132P-33-020, 132P-33-030, 132P-33-040, 132P-33-050, 132P-33-080, 132P-33-100, 132P-33-110, 132P-33-140, 132P-33-150, 132P-33-155, and 132P-33-160.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 14-16-058 on July 30, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 7, Amended 1, Repealed 8; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 11, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 10, Amended 0, Repealed 12.

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

Date Adopted: October 9, 2014.

Leslie Blackaby
Dean of Student Services

AMENDATORY SECTION (Amending WSR 99-13-140, filed 6/18/99, effective 7/19/99)

WAC 132P-33-010 Preamble. Yakima Valley Community College (YVCC) is dedicated not only to learning and

the advancement of knowledge but also to the development of ~~((ethically sensitive and responsible persons. It))~~ civic minded citizens. YVCC seeks to achieve these goals through a sound educational program and policies concerning conduct that encourage independence and maturity while strengthening the spirit of mutual cooperation and responsibility shared by all members of the college community. Sharing goals held in common, the students, faculty, and staff of ~~((Yakima Valley Community College))~~ (YVCC) are joined in voluntary association in an educational community.

~~((The student is, first of all, a member of the community at large, and as such, is entitled to the rights and responsibilities of any citizen of comparable age and maturity. In addition, students, as members of the college are in the unique position of being citizens of two communities, subject to the regulations imposed by both and accountable to both.~~

~~Yakima Valley Community College expects that students will respect the laws of the greater society. As an agency of the state of Washington, the college must respect and adhere to the regulations established by local, state, and federal authorities. As an educational institution, it has the added responsibility for assisting students in gaining an understanding of the law and its function, and the responsibilities imposed upon each individual in a democratic society to respect and support the legal structure which protects the individual and the society. As a functioning organization, the college also has the responsibility to develop a set of regulations to assure the orderly conduct of the affairs of the college.))~~

Admission to the college carries with it the expectation that students will conduct themselves as responsible members of the college community, that they will comply with the rules and regulations of the college, maintain high standards of integrity and honesty, respect the rights, privileges and property of other members of the college community and will not interfere with legitimate college affairs.

~~((An atmosphere of learning and self-development is created by appropriate conditions in the college community. The rights and responsibilities in this document are critical ingredients in the free, creative, and spirited educational environment to which the students, faculty and staff on Yakima Valley Community College are committed.))~~

AMENDATORY SECTION (Amending WSR 99-13-140, filed 6/18/99, effective 7/19/99)

WAC 132P-33-020 Definitions. As used in this code of student rights and responsibilities the following words and phrases shall mean:

~~(1) (("YVCC senate" means the representative governing body for students at Yakima Valley Community College recognized by the board of trustees.~~

~~(2))~~ (2) "Assembly" means any overt activity engaged in by two or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons or group of persons.

~~((3))~~ (2) "ASYVCC" means the associated students of Yakima Valley Community College.

(3) "ASYVCC senate" means the representative governing body for students at Yakima Valley Community College recognized by the board of trustees.

(4) "Board" means the board of trustees of Community College District 16, state of Washington.

~~((4))~~ (5) "Business day" means a weekday, excluding weekends and college holidays.

(6) "College" means Yakima Valley Community College located within Community College District 16, state of Washington.

~~((5))~~ "College facilities" means and includes any or all real and personal property owned or operated by the college and shall include all buildings and appurtenances affixed thereon or attached thereto.

~~(6))~~ (7) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(8) "College personnel" refers to any person employed by Community College District 16 on a full-time or part-time basis, except those who are faculty members.

~~((7))~~ (9) "Disciplinary action" ~~((means and includes suspension or any lesser sanction of any student by the dean of students, the student hearing committee, college president, or the board of trustees for the violation of any of the provisions of the code of student rights and responsibilities for which such sanctions may be imposed.~~

~~The college president or designee shall have the authority to take any disciplinary action including the authority to suspend any student of the college.~~

~~(8))~~ is the process by which the dean of student services or designee imposes discipline against a student for a violation of the student code.

(10) "Dean of student services or designee" is a college administrator designated by the president or vice-president for instruction and student services to be responsible for implementing and enforcing the student conduct code. The president or vice-president for instruction and student services is authorized to reassign any and all of the dean of student services' duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(11) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the dean of student services or designee. Disciplinary appeals from a suspension in the excess of ten instructional days or an expulsion are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(12) "District" means Community College District 16, state of Washington.

~~((9))~~ (13) "Faculty member(s)" means any employee of Yakima Valley Community College who is employed on a full-time or part-time basis as a teacher, counselor, librarian or other position for which the training, experience and responsibilities are comparable as determined by the appointing authority, except administrative appointments.

~~((10))~~ (14) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

~~((15))~~ "The president" ((means the duly appointed chief executive officer of Yakima Valley Community)) is the president of the college((- District 16, state of Washington, or in his/her absence, the acting chief executive officer)). The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary.

~~((14))~~ (16) "Recognized student organization" means and includes any group or organization composed of students which is recognized formally by the ((student government of the college)) ASYVCC senate.

(17) "Respondent" is the student against whom disciplinary action is initiated.

(18) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by e-mail and by certified mail or first class mail to the party's last known address. Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

~~((13))~~ (19) A "sponsored event or activity" means any activity that is scheduled by the college and is supervised and controlled by the college's faculty members or college personnel. Such sponsorship shall continue only as long as the event is supervised and controlled by the college faculty member or college personnel. When the sponsored event or activity is of a prolonged nature, and free time periods are permitted to the students participating in the event, any activity taking place during such a free time period outside of the supervision and control of the college's faculty member or college personnel responsible for the event or activity shall be deemed to be a nonsponsored activity.

~~((13))~~ (20) "Student((-))" ((unless otherwise qualified, means and includes any person who is enrolled for classes or formally in the process of applying for admission to the college)) includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(21) "Student conduct code" means Yakima Valley Community College's student rights and responsibilities found in the Washington Administrative Code.

(22) "YVCC" means Yakima Valley Community College.

(23) "Vice-president for instruction and student services or designee" is the vice-president of student services or other

college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the vice-president for student services or designee's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

AMENDATORY SECTION (Amending WSR 82-01-079, filed 12/21/81)

WAC 132P-33-030 Jurisdiction. (1) All rules herein adopted shall apply to every student whenever said student is present upon or in any college facility and whenever said student is present at or engaged in any college-sponsored activity or function which is held on or in noncollege facilities ~~((not open to attendance by the general public))~~ or provided through web-based or interactive television (ITV) modes of delivery. In the event that a student's conduct, regardless of the location, shall be deemed to contribute to an unsafe college environment or create a disruptive atmosphere at the college, the college may also consider that conduct as basis for student discipline.

(2) Persons aiding or abetting a student's breach of this code shall be subject to having their privilege removed as to remaining on college property or engaging in college-sponsored activities~~((, and/or))~~. Appropriate disciplinary action may be taken pursuant to ~~((HEPB rules or))~~ faculty and administrative rules and regulations of conduct. If the privilege to remain on campus is revoked, trespassers shall be subject to possible arrest and prosecution under the state criminal trespass law.

AMENDATORY SECTION (Amending WSR 82-01-079, filed 12/21/81)

WAC 132P-33-040 Authority to prohibit trespass. (1) ~~((The college president is authorized in the instance of any event that the college president deems impedes))~~ In the instance of any event that the president or designee deems violates WAC 132P-24-050 by impeding the movement of persons or vehicles or which the ((college)) president deems to disrupt or threatens to disrupt ((the ingress and/or egress of persons from college facilities, and the college president acting through the dean of students, or such other designated person)) access to and from or in and out of college property or at a college-sponsored event or activity, the president or designee shall have authority and power to:

(a) Prohibit the entry of, or withdraw the ~~((license or))~~ privilege of a person or persons or any group of persons to enter onto or remain upon any portion of a college facility; or

(b) Give notice against trespass to any person, persons, or group of persons ~~((against))~~ for whom the ~~((license or))~~ privilege has been withdrawn or who have been prohibited from entering onto or remaining upon all or any portion of a college facility; or

(c) Order any person, persons or group of persons to leave or vacate all or any portion of a college facility.

(2) Any student who ~~((shall))~~ disobeys a lawful order given by the ~~((campus))~~ president or designee pursuant to the

requirements of subsection (1) of this section shall be subject to disciplinary action.

AMENDATORY SECTION (Amending WSR 82-01-079, filed 12/21/81)

WAC 132P-33-050 Right to demand identification.

(1) For the purpose of determining identity of a person as a student, any faculty member, administrator, or other college personnel authorized by the ~~((campus))~~ president or designee may demand that any person on college ~~((facilities))~~ property or at a college-sponsored event or activity produce evidence of student enrollment at the college. ~~((Fender of the))~~ a valid student identification card will satisfy this requirement.

(2) Refusal by a student to produce identification as required shall subject the student to disciplinary action.

NEW SECTION

WAC 132P-33-065 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this student conduct code is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 99-13-140, filed 6/18/99, effective 7/19/99)

WAC 132P-33-080 Freedom of association and organization. Students bring to the campus a variety of interests previously acquired and develop many new interests as members of the college community. They are free to organize and join associations to promote any legal purpose, whether it be religious, political, educational, recreational, or social.

Student organizations must be granted a charter by the ~~((college student government))~~ ASYVCC senate before they may be officially recognized. Prior to becoming chartered, a student organization must submit to the ~~((student government))~~ ASYVCC senate a statement of purpose, criteria for membership, a statement of operating rules or procedures, and the name of a college employee who has agreed to serve as advisor. All student organizations must also submit to the student government a list of officers and keep that list updated when changes occur. In order to qualify for issuance of a charter, a student organization must be open to all students ~~((without respect to race, sex, creed, or national origin, except for religious qualifications which may be required by organizations whose aims are primarily sectarian, or for other reasonable justifications which are directly related to the purposes of the organization))~~. YVCC policy prohibits conduct that discriminates against individuals based on their race, color, creed, religion, national origin, sex, sexual orientation and/or gender identity, age, marital status, disability (including the use of a specially trained guide dog or other service animal), genetic information, honorably discharged veteran or military status, status as a disabled veteran, Vietnam era veteran, or the right of a mother to breastfeed her child. Affiliation with a ~~((noncampus))~~ noncollege organization shall not be grounds for denial of a charter provided that other conditions ~~((for))~~ of the charter issuance have been met.

AMENDATORY SECTION (Amending WSR 82-01-079, filed 12/21/81)

WAC 132P-33-090 Student participation in college governance. As members of the college community, students will be free, individually and collectively, to express their views on college policy~~(s)~~ and on matters of general interest to the student body. The ASYVCC constitution and the college's administrative procedures provide clear channels for student participation in the formulation and application of institutional policies regarding academic and student affairs. Individuals affected by a policy shall have a representative voice in the formulation of that policy.

AMENDATORY SECTION (Amending WSR 05-16-005, filed 7/21/05, effective 9/1/05)

WAC 132P-33-100 Disclosure of student records. The Family Educational Rights and Privacy Act (FERPA) permits a student's education records to be disclosed without consent to persons who meet the strict definition of an "education official" who has a "legitimate educational interest" in their records.

(1) **Education official.** Education official is defined as a person employed by the college in either an administrative,

supervisory, academic, research, law enforcement or support staff position; persons serving on official committees such as disciplinary or grievance; an outside contractor (e.g., health or medical professional, attorney, auditor) acting as an agent for the college or the Washington state college and university systems.

The college may designate a student employee of the college as an education official, with the approval of the vice-president for instruction and student services or designee, according to the following procedure:

(a) Supervisor establishes job description identifying specific tasks to be performed by the student employee that require access to personally identifiable confidential information about students, including enrollment records, grades, or other education records;

(b) Supervisor submits job description to dean for approval;

(c) Dean submits job description to the vice-president for instruction and student services approval;

(d) Vice-president for instruction and student services forwards approved job description to supervisor.

(2) **Legitimate educational interest.** Educational interest is a need for an education official to review education records in order to fulfill his or her professional responsibilities. These responsibilities may or may not be limited to the following areas:

(a) Performing a task that is specified in his/her position;

(b) Researching a matter related to student ~~((discipline))~~ conduct;

(c) Providing a service or benefit related to a currently enrolled student or a past student for which the college is still maintaining an educational record;

(d) Maintaining safety and security on campus.

(3) **Education records.** Education records are records, files, and documents containing information directly related to a student or maintained by an educational institution; such as:

(a) Records pertaining to admission, advising, registration, grades and degree information that are maintained by the college;

(b) Testing information used for advising and counseling purposes maintained by the college;

(c) Information maintained by the college concerning payment of fees;

(d) Financial aid information as maintained by the college;

(e) Information regarding students participating in student government or athletics maintained by the college.

The following student records are not considered education records and are not subject to FERPA protection against unauthorized disclosure:

(i) Employment records when the employment is not connected to student status;

(ii) Sole possession records or private notes held by education officials that are not accessible or released to other personnel; other than a temporary substitute;

(iii) Alumni records, which do not relate to the person as a student;

(iv) Application records of students not admitted to the college;

(v) Law enforcement or campus security records that are solely for law enforcement purposes and maintained solely by ~~((the law enforcement unit))~~ campus security;

(vi) Records relating to treatment provided by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional and disclosed only to individuals providing treatment.

(4) **Directory information.** An educational institution is allowed to designate certain types of information that may be released without seeking written permission from the student. Directory information may be provided to the person requesting it either in person, by mail, or by telephone.

All requests for directory information from persons not employed by YVCC shall be referred to enrollment services. Only designated registration personnel are authorized to comply with requests for directory information.

~~((Yakima Valley Community College))~~ YVCC has designated the following items as directory information:

(a) Student's name;

(b) ~~((Address;~~

~~((Telephone number;~~

~~((Date and place of birth;~~

~~((Photographs;~~

~~((E-mail address;~~

~~((Major field of study;~~

~~((Eligibility for and participation in officially recognized activities, organizations, and sports;~~

~~((Weight and height statistics for members of athletic teams;~~

~~((Dates of attendance (quarters in attendance);~~

~~((Enrollment status (number of credits enrolled);~~

~~((Honor roll;~~

~~((Degrees and awards received;~~

~~((Most recent previous educational agency or institution attended by the student.~~

(5) **Protecting directory information from disclosure.** Students have the right to prohibit the release of directory information. A student may prevent the release of directory information by ~~((personally))~~ submitting in person a request in writing to the enrollment services office. This request to prevent the release of information becomes a part of the student's record and remains in effect (even after ~~((graduation))~~ degree and certificate completion) until the student instructs the college, in writing, to remove the hold status on the record.

(6) **Disclosure exceptions.** In addition to directory information the college will, at its discretion, make disclosures from education records without the student's prior written consent ~~((to))~~ to the following listed parties:

(a) Education officials with a legitimate educational interest;

(b) To officials of another school in which the student seeks or intends to enroll;

(c) To authorized federal, state, or local officials as required by law;

(d) To persons specified in a lawfully served judicial order or subpoena, provided the college makes a reasonable effort to notify the student in advance of compliance (unless

in the case of grand jury or other subpoenas which prohibit notification);

(e) In connection with financial aid for which the student has applied or received;

(f) To accrediting organizations, or organizations conducting studies for or on behalf of the institution;

(g) To appropriate parties in a health or safety emergency (campus security will personally relay message of an emergent nature to students);

(h) To parents of a dependent student, upon receipt of their most recently filed tax return, that shows the student as a dependent or upon receipt of a written statement from the student approving the release of nondirectory information (~~(from the student)~~). The following information can be released to the parents of dependent college students:

(i) Tuition account balances;

(ii) Financial aid eligibility;

(iii) Reason for an account hold (not to include titles of library materials);

(iv) Explanation of the satisfactory academic progress policy;

(v) Violation of student conduct policies concerning alcohol and controlled substances.

Faculty and staff of the college may provide job references for students, and may respond to inquiries from employers regarding students. Statements made by college personnel regarding students that are based on that person's personal observations do not require a written release from the student. However, if college personnel provide in either verbal or written form personally identifiable information about a student that is obtained from education records (grades, GPA, etc.,) the person is required to obtain prior written permission from the student. In cases where consent of the student is required for release of education records, the student shall submit a written, signed and dated statement specifying the records to be disclosed, the purpose of the disclosure, and the name of the party to whom the disclosure can be made.

When personally identifiable information is released without prior consent of the student, other than directory information and information released to education officials or the student, the education official in charge of these records will record the names of the parties who have requested information from education records and the nature of the interest in that information.

(7) Student's rights and responsibilities regarding student records.

(a) The student (~~(s-have)~~) has the right to inspect and review their records by submitting a written, signed request to the enrollment services office stating the record (~~(they wish)~~) he or she wishes to review. Charges may be assessed for reproduced copies of education records.

(b) Students have the right to seek to amend their education records. Students who believe that information contained in their education record is inaccurate, misleading, or in violation of privacy rights, may submit a written request to amend their records to the appropriate education official. The education official(s) will make every effort to settle disputes through informal meetings and discussion with the student. In instances where disputes regarding contents of education

records cannot be resolved by the parties concerned, the education official(s) involved shall advise the student of the right to a hearing by the student submitting a written request, appealing the decision of the education official(s), to the registrar or dean of student(s) services or designee. Should the registrar or dean of student(s) services or designee deem that the education records in question are inaccurate or misleading, he or she can ask that the records be amended by the appropriate education official(s). If the education records are held to be accurate, the student shall be granted the opportunity to place within those records a personal statement commenting upon the information contained within.

(c) The student (~~(s-have)~~) has the right to consent to disclosures of personally identifiable information contained in their education records, except to the extent that FERPA authorizes disclosure without consent.

(d) Each eligible student is afforded the right to file a complaint concerning alleged failures by the college to comply with the requirements of the act. The (~~(address)~~) web site of the office designated to investigate, process, and review violations and complaints is:

~~((The Family Educational Rights and Privacy Act Office (FERPA)~~

~~Department of Health, Education, and Welfare~~

~~330 Independence Avenue, S.W.~~

~~Washington, DC 20201))~~

~~Web site: <http://www.ed.gov/offices/om/fpco/>~~

~~((Students have the right to obtain a copy of the college's student records policy.))~~ Copies of this policy are available through the associated student body and the enrollment services office.

AMENDATORY SECTION (Amending WSR 82-01-079, filed 12/21/81)

WAC 132P-33-110 Student publications. The college recognizes the fact that student publications are a valuable aid in establishing and maintaining an atmosphere of free and responsible discussion and of intellectual exploration on the campus. They are a means of bringing student concerns to the attention of the faculty and institutional authorities and of formulating opinion on various issues on the campus and in the college community at large. They may also serve as a means of journalistic and/or creative expression.

~~((The college, as the publisher of student publications, must bear the legal responsibility for the contents of the publications.~~

~~Students shall have freedom to deal with any ideas and to express any opinions in the student publications without fear of their censorship.))~~ Student editors and managers of approved student publications are protected from arbitrary suspension and removal. Only for proper and stated causes, as outlined in the statement of purpose or philosophy adopted for each student publication, should editors and managers be subject to removal and then by orderly and prescribed procedures.

At the same time, student editors and managers are charged with corollary responsibilities to be governed by the canons of responsible journalism, including the avoidance

of libel, indecency, harassment, innuendo, undocumented allegations, and attacks on personal integrity(, and the techniques of harassment and innuendo)).

AMENDATORY SECTION (Amending WSR 82-01-079, filed 12/21/81)

WAC 132P-33-140 Commercial and promotional activities. ~~((College facilities may not be used for commercial solicitations, advertising, or promotional activities except when such activities clearly serve educational objectives (as in display of books or technical books or technical equipment of interest to the academic community), and when they are conducted under the sponsorship or at the request of a college department or the associated students, and so long as such use does not interfere with or operate to the detriment of the conduct of college affairs.))~~ College facilities shall not be used for commercial solicitations, advertising, or promotional activities except when such activities clearly serve the district's educational objectives including, but not limited to, display of books of interest to the academic community or the display or demonstration of technical or research equipment, and when such commercial activities relate to educational objectives and are conducted under the sponsorship or the request of a college department or the office of student life, provided that such solicitation does not interfere with or operate to the detriment of the conduct of college affairs or the free flow of pedestrian or vehicular traffic. For the purposes of regulation, the term "commercial activities" does not include handbills, leaflets, newspapers, and similarly related materials as regulated in chapters 132P-136 and 132P-142 WAC.

AMENDATORY SECTION (Amending WSR 99-13-140, filed 6/18/99, effective 7/19/99)

WAC 132P-33-150 Use of college facilities. ~~((Any recognized ASYVCC organization may request approval from the student life coordinator to utilize available college facilities for authorized activities as provided for in official ASYVCC documents. Facilities will be provided free of charge to the organization except when such use necessitates staffing and services beyond regular college requirements. Standard college fees will be charged in these cases.~~

~~Use of facilities for purposes other than those approved or in an irresponsible manner may result in withdrawal of this privilege for an organization.~~

~~Student organizations should schedule facility use requests with the director of student programs as far in advance as possible.))~~ Please refer to chapters 132P-136 and 132P-142 WAC.

AMENDATORY SECTION (Amending WSR 99-13-140, filed 6/18/99, effective 7/19/99)

WAC 132P-33-155 Electronic communication policy. The following is a general policy:

(1) Computer and network use at ~~((Yakima Valley Community College))~~ YVCC must be consistent with the mission, policies, and procedures of the college and applicable federal, state, and local laws and regulations. ~~((Yakima Valley Com-~~

~~munity College))~~ YVCC computers and networking facilities are primarily designated for educational and research purposes.

(2) Users must respect the rights and property of others. Users must not improperly access, misuse, send, or misappropriate information or files. Unauthorized access to systems, software, or data is prohibited.

(3) ~~((Yakima Valley Community College))~~ YVCC computers and network facilities must not be used for commercial purposes or private gain.

(4) ~~((Yakima Valley Community College))~~ YVCC computers and network facilities must not be used to transmit or solicit the transmission of any communication in any form where the content and/or meaning of the message transmitted or distributed would violate any applicable law or regulation.

(5) Users of ~~((Yakima Valley Community College))~~ YVCC computers and network facilities must promote efficient use of the networks. Users must minimize and avoid unnecessary network traffic which might interfere or negatively impact the work of other users of the YVCC network or connected networks. Uses that significantly interfere with the ability of others to make effective use of the network or which disrupt the YVCC network or any connected networks, systems, services, or equipment are prohibited.

(6) Interpretation, application, and modification of this policy will be at the sole discretion of ~~((Yakima Valley Community College))~~ YVCC. Violations may result in loss of computer and network privileges and other penalties as applicable under YVCC policies and federal, state, and local laws and regulations.

(7) ~~((Yakima Valley Community College))~~ YVCC makes no warranty of any kind, expressed or implied, regarding computer resources or services, or the contents of resources or electronic messages over the YVCC campus network or connected networks. ~~((Yakima Valley Community College))~~ YVCC will not be liable in any event for incidental or consequential damages, direct or indirect, resulting from the use of the YVCC campus network or network services.

AMENDATORY SECTION (Amending WSR 99-13-140, filed 6/18/99, effective 7/19/99)

WAC 132P-33-160 Noncollege speaker policy. ~~((The trustees, the administration, and the faculty of the college subscribe to the proposition that an important aspect of the education of college students is the opportunity to listen to speakers representing a wide variety of opinions and beliefs on important public issues. In conformity with the American tradition of free speech and free inquiry, the following policies are established governing the appearance on campus of speakers not themselves members of the college community:~~

~~(1) Any recognized ASYVCC student organization with the written sanction of its advisor, may ask individuals to speak on the campus subject to normal restraints imposed by considerations of common decency and the state law.))~~ (1) Student organizations officially recognized by the college shall have the right to invite outside speakers to speak on campus. This right is subject to the availability of campus facilities, funding, and in compliance with college procedures available in the respective office of student life. Speakers are

subject to the legal restraints imposed by the laws of the United States and the state of Washington.

(2) The appearance of ~~((an))~~ an invited speaker on ~~((the campus))~~ college facilities or at sponsored events or activities does not ~~((involve an))~~ represent an implicit or explicit endorsement ~~((, either implicit or explicit,))~~ of the speaker's views or opinions by the college, its students, its faculty, its college personnel, its administration, or its board ~~((of trustees))~~.

(3) The scheduling of facilities for ~~((hearing invited speakers))~~ events shall be made through the ~~((office of the student life coordinator.~~

~~((4))~~ The student life coordinator or designee will be notified at least three academic calendar days prior to the appearance of an invited speaker, at which time a form (available in the student programs office) must be completed with such particulars as name of speaker, speech or discussion topic, time of appearance(s) and sponsoring organization. The form must bear the signature of the sponsoring organization's advisor. Exceptions to the three day ruling may be made by the student life coordinator with the approval of the dean of students)) designated reservation clerk. Use of facilities generally requires ten calendar days notice, excluding Saturday, Sunday and holidays.

~~((5))~~ (4) The dean of students or designee may require views other than those of the invited speaker to be presented at the meeting, or at a subsequent meeting. The ((campus)) president may assign a ((faculty member)) college employee to preside over any meeting where a speaker has been invited.

NEW SECTION

WAC 132P-33-165 Distribution and posting of materials. Students may distribute or post printed or published material subject to procedures available in the office of student life. All free publications not in violation of local, state and/or federal laws, such as books, magazines, newspapers, leaflets or similar materials may be distributed on campus. The college may restrict the distribution of any publications where such distribution unreasonably interferes with college operations. Such materials may be distributed from authorized public areas consistent with the maintenance of college property, with the free flow of traffic and persons, and not in the manner that, in itself, limits the orderly operation of college affairs. Any student desiring to distribute such publications shall first register with the office of student life so that reasonable areas and times can be assured and prevent undue interference with the activities of the institution. All publications shall bear identification as to the publishing agency and distributing organization or individual.

DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT

NEW SECTION

WAC 132P-33-400 Supplemental sexual misconduct procedures. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student

conduct matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132P-33-200 through 132P-33-310. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

NEW SECTION

WAC 132P-33-410 Supplemental definitions. The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.

(2) "Sexual misconduct" is prohibited sexual- or gender-based conduct by a student including, but not limited to:

(a) Sexual activity for which clear and voluntary consent has not been given in advance;

(b) Sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping or otherwise incapacitated due to alcohol or drugs;

(c) Sexual harassment;

(d) Sexual violence, which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual- or gender-based stalking;

(e) Nonphysical conduct such as sexual- or gender-based digital media stalking, sexual- or gender-based online harassment, sexual- or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

NEW SECTION

WAC 132P-33-420 Supplemental complaint process. The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(1) The human resources director or designee, the college's Title IX compliance officer, shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the dean of student services or designee for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college com-

munity or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The dean of student services or designee, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The dean of student services or designee, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the dean of student services or designee shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection is given.

NEW SECTION

WAC 132P-33-430 Supplemental appeal rights. (1)

The following actions by the dean of student services or designee may be appealed by the complainant:

- (a) The dismissal of a sexual misconduct complaint; or
- (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the vice-president of instruction and student services or designee within twenty-one days of service of the notice of the discipline decision provided for in WAC 132P-33-230. The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are offered the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

- (a) Exoneration and dismissal of the proceedings;
- (b) A disciplinary warning;
- (c) A written reprimand;
- (d) Disciplinary probation;
- (e) Suspensions of ten instructional days or less; and/or
- (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair and dean of student services or designee with copies to the respondent.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

(10) The vice-president for instruction and student services and designee, on the same date as the initial decision is served on the respondent, will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights.

(11) Complainant may appeal the vice-president for instruction and student services' decision to the president subject to the same procedures and deadlines applicable to other parties.

(12) The vice-president for instruction or designee, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

STUDENT CONDUCT CODE PROCEDURES

NEW SECTION

WAC 132P-33-440 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) Academic dishonesty. Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes, but is not limited to, any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes, but is not limited to, taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) Other dishonesty. Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) Obstruction or disruption. Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) Assault. Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.

(5) Cyber misconduct. Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mail communications directly or through communi-

cations with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) Property violation. Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has been stolen.

(7) Failure to comply with directive. Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) Weapons. Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(9) Hazing. Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(10) Alcohol and drug violations.

(a) Alcohol. The use, possession, delivery, or sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) Marijuana. The use, possession, delivery, or sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) Drugs. The use, possession, delivery, sale, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(11) Lewd conduct. Conduct which is lewd or obscene.

(12) Discriminatory conduct. Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) Sexual harassment. The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) Sexual intimidation. The term "sexual intimidation" incorporates the definition of sexual harassment and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) Sexual violence. The term "sexual violence" incorporates the definition of sexual harassment and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender- or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

(14) Harassment. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile or offensive environment for other campus community members. Protected status includes a person's race, color, national origin, sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of sexual harassment. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) Retaliation. Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies, including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

(16) Misuse of electronic resources. Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic in-formation resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) Unauthorized access. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) Safety violations. Safety violation includes any non-accidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) Ethical violation. The breach of any generally recognized and published code of ethics or standards of profession practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 132P-33-445 Disciplinary sanctions and terms and conditions. The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

(1) Disciplinary warning. A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) Written reprimand. Notice in writing that the student has violated one or more terms of this student conduct code and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) Disciplinary probation. Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction which may include, but is not limited to, a suspension or a dismissal from

the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) Disciplinary suspension. Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(5) Dismissal. The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(6) Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) Restitution. Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) Professional evaluation. Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with the recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(7) Not in good standing. A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(b) Ineligible to represent college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

NEW SECTION

WAC 132P-33-450 Purpose of disciplinary actions.

The college may apply sanctions or take other appropriate action when student conduct interferes with the college's education process:

(1) Nothing herein shall prevent faculty members from taking reasonable summary action as maybe reasonably necessary to maintain order when they have reason to believe that such action is necessary for the physical safety and well-being of the student, the safety and protection of other stu-

dents, of college property or where the student's conduct disrupts the educational process.

(2) Such summary action in the form of removal from the classroom shall be effective for a period not to exceed two scheduled classroom days.

(3) Faculty shall maintain a written record of any summary action and a copy shall be filed with the dean of student services or designee within two scheduled classroom days (excludes Saturday, Sunday, and holidays).

(4) Any summary action may be appealed to the dean of student services or designee for an informal hearing.

NEW SECTION

WAC 132P-33-460 Initiation of disciplinary action.

(1) All disciplinary actions will be initiated by the dean of student services or designee. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The dean of student services or designee shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the dean of student services or designee will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting the dean of student services or designee may take disciplinary action based upon the available information.

(3) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the dean of student services or designee shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) The dean of student services or designee may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132P-33-200.

(c) Refer the matter directly to the student conduct committee.

(i) Initiating the process. Student behavior that is suspected to be in violation of the student conduct code may be reported by students or employees of the college. In the event of an urgent safety concern, the person reporting the behavior is advised to first contact campus security or 911 local emergency services. If the conduct may be criminal, the student or employee reporting the incident may also report the conduct to law enforcement.

(ii) Notice requirements. The dean of students or designee shall initiate timely notification of the student accused of a violation of the student conduct code. The human resources director or designee shall initiate timely notification of allegations of sexual misconduct (WAC 132P-33-150). The notice shall not be ineffective if presented later due to the student's absence. Such notice shall:

(A) Inform the student that a report has been filed alleging that the student violated specific provisions of the code and the date of the violation;

(B) Inform the student that failure to appear at either of the appointed times at the office of the dean of student services or designee by the appointed deadline may subject the student to suspension from the institution for a stated time and a loss of access to college services for an indefinite period of time.

(5) Meeting with the dean of student services or designee.

(a) At the meeting with the dean of student services or designee the student shall be informed:

(i) Of provisions of the student conduct code that prompted that notice;

(ii) That the dean of student services or designee will make a decision as to any disciplinary sanction;

(iii) That the student may appeal any disciplinary sanction by requesting a formal hearing;

(iv) That the decision of the dean of student services or designee stands until such hearing is completed; and

(v) That if a hearing is requested the student may have that hearing open to the public.

(b) After the investigation is completed, the dean of student services or designee may take any of the following actions:

(i) Terminate the proceedings, exonerating the student or students;

(ii) Dismiss the case after whatever counseling and advice may be appropriate;

(iii) Provide a warning, verbally cautioning the student that the reported behavior constitutes violation of college rules or regulations or has otherwise failed to meet the college's standards of conduct and that further conduct of the type reported may lead to more serious disciplinary actions in the future;

(iv) In the case of a sexual misconduct allegation, that the complainant may also appeal any disciplinary sanction by requesting a formal hearing;

(v) Impose disciplinary sanctions as listed in WAC 132P-33-200 subject to the student's right of appeal described below; or

(vi) Refer the matter to the student conduct committee for a recommendation to the vice-president for instruction and student services or designee as to appropriate action.

(c) Disciplinary action taken by or at the recommendation of the dean of student services or designee is final twenty-one days after notice is sent unless the student exercises the right of appeal as provided for in these rules.

(d) This process does not preclude and may occur concurrently with a Title IX sexual harassment investigation (WAC 132P-33-150). In cases of sexual misconduct, both the

complainant and the accused may appeal disciplinary sanctions.

NEW SECTION

WAC 132P-33-470 Appeal from disciplinary action.

The respondent may appeal a disciplinary action by filing a written notice of appeal with the vice-president of instruction and student services within twenty-one days of service of the dean of student services or designee decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the dean of student services or designee's decision shall be deemed final.

(1) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(2) The parties to an appeal shall be the respondent and the dean of student services or designee.

(3) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(4) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(5) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(6) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the vice-president for instruction and student services, the dean of student services, or the president.

(7) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(8) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

NEW SECTION

WAC 132P-33-480 Student conduct committee. (1)

The student conduct committee shall consist of six members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president; and

(c) Two administrative staff members (excluding the individual who imposed the sanction) appointed by the president at the beginning of the academic year.

(2) The administrative staff member shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair

shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings shall be heard by a quorum of three members of the committee so long as one faculty member, one administrator and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

NEW SECTION

WAC 132P-33-490 Appeal student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The dean of student services or designee shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The dean of student services or designee may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown. If the dean of student services or designee imposed the appealed sanction the vice-president of instruction and student services will designate another administrator to facilitate the process.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair or dean of student services or designee, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The notification of imposition of discipline (or referral to the committee); and

(b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair or dean of student services or designee should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of

these admissible exhibits to the committee members before the hearing.

(7) The dean of student services or designee, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student dean of student services or designee. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the dean of student services or designee may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 132P-33-500 Student conduct committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair or dean of student services or designee shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair or dean of student services or designee shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The dean of student services or designee (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

NEW SECTION

WAC 132P-33-510 Student conduct committee—Initial recommendation. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial recommendation to the vice-president for instruction and student services or designee in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be identified.

(3) The vice-president for instruction and student services or designee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the dean of student services or designee, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student conduct code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the dean of student services or designee and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The vice-president for instruction and student services or designee shall cause copies of the initial decision to be served on the parties and their legal counsel or record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

NEW SECTION

WAC 132P-33-520 Appeal from vice-president for instruction and student services initial decision. (1) A respondent who is aggrieved by the findings or conclusions issued by the vice-president for instruction and student services or designee may appeal the initial decision to the president based solely upon procedural concerns by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific procedural concerns that are challenged and must contain argument why the appeal should be granted.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final and shall

include a notice of any rights to request reconsideration and/or judicial review.

(4) The president may at his or her discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

NEW SECTION

WAC 132P-33-530 Readmission after suspension. Any student suspended from the college for disciplinary reasons may be readmitted upon expiration of the time period for which the suspension was issued. If the student has been suspended for an indefinite period, or feels that circumstances warrant reconsideration of the temporary suspension prior to its expiration, the student may appeal in writing no more than once per quarter to the dean of student services or designee. Such petitions shall state reasons which support a reconsideration of the matter.

SUMMARY SUSPENSION RULES

NEW SECTION

WAC 132P-33-540 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The vice-president for instruction and student services or designee may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the dean of student services or designee for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespass-

ing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the vice-president for instruction and student services or the dean of student services, or to attend a disciplinary hearing.

(5)(a) The dean of student services or designee shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the dean of student services or designee is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceeding and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the student fails to appear at the designated hearing time, the dean of student services or designee may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the dean of student services or designee shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the dean of student services or designee shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132P-33-060	Freedom of access to higher education.
WAC 132P-33-070	Freedom of expression.
WAC 132P-33-120	Student complaints.
WAC 132P-33-123	Sexual harassment policy.
WAC 132P-33-125	Complaints against academic employees in accordance with the negotiated agreement.
WAC 132P-33-170	Violations.
WAC 132P-33-180	Emergency procedures.
WAC 132P-33-190	Purpose of disciplinary actions.
WAC 132P-33-200	Initial proceedings.
WAC 132P-33-210	Appeals.
WAC 132P-33-220	Student hearing committee.
WAC 132P-33-230	Final decision regarding disciplinary sanction.
WAC 132P-33-240	Disciplinary sanctions.
WAC 132P-33-250	Readmission after suspension.

WAC 132P-33-260	Reestablishment of academic standings.
WAC 132P-33-270	Initiation of summary suspension proceedings.
WAC 132P-33-280	Permission to enter or remain on campus.
WAC 132P-33-290	Notice of summary suspension proceedings.
WAC 132P-33-300	Procedures of summary suspension hearing.
WAC 132P-33-310	Decision by the dean of students.
WAC 132P-33-320	Notice of summary suspension.
WAC 132P-33-330	Suspension for failure to appear.
WAC 132P-33-340	Appeal.
WAC 132P-33-350	Summary suspension proceedings not duplicitious.

WSR 14-21-101
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
 (Securities Division)

[Filed October 15, 2014, 11:11 a.m., effective November 15, 2014]

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

Purpose: The rule making will create a new rule at WAC 460-23B-070 regarding the termination of salespersons for issuers. RCW 21.20.080 states that if the employment or association of a salesperson for an issuer is terminated, the salesperson and the issuer must notify the securities division of the termination. However, RCW 21.20.080 does not specify how to make this notification. The new rule will specify that if the employment or association of a salesperson for an issuer is terminated, the salesperson and the issuer must notify the securities division of the termination by filing Form U5 (the Uniform Termination Notice for Securities Industry Registration) with the division. The rule will clarify how issuers and salespersons for issuers should comply with the existing statute.

Statutory Authority for Adoption: RCW 21.20.070, 21.20.080, 21.20.450.

Adopted under notice filed as WSR 14-17-037 on August 13, 2014.

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

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

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

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

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

Date Adopted: October 15, 2014.

Scott Jarvis
Director

NEW SECTION

WAC 460-23B-070 Termination of salespersons for issuers. Pursuant to RCW 21.20.080, if a salesperson for an issuer terminates employment or association with an issuer, the issuer and the salesperson must notify the director of the termination by complying with the instructions to Form U5 and filing a paper copy of a completed Form U5 with the securities division within thirty days of termination.

WSR 14-21-102
PERMANENT RULES
DEPARTMENT OF
ENTERPRISE SERVICES

[Filed October 15, 2014, 11:20 a.m., effective November 15, 2014]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The expedited rule-making process requires a period of forty-five days for anyone to file objections to the proposed rule. No objections were filed with the agency within the forty-five day period.

Purpose: WAC 200-600-015 requires state agencies to develop a training and development plan. While the specific requirements of the plan are listed under WAC 200-600-025; WAC 200-600-015 incorrectly directs the reader to WAC 357-34-030. The purpose of this rule-making action is to amend WAC 200-600-015 in order to correctly direct the reader to WAC 200-600-025.

WAC 200-600-030 requires agencies to report to the department of enterprise services their compliance with sexual harassment awareness and prevention training requirements under WAC 357-34-100 and 357-34-105.

WAC 200-600-030 is no longer needed because a system is in place that automatically captures relevant state agency training information and is capable of providing reports sufficient to comply with the sexual harassment awareness and prevention training requirements of this rule as well as those of WAC 357-34-100 and 357-34-105. This system is known as the learning management system and is managed by the department of enterprise services. The purpose of this rule-making action is to repeal WAC 200-600-030.

Citation of Existing Rules Affected by this Order: Repealing WAC 200-600-030; and amending WAC 200-600-015.

Statutory Authority for Adoption: Chapter 43.19 RCW.

Adopted under notice filed as WSR 14-15-155 on July 23, 2014.

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

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

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

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

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

Date Adopted: October 15, 2014.

Jack Zeigler
Rules Manager

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-600-015 What are the employer's training and development responsibilities? Each employer is responsible for:

- (1) Developing a training and development plan as prescribed by WAC (~~(357-34-030)~~) 200-600-025; and
- (2) Providing employee orientation, required job-related training, and assistance with career planning.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 200-600-030 How do agencies report their compliance with WAC 357-34-100 to the department?

WSR 14-21-104
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed October 15, 2014, 1:17 p.m., effective December 14, 2014]

Effective Date of Rule: January 12, 2015.

Purpose: WAC 458-20-17802 (Rule 17802) Collection of use tax by county auditors and department of licensing—Measure of tax, the department of revenue authorizes county auditors and the department of licensing (DOL) to collect the use tax when a person applies to transfer a certificate of title of a vehicle under the authority of RCW 82.12.045. This rule explains how county auditors, their subagents, and DOL determine the measure of the use tax.

DOL has an automated system that provides a vehicle's average retail value to help determine the measure of use tax

due at the time of transfer. Previously if the vehicle's average retail value, as provided by the system, was less than \$3,000 the purchase price was presumed to represent the vehicle's true value. The rule has been revised to raise the threshold of \$3,000 to \$5,000. Other general updating has also been completed.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-17802 Collection of use tax by county auditors and department of licensing—Measure of tax.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 82.12.045.

Adopted under notice filed as WSR 14-17-131 on August 20, 2014.

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

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

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

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

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

Date Adopted: October 15, 2014.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-22-008, filed 10/26/01, effective 11/26/01)

WAC 458-20-17802 Collection of use tax by county auditors and department of licensing—Measure of tax.

(1) Introduction. The department of revenue (department) has authorized county auditors and the department of licensing to collect the use tax imposed by chapter 82.12 RCW when a person applies to transfer the certificate of (~~ownership~~) title of a (~~motor~~) vehicle acquired without the payment of sales tax. See RCW 82.12.045. This rule explains how county auditors, their subagents, and the department of licensing determine the measure of the use tax. This rule does not relieve a seller registered with the department (~~of revenue~~) of the statutory requirement to collect sales tax when selling tangible personal property, including (~~motor~~) vehicles. RCW 82.08.020 and 82.08.0251. The use tax reporting responsibilities of Washington residents in other situations and the general nature of the use tax are addressed in WAC 458-20-178 (Use tax). (~~The various use tax exemptions provided by chapter 82.12 RCW are discussed in WAC 458-20-17801 (Use tax exemptions).~~) The application of tax to vehicles acquired by Indians and Indian tribes is discussed in WAC 458-20-192 (Indians—Indian country).

Vehicle licensing locations and information about vehicle titles and registration are available from the department of

licensing on (~~the internet~~) their web site at: (~~http://www.wa.gov/dol/, under "vehicles list."~~) dol.wa.gov. This information is also available by contacting the local county auditor's office listed in the government pages of (~~the~~) a telephone directory.

(2) What is use tax based on? For purposes of computing the amount of use tax due, the value of the article used is the measure of tax. The value of the article used is generally the purchase price. If the purchase price does not represent the true value of the article used, the value must be determined as nearly as possible according to the retail selling price at place of use of similar vehicles of like quality and character. RCW 82.12.010.

(3) Use of automated system to verify measure of tax. When a person applies to transfer the certificate of (~~ownership~~) title of a (~~motor~~) vehicle, county auditors, their subagents, or the department of licensing must verify that the purchase price represents the true value. In doing so, county auditors, their subagents, or the department of licensing compare the vehicle's purchase price to the average retail value of comparable vehicles using an automated valuing system. The automated valuing system identifies the average retail value using a data base that is provided by a regional industry standard source specializing in providing valuation services to local, state, and federal governments, and the private sector.

In limited situations, the automated valuing system's data base may not provide the average retail value for a (~~motor~~) vehicle. For example, the automated valuing system's data base does not provide average retail value information for collectible vehicles or vehicles that are over twenty years of age. In the absence of an average retail value, county auditors, their subagents, or the department of licensing will determine the true value as nearly as possible according to the retail selling price at place of use of similar vehicles of like character and quality. To assist in this process, the department of revenue and the department of licensing may approve the use of alternative valuing authorities as necessary.

(4) What happens when the purchase price is presumed to represent the true value? County auditors, their subagents, or the department of licensing will use the purchase price to compute the amount of use tax due when the purchase price represents the vehicle's true value. County auditors, their subagents, or department of licensing will presume the purchase price represents the vehicle's true value if one of the following conditions is met:

(a) The vehicle's average retail value, as provided by the automated valuing system, is less than (~~(\$3,000)~~) \$5,000.

For example, a person buys a (~~motor~~) vehicle for (~~(\$800)~~) \$2,800. The automated valuing system indicates that the vehicle's average retail value is (~~(\$2,900)~~) \$4,900. The purchase price is presumed to represent the vehicle's true value because the average retail value is less than (~~(\$3,000)~~) \$5,000.

(b) The vehicle's purchase price is not more than \$2,000 below the average retail value as provided by the automated valuing system.

For example, a person buys a used (~~motor~~) vehicle for (~~(\$4,500)~~) \$10,000. The automated valuing system indicates the vehicle's average retail value is (~~(\$6,000)~~) \$11,500. When

compared to the average retail value, the purchase price is not more than \$2,000 below the average retail value. Consequently, the purchase price is presumed to represent the vehicle's true value.

(5) **What happens when the purchase price is not presumed to represent the true value?** If the vehicle's purchase price is not presumed to be the true value as explained in subsection (4) of this rule, a person may remit use tax based on the average retail value as indicated by the automated valuing system or substantiate the true value of the vehicle using any one of the following methods.

(a) **Industry-accepted pricing guide.** A person applying to transfer a certificate of ~~((ownership))~~ title may provide the county auditor, a subagent, or the department of licensing with documentation from one of the various industry-accepted pricing guides. The value from the industry-accepted pricing guide must represent the retail value of a similarly equipped vehicle of the same make, model, and year in a comparable condition. The purchase price is presumed to represent the vehicle's true value if the purchase price is not more than \$2,000 below the retail value.

For example, a person buys a vehicle for \$3,500. The automated valuing system indicates that the vehicle's average retail value is \$5,700. An industry-accepted pricing guide shows that the retail value of a similarly-equipped vehicle in a comparable condition of the same make, model, and year is \$5,000. When compared to the retail value established by the industry-accepted pricing guide, the purchase price is not more than \$2,000 below the retail value. Consequently, the purchase price is presumed to represent the vehicle's true value.

(b) **Declaration of buyer and seller.** A person applying to transfer a certificate of ~~((ownership))~~ title may provide to the county auditor, a subagent, or the department of licensing a Declaration of Buyer and Seller Regarding Value of Used Vehicle Sale (REV 32 2501) to substantiate that the purchase price is the true value of the vehicle. The declaration must be signed by both the buyer and the seller and must certify to the purchase price and the vehicle's condition under penalty of perjury. The department ~~((of revenue))~~ may review a declaration and assess additional tax, interest, and penalties. A person may appeal an assessment to the department ~~((of revenue))~~ as provided in WAC 458-20-100 (Appeals~~((small claims and settlements)))~~).

The declaration is available ~~((from))~~ on the ~~((department of revenue on the internet at <http://dor.wa.gov/> under "other forms and schedules.")~~ department's web site at dor.wa.gov. It is also available at all vehicle licensing locations, ~~((department of revenue))~~ department's field offices, or by writing:

Department of Revenue
Taxpayer Services
P.O. Box 47478
Olympia, WA 98504-7478

(c) **Written appraisal.** A person applying to transfer a certificate of ~~((ownership))~~ title may present to the county auditor, a subagent, or the department of licensing a written appraisal from an automobile dealer, insurance or other vehicle appraiser to substantiate the true value of the vehicle. If an automobile dealer performs the appraisal, the dealer must be

currently licensed with the department of licensing's dealer services division or be a licensed vehicle dealer in another jurisdiction.

The written appraisal must appear on company stationery or have the business card attached and include the vehicle description, including the vehicle make, model, and identification number (VIN). The person performing the appraisal must certify that the stated value represents the retail selling price of a ~~((similarly equipped))~~ similarly equipped vehicle of the same make, model, and year in a comparable condition. The department ~~((of revenue))~~ may review an appraisal and assess additional tax, interest, and penalties. A person may appeal an assessment to the department ~~((of revenue))~~ as provided in WAC 458-20-100 (Appeals~~((small claims and settlements)))~~).

(d) **Declaration of use tax.** A person applying to transfer a certificate of ~~((ownership))~~ title may present to the county auditor, a subagent, or the department of licensing a Declaration of Use Tax (REV 32 2486e) to substantiate the true value of the vehicle. An authorized employee of the department ~~((of revenue))~~ must complete the declaration. Determining the true value may require a visual inspection that is not available at all department ~~((of revenue))~~ locations.

(e) **Repair estimate.** A person applying to transfer a certificate of ~~((ownership))~~ title may present to the county auditor, a subagent, or the department of licensing a written repair estimate, prepared by an auto repair or auto body repair business. This estimate will then be used to assist with determining the true value of the vehicle. The written estimate must appear on company stationery or have the business card attached. In addition, the written estimate must include the vehicle description, including the vehicle make, model, and identification number (VIN), and an itemized list of repairs. The department ~~((of revenue))~~ may review an appraisal and assess additional tax, interest, and penalties. A person may appeal an assessment to the department ~~((of revenue))~~ as provided in WAC 458-20-100 (Appeals~~((small claims and settlements)))~~).

The purchase price is presumed to represent the true value if the total of the purchase price and the repair estimate is not more than \$2,000 below the average retail value. For example, a person purchases a vehicle with extensive bumper damage for \$1,700. The automated valuing system indicates that the vehicle's average retail value is \$6,000. An estimate from an auto body repair business indicates a cost of \$2,500 to repair the bumper damage. The purchase price is presumed to represent the vehicle's true value because when the total of the purchase price and the repair estimate (\$1,700 + \$2,500 = \$4,200) is compared to the average retail value, the total is not more than \$2,000 below the average retail value (\$6,000).

WSR 14-21-106
PERMANENT RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2014-05—Filed October 15, 2014, 4:41 p.m., effective November 15, 2014]

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

Purpose: Establish rules for investment in hedging and income generation derivative transactions by insurers and approval by the commissioner of derivative use plans of insurers.

Statutory Authority for Adoption: RCW 48.020.60 [48.02.060] and 48.13.171.

Other Authority: RCW 48.13.091.

Adopted under notice filed as WSR 14-18-066 on August 29, 2014.

A final cost-benefit analysis is available by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail rules coordinator@oic.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 7, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 0, Repealed 0.

Date Adopted: October 15, 2014.

Mike Kreidler
Insurance Commissioner

DERIVATIVE INSTRUMENTS

NEW SECTION

WAC 284-13-900 Purpose. The purpose of this rule is to set standards for the prudent use of hedging and income generation derivative instruments under RCW 48.13.171.

NEW SECTION

WAC 284-13-910 Definitions. The definitions in this section apply to WAC 284-13-920 through 284-13-960.

"Business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy or other similar form of business organization, whether for-profit or not-for-profit.

"Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price.

"Collar" means an agreement to receive payments as the buyer of an option, cap, or floor and to make payments as the seller of a different option, cap, or floor.

"Counterparty exposure amount" means:

(1) The net amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or cleared through a qualified clearinghouse (over-the-counter derivative instrument). The amount of credit risk equals:

(a) The market value of the over-the-counter derivative instrument if the liquidation of the instrument would result in a final cash payment to the insurance company; or

(b) Zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurance company.

(2) If over-the-counter derivative instruments are entered into under a written master agreement which provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counterparty is either within the United States, or if not within the United States, within a foreign jurisdiction listed in the *Purposes and Procedures of the Securities Valuation Office* of the NAIC as eligible for netting, the net amount of credit risk must be the greater of zero or the net sum of:

(a) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurance company; and

(b) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurance company to the business entity.

(3) For open transactions, market value must be determined at the end of the most recent quarter of the insurance company's fiscal year and must be reduced by the market value of acceptable collateral held by the insurance company or placed in escrow by one or both parties.

"Covered" means that an insurer owns or can immediately acquire, through the exercise of options, warrants, or conversion rights already owned, the underlying interest in order to fulfill or secure its obligations under a call option, cap or floor it has written, or has set aside under a custodial or escrow agreement cash or cash equivalents with a market value equal to the amount required to fulfill its obligations under a put option it has written in an income generation transaction.

"Derivative instrument" means an agreement, option, instrument, or a series or combination thereof:

(1)(a) To make or take delivery of, or assume or relinquish a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or

(b) That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

(2) Derivative instruments include options, warrants, caps, floors, collars, swaps, forwards, futures, and any other agreements, options, or instruments substantially similar thereto or any series or combination thereof. Derivative instruments shall additionally include any agreements, options, or instruments permitted under WAC 284-13-920 through 284-13-960. Derivative instruments shall not include

an investment authorized by RCW 48.13.061 (2) through (10).

"Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance, or value of one or more underlying interests.

"Future" means an agreement, traded on a qualified exchange or qualified foreign exchange, to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance, or value of, one or more underlying interests.

"Hedging transaction" means a derivative transaction which is entered into and maintained to reduce:

(1) The risk of change in value, yield, price, cash flow, or quantity of assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring; or

(2) The currency exchange rate risk or the degree of exposure as to assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring.

"Insurer" includes domestic insurance companies authorized under chapter 48.05 RCW, United States branches of alien insurers entered through this state, alien insurers admitted and using this state as their port of entry, domestic fraternal benefit societies formed pursuant to chapter 48.36A RCW, domestic health care service contractors registered under chapter 48.44 RCW, domestic health maintenance organizations registered under chapter 48.46 RCW, and domestic self-funded multiple employer welfare arrangements registered under chapter 48.125 RCW.

"Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend, or terminate or effects a cash settlement based on the actual or expected price, level, performance, or value of one or more underlying interests.

"Qualified clearinghouse" means a clearinghouse for, and subject to the rules of a qualified exchange or a qualified foreign exchange, which clearinghouse provides clearing services, including acting as a counterparty to each of the parties to a transaction so that the parties no longer have credit risk to each other.

"Qualified exchange" means:

(1) A securities exchange registered as a national securities exchange, or a securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78 et seq.), as amended;

(2) A board of trade or commodities exchange designated as a contract market by the Commodity Futures Trading Commission (CFTC) or any successors thereto;

(3) Private Offerings, Resales and Trading through Automated Linkages (PORTAL);

(4) A designated offshore securities market as defined in Securities Exchange Commission Regulation S, 17 C.F.R. Part 230, as amended; or

(5) A qualified foreign exchange.

"Qualified foreign exchange" means a foreign exchange, board of trade or contract market located outside the United States, its territories or possessions:

(1) That has received regulatory comparability relief under Commodity Futures Trading Commission Rule 30.10

(as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30);

(2) That is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief under Commodity Futures Trading Commission Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30) as to futures transactions in the jurisdiction where the exchange, board of trade, or contract market is located; or

(3) Upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the CFTC's Office of General Counsel, but an exchange, board of trade, or contracts market that qualifies as a "qualified foreign" only under this subsection shall be a "qualified foreign exchange" as to foreign stock index futures contracts that are the subject of the no-action relief under this subsection.

"Swap" means an agreement to exchange or to net payments at one or more times based on the actual or expected price, level, performance, or value of one or more underlying interests.

"Underlying interest" means the assets, liabilities, other interests, or a combination thereof underlying a derivative instrument, such as any one or more securities, currencies, rates, indices, commodities, or derivative instruments.

"Warrant" means an instrument that gives the holder the right to purchase an underlying financial instrument at a given price and time or at a series of prices and times outlined in the warrant agreement. Warrants may be issued alone or in connection with the sale of other securities, for example, as part of a merger or recapitalization agreement, or to facilitate divestiture of the securities of another business entity.

NEW SECTION

WAC 284-13-920 Derivative transactions. (1) An insurer may, directly or indirectly through an investment subsidiary, only engage in hedging and income generation derivative transactions. Use of derivative instruments for replication, speculative or any other purpose is prohibited.

(2) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction, the insurer can demonstrate to the satisfaction of the commissioner the intended hedging characteristics and ongoing effectiveness of the derivative transaction or combination of transactions through cash flow testing or other appropriate analysis.

(3) An insurer may only enter into covered income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps and floors, plus the face value of the fixed income securities underlying a derivative instrument subject to call plus the amount of the purchase obligations under the puts, does not exceed chapter 48.13 RCW limitations.

(4) An insurer must include all counterparty exposure amounts in determining compliance with general diversification requirements and medium and low-grade investment limitations under chapter 48.13 RCW.

(5) Side-letter or similar agreements that directly or indirectly alter the original derivative transaction in any way are prohibited.

NEW SECTION

WAC 284-13-930 Guidelines and internal control procedures. (1) Before engaging in a derivative transaction, an insurance company must establish written guidelines approved by the commissioner, that must be used for effecting and maintaining derivative transactions. The guidelines must:

(a) Specify insurance company objectives for engaging in derivative transactions and derivative strategies and all applicable risk constraints, including credit risk limits;

(b) Establish counterparty exposure limits and credit quality standards;

(c) Identify permissible derivative transactions and the relationship of those transactions to insurance company operations; for example, a precise identification of the risks being hedged by a derivative transaction; and

(d) Require compliance with internal control procedures.

(2) An insurance company must have a written methodology for determining whether a derivative instrument used for hedging has been effective using cash flow testing or other appropriate analysis.

(3) An insurance company must have written policies and procedures describing the credit risk management process and a credit risk management system for over-the-counter derivative transactions that measures credit risk exposure using the counterparty exposure amount.

(4) An insurance company's board of directors must, in accordance with RCW 48.13.051:

(a) Approve the written guidelines, methodology and policies, and procedures required by subsections (1), (2), and (3) of this section and the systems required by subsection (2) and (3) of this section;

(b) Determine whether the insurance company has adequate professional personnel, technical expertise, and systems to implement investment practices involving derivatives;

(c) Review whether derivatives transactions have been made in accordance with the approved guidelines and consistent with stated objectives; and

(d) Take action to correct any deficiencies in internal controls relative to derivative transactions.

NEW SECTION

WAC 284-13-940 Commissioner approval. Written documentation explaining the insurance company's internal guidelines and controls governing derivative transactions must be submitted for approval to the commissioner. The commissioner shall have authority to disapprove the guidelines and controls proposed by the company if the insurance company cannot demonstrate the proposed internal guidelines and controls would be adequate to manage the risks associated with the derivative transactions the insurance company intends to engage in.

NEW SECTION

WAC 284-13-950 Documentation requirements. An insurance company must maintain all documentation and records relating to each derivative transaction, such as:

(1) The purpose or purposes of the transaction;

(2) The assets or liabilities to which the transaction relates;

(3) The specific derivative instrument used in the transaction;

(4) For over-the-counter derivative instrument transactions, the name of the counterparty and the market value; and

(5) For exchange traded derivative instruments, the name of the exchange and the name of the firm that handled the trade and the market value.

NEW SECTION

WAC 284-13-960 Trading requirements. Each derivative instrument must be:

(1) Traded on a qualified exchange;

(2) Entered into with, or guaranteed by, a business entity;

(3) Issued or written with the issuer of the underlying interest on which the derivative instrument is based; or

(4) Entered into with a qualified foreign exchange.

WSR 14-21-110

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed October 16, 2014, 10:48 a.m., effective November 16, 2014]

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

Purpose: Chapter 246-790 WAC amends rules that regulate the department's food delivery system within the women, infants, and children (WIC) nutrition program. The rule provides support for the operation of the WIC nutrition program, assists in contracting with retail partners, and maximizes agency options for determining participant access. The rule provides necessary clarifications and consistency with federal rules and directives.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-790-055; and amending WAC 246-790-010, 246-790-075, 246-790-077, 246-790-086, 246-790-105, 246-790-125, and 246-790-127.

Statutory Authority for Adoption: RCW 43.70.120.

Adopted under notice filed as WSR 14-15-154 on July 23, 2014.

Changes Other than Editing from Proposed to Adopted Version: Removal of the state and federal sanction table in WAC 246-790-105; the sanctions will be included in the vendor agreement instead. Simplified the record keeping requirements in WAC 246-790-077.

A final cost-benefit analysis is available by contacting Daniel O'Neill, 310 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-3681, fax (360) 236-2345, e-mail daniel.o'neill@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 9, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 7, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 7, Repealed 1.

Date Adopted: October 16, 2014.

Dennis E. Worsham
Deputy Secretary
for John Wiesman, DrPH, MPH
Secretary

NEW SECTION

WAC 246-790-001 Purpose. (1) The federal Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) provides supplemental foods and nutrition education to pregnant, postpartum and breastfeeding women, infants and young children from families with inadequate income through payment of cash grants to states that operate WIC food delivery systems. The department operates a WIC retail food delivery system in which WIC participants obtain authorized supplemental foods by submitting a food instrument to a retail business that has entered into a contract with the department to provide such service. The department's WIC operations comply with the most current version of 7 C.F.R. 246. Copies are available from the Department of Health, P.O. Box 47886, Olympia, WA 98504-7886, or by calling the WIC nutrition program at 800-841-1410.

(2) The purpose of this chapter is to establish:

- (a) Qualifications a store must meet before the department will consider its application to be a WIC authorized vendor;
- (b) Requirements of all WIC authorized vendors;
- (c) Administrative appeal processes; and
- (d) An advisory committee.

AMENDATORY SECTION (Amending WSR 11-23-125, filed 11/21/11, effective 12/22/11)

WAC 246-790-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly (~~requires~~) indicates otherwise.

~~((1) "C.F.R." means Code of Federal Regulations.~~

~~(2) "Contract" means a written legal document binding the contractor and the department to designated terms and conditions. Terms and conditions include those stated in 7 C.F.R. 246.12 (h)(3) under "Retail food delivery systems: Vendor agreements, Vendor agreement provisions."~~

~~(3) "Department" means the Washington state department of health.~~

~~(4) "Retailer" means "vendor" as defined in 7 C.F.R. 246.2.~~

~~(5) "Wholesale supplier" means a business licensed to sell food and other goods at prices lower than retail to a retail vendor for resale to customers.~~

~~(6) "WIC" means the federally funded special supplemental nutrition program for women, infants, and children as described in 7 C.F.R. 246 and defined in 7 C.F.R. 246.2.~~

~~(7) "WIC check" means "food instrument" and "cash-value voucher" as defined in 7 C.F.R. 246.2.) (1) "Administrative appeal" means a formal proceeding where a vendor who has received a notice of violation from the department has the opportunity to present his or her case in an impartial setting and be heard by the department.~~

~~(2) "Applicant" means any vendor, or person representing a vendor, requesting authorization to participate in the WIC program by submitting a completed application for authorization and all corresponding documentation.~~

~~(3) "Approved infant formula wholesaler" means a supplier or manufacturer listed in the document titled "Washington WIC Approved Infant Formula Suppliers."~~

~~(4) "Authorized vendor" means a vendor who has met the vendor selection criteria as required by the United States Department of Agriculture (USDA) and the department, received training on WIC program requirements, and entered into a fully executed contract with the department.~~

~~(5) "Business integrity" means the store's uncompromising commitment and adherence to honesty, truthfulness, and accuracy in interactions with the department, customers, creditors, suppliers, associates, and the public at large.~~

~~(6) "C.F.R." means Code of Federal Regulations.~~

~~(7) "Cash value voucher" means a WIC food instrument used by a participant to obtain fresh fruits and vegetables.~~

~~(8) "Civil monetary penalty" means a sum of money imposed by the WIC program for noncompliance with program requirements.~~

~~(9) "Contract" means the department's standard WIC contract form that, once completed and signed by both parties, becomes the written legal document binding a vendor and the department to designated terms and conditions and authorizes the vendor to transact food instruments.~~

~~(10) "Cost containment" means the process of controlling expenses required to operate the WIC program.~~

~~(11) "Department" means the Washington state department of health.~~

~~(12) "Disqualification" means the act of revoking the authorization and terminating the contract of an authorized vendor for a specific period of time or permanently for non-compliance with WIC program requirements.~~

~~(13) "EBT (electronic benefits transfer)" means the electronic system that allows a participant to authorize transfer of their government food benefits from a federal account to a vendor account to pay for products they buy.~~

~~(14) "Food instrument" means the method of payment used by a participant to obtain WIC approved foods. This method may include WIC checks, cash value vouchers, or EBT payment.~~

~~(15) "Minimum Inventory Requirements" means the document created, maintained and supplied by the department that lists the required minimum stock levels of department authorized foods a store must maintain on premises at all times.~~

(16) "Notice of violation" means a written document given to a vendor when the department determines the vendor has not complied with program requirements, federal WIC regulations, this chapter, or the contract.

(17) "Participant" means a woman, infant or child receiving WIC benefits.

(18) "Participant access" means the ability of WIC participants to purchase authorized WIC foods, with consideration made to factors including, but not limited to, geography, population density and participant dietary needs, as determined by the department.

(19) "Peer group" means a group of authorized vendors that share certain characteristics and can be expected to have similar business practices and prices. Peer group criteria and assignments are determined by the department. Vendors in the same peer group are subject to the same WIC maximum reimbursement levels. Peer group criteria include, but are not limited to, characteristics such as geography or size.

(20) "SNAP" means the federal supplemental nutrition assistance program. SNAP was previously known as the food stamp program.

(21) "Variety" means a collection of similar, but not identical, foods and products. This may include different brands, sizes or flavors of similar foods and products.

(22) "Vendor," also known as "retailer," means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the state WIC program to provide WIC approved foods to WIC participants.

(23) "Vendor selection criteria" means the federally approved standards the department uses to select vendors for WIC authorization.

(24) "Wholesale supplier" means a business licensed to sell food and other goods at prices lower than retail to a retail vendor for resale to customers.

(25) "WIC" means the federally funded special supplemental nutrition program for women, infants, and children as described in 7 C.F.R. 246.

NEW SECTION

WAC 246-790-061 Contract procedure. (1) To become an authorized vendor and receive a contract, a retail business must apply to the department as provided under WAC 246-790-075.

(2) The department shall make available to the applicant copies of the contract and all applicable regulations, policies, and guidelines current at the time of application.

(3) The department will consider an application only if the applicant complies with WAC 246-790-075 and 246-790-077.

(4) If the applicant meets the qualifications or the department has determined that including the applicant's store in the program is necessary to assure participant access, the department may offer a contract to the applicant. An applicant that has an application declined may appeal the department's decision as provided in WAC 246-790-125.

(5) The authorized vendor will be assigned to the department's vendor peer group system as appropriate. The peer

group assignment establishes the vendor's maximum allowable reimbursement level.

(6) If authorized, the applicant will become an authorized vendor for the term of the contract, provided the authorized vendor continues to comply with requirements in WAC 246-790-086.

(7) Vendors can request an administrative appeal for certain adverse actions by the department in connection with the contract as specified in the contract and provided in WAC 246-790-125.

(8) The department may temporarily suspend acceptance of applications when in the best interest of program administration.

AMENDATORY SECTION (Amending WSR 11-23-125, filed 11/21/11, effective 12/22/11)

WAC 246-790-075 (~~Requirements to become an authorized retailer~~) Vendor application. (1) To (~~become authorized in the WIC program~~) be considered for WIC vendor authorization an applicant must:

(a) Be a food (~~retailer~~) vendor that meets or exceeds all selection criteria listed in WAC 246-790-077;

(b) Apply (~~for authorization~~) to the department using department forms;

(c) Provide complete and truthful information in the application;

(d) (~~Meet all the retailer selection criteria stated in WAC 246-790-077;~~

~~(e))~~ Allow the department to inspect the store; and ~~((f))~~ (e) Participate in training on WIC program requirements(~~;~~ and

~~(g) Agree to follow WIC program requirements stated in the contract).~~

(2) (~~The effective date of authorization is the date on which the last party to sign the contract signs it. The department and the retailer are the parties to the contract.~~) If the department declines an application, the applicant may reapply no sooner than six months afterwards.

(3) ~~Before declining an application for the first time, the department shall give an applicant thirty days notice to (correct their application when it is incomplete or insufficient in any manner before the department denies authorization.~~

(4) ~~The department may not accept a new application sooner than six months after an applicant's denial)~~ submit missing materials or information, if such is the basis for denial.

~~((5))~~ (4) An applicant (~~or an authorized retailer~~) may request an exemption to the (~~retailer~~) vendor selection criteria in WAC 246-790-077.

(a) The request must:

(i) Be in writing, dated, and signed by the applicant;

(ii) (~~Identify the specific retailer selection criterion or criteria for which the retailer is seeking an exemption and~~) Explain the reasons for the request in detail; (~~and~~)

(iii) Demonstrate how the requested exemption is consistent with the requirements, purpose and objectives of the program; and

(iv) List, in the body of the request, the physical address of the applicant.

(b) The department may grant ~~((an))~~ the requested exemption ((from retailer selection criteria if the applicant submits a request that satisfies)) if the applicant's request conforms to (a) of this subsection and the department determines that allowing the exemption is consistent with the requirements, purpose, and objectives of the program and is necessary to assure participant access.

(c) The department shall respond in writing to a request for exemption with its decision to grant or deny the request.

AMENDATORY SECTION (Amending WSR 11-23-125, filed 11/21/11, effective 12/22/11)

WAC 246-790-077 ((Retailer)) Vendor selection criteria. ~~((An applicant and an authorized retailer shall meet all the following retailer selection criteria to be authorized.~~

~~(1) Business license, permit, and certification requirements.~~

~~(a) A current master business license and unified business identifier number issued by the Washington state department of revenue as required under chapter 19.02 RCW with a major operation category that includes the retail sale of foods, such as grocery store.~~

~~(b) A current reseller's permit issued by the Washington state department of revenue as required under chapter 82.32 RCW.~~

~~(c) A current food establishment permit issued by the local health jurisdiction as required by the Washington state board of health under chapter 246-215 WAC.~~

~~(d) A current weighing and measuring device registration issued by the Washington state department of agriculture as required under chapter 16-674 WAC.~~

~~(e) A current authorization as a vendor in the supplemental nutrition assistance program (SNAP).~~

~~(f) Comply with all other applicable federal, state, county, and city required licenses, permits and certifications.~~

~~(2) Business model requirements.~~

~~(a) Be primarily engaged in retail sales of a variety of food products and general merchandise as a full line grocery store. A full line grocery store stocks on a continuous basis, multiple varieties of the following product categories:~~

- ~~(i) Canned foods;~~
- ~~(ii) Frozen foods;~~
- ~~(iii) Dairy products;~~
- ~~(iv) Fresh and frozen meat, fish, and poultry;~~
- ~~(v) Fresh fruits;~~
- ~~(vi) Fresh vegetables;~~
- ~~(vii) Juices;~~
- ~~(viii) Bakery goods including, but not limited to, breads, pastries, and tortillas;~~
- ~~(ix) Dried grains and beans;~~
- ~~(x) Baby products;~~
- ~~(xi) Household cleaners;~~
- ~~(xii) Laundry products; and~~
- ~~(xiii) Health care products.~~

~~(b) Purchase WIC approved foods directly from a wholesale supplier or other nonretail supplier, such as a food manufacturer or a fresh produce supplier.~~

~~(c) Purchase WIC approved infant formula directly from an infant formula manufacturer or supplier named on the WIC approved infant formula supplier list.~~

~~(d) Not use the WIC program name, acronym, or logo in the store name or advertisement, advertise primarily to WIC customers, offer incentives primarily to WIC customers, or otherwise focus primarily on serving WIC customers.~~

~~(e) Not receive or expect to receive more than fifty percent of annual food sales revenue from WIC transactions.~~

~~(f) Maintain on store shelves at all times the minimum quantities and varieties of WIC approved foods, including infant formula, required by the contract. Expired foods are not counted as inventory.~~

~~(g) Maintain shelf prices for WIC approved foods that are competitive with retailers in the same WIC retailer peer group. A "peer group" means a group of retailers who share similar characteristics established by the department.~~

~~(h) Operate from a fixed, permanent location where all WIC transactions take place in the store.~~

~~(i) Maintain business hours of at least eight hours per day, six days per week.~~

~~(j) Accept various types of tender including cash and SNAP electronic benefit transfer (EBT).~~

~~(k) Post WIC food price on the item, on the shelf next to the item, or other means that is clearly visible to customers.~~

~~(l) Maintain sanitary conditions that meet food service rules in chapter 246-215 WAC.~~

~~(m) Keep fresh fruit and vegetable display areas free of spoiled produce.~~

~~(3) Recordkeeping.~~

~~(a) Maintain a recordkeeping system that meets the Washington state department of revenue requirements in WAC 458-20-254 including the following:~~

~~(i) The recordkeeping system must have original documents and records organized in a logical way that conforms to acceptable accounting methods and procedures.~~

~~(ii) Documents and records must be retrievable and in a readable format.~~

~~(b) The recordkeeping system must include original, dated documents and records that contain enough detail to prove the purchase, inventory, and sale of WIC approved foods, including infant formula, by brand name, container size and quantity. These documents and records must be kept for a period of six years following the date of final payment.~~

~~(c) Submit to the department upon request documents and records showing food is purchased from a wholesale supplier or other nonretail supplier, such as a food manufacturer or a fresh produce supplier.~~

~~(d) Submit to the department upon request documents and records showing infant formula is purchased from an infant formula manufacturer or supplier named on the WIC approved infant formula supplier list.~~

~~(e) Submit to the department upon request itemized sales receipts for WIC purchases using an electronic cash register or a manual system. Sales receipts must include the store name, food product name, quantity sold, price of each item, and the date of sale.~~

~~(f) Submit to the department upon request annual sales information including gross sales and tax exempt food sales~~

by payment type including cash, SNAP EBT, WIC and credit/debit card.

(g) ~~Submit to the department upon request shelf price and stock level information.~~

~~(4) Additional requirements.~~

~~(a) Allow access to facilities, including nonpublic storage areas, by the department during normal business hours.~~

~~(b) Maintain an active e-mail account that is capable of receiving WIC contract and program information.~~

~~(c) Comply with WIC training requirements stated in the contract.~~

~~(d) Maintain in-store records documenting employee training on WIC requirements.~~

~~(e) Demonstrate business integrity.~~

~~(f) Comply with all applicable federal and state laws.~~

~~(5) Exemptions:~~

~~(a) Oregon and Idaho retailers located on the Washington border and that serve Washington residents are exempt from Washington state business license, permit, and certification requirements. They shall meet all applicable business license, permit and certification requirements for their respective state.~~

~~(b) A retailer authorized as an "infant formula only provider" is exempt from the full line grocery store requirement. "Infant formula only provider" means a retailer for whom WIC authorization is limited to the redemption of WIC checks issued for infant formula.)~~ At the time of application, applicants must meet the following criteria; all authorized vendors must continue to meet the following criteria throughout the period of authorization:

(1) Purchase WIC approved infant formula directly from an infant formula manufacturer or supplier named on the "WIC approved infant formula suppliers" document.

(2) Purchase WIC approved foods directly from a wholesale supplier or other nonretail supplier, such as a food manufacturer, wholesaler, dairy, or fresh produce supplier.

(3) Maintain in store at all times the minimum quantities and varieties of WIC approved foods, including infant formula, as required by the "WIC minimum inventory requirements" document. Expired or spoiled foods do not count as inventory.

(4) Maintain an active electronic mailing address to be used for department communications.

(5) Be primarily engaged in the retail sale of food products and general merchandise as a full line grocery store. A full line grocery store carries the designated products in the following categories on a continuous basis. These requirements are separate from the "minimum inventory requirements."

(a) Canned foods: At least twenty total varieties of canned foods such as fruit, vegetables, beans, meat, poultry, chili, soup, stew, broth or sauce (excluding canned infant formula, fish, juice or other beverages).

(b) Frozen foods: At least ten total varieties of frozen foods such as dinners, pizza, fruit, or vegetables (excluding frozen juice, meat, seafood, poultry, desserts, snacks or novelties).

(c) Dairy products: At least ten total varieties of refrigerated dairy products such as butter, yogurt, cottage cheese, string cheese, cream cheese, whipped cream, sour cream or

ice cream (excluding milk, WIC approved cheeses, infant formula or individual serving size packages).

(d) Frozen and unfrozen meat, seafood, and poultry: At least six total varieties (all unbreaded) of frozen meat, unfrozen meat, frozen seafood, unfrozen seafood, frozen poultry, or unfrozen poultry including at least two varieties of meat and at least two varieties of poultry (excluding precooked and deli style products).

(e) Fresh fruit and vegetables: At least twenty total varieties of fresh fruits or fresh vegetables including at least five varieties of fruits and at least five varieties of vegetables. The store must have a minimum of five linear feet of refrigerated display space for its produce.

(f) Bread and tortillas: At least ten total varieties of bread products such as bread, rolls, bagels, and tortillas. Breads and tortillas exclude muffins, pastries, cookies, cakes, crackers, or other snack foods.

(g) Grains, pasta, and dried beans: At least ten total varieties of grains, pasta, or beans such as oatmeal, rice, bulgur, pasta, beans, peas, or lentils (excluding bread, canned products or other breakfast cereals).

(h) Baby products: At least ten total varieties of baby products such as diapers, baby bottles, baby wipes, baby shampoo, baby lotion, or baby bottles (excluding infant formula).

(i) Household cleaners and laundry products: At least ten total varieties of household cleaning or laundry products used for cleaning kitchens, dishes, bathrooms, windows, floors, furniture, clothes, or fabrics.

(j) Health care products: At least twenty total varieties of health care products such as pain relievers, cold/cough/allergy products, digestive aids, dental care products, feminine hygiene products, or toilet paper.

(6) Maintain prices for WIC approved foods that are at or below the limits established by the WIC nutrition program's current price management system.

(7) Be currently authorized and participating as a vendor in the supplemental nutrition assistance program (SNAP).

(8) Receive or expect to receive less than fifty percent in annual food sales revenue from WIC transactions.

(9) Be open for business at least eight hours per day, six days per week.

(10) Submit to the department, upon request, sales information including gross sales and tax exempt food sales.

(11) Have electronic cash registers capable of producing receipts that include:

(a) The store name;

(b) Food product name and description;

(c) Quantity sold, price of each item;

(d) Total actual purchase price; and

(e) The date of sale.

(12) Post food prices for all foods, including fresh fruits and vegetables, on each item, or on the shelf next to the item.

(13) Maintain a business model that promotes business integrity. In its determination of business integrity, the department's consideration will include, but is not limited to, the following:

(a) Providing complete and truthful information in the application, correspondence, and other documents requested by the department.

(b) Ensuring all current owners, officers, managers, or representatives have had no criminal convictions or civil judgments entered against them in the last six years for fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice.

(c) Having no uncorrected violation(s) from a previous contracting period, current disqualification, or outstanding claims owed to the department.

(d) Not being currently disqualified from the SNAP or having a civil money penalty levied instead of SNAP disqualification.

(e) Disclosure of any third party, agent or broker involved in any part of the application process.

(f) Where a store has an outstanding WIC or SNAP sanction or claim, not attempting to avoid sanction or claim by reapplying after:

(i) Conveying any legal interest in a store to a relative or other person with whom the owner or owners have a financial relationship.

(ii) Accepting any legal interest in a store from a relative by blood or marriage or other person with whom the owner or owners have a financial relationship.

(iii) Reorganizing the business to another form, such as, but not limited to, corporation, general partnership, limited partnership, sole proprietorship, and limited liability company.

(14) When evaluating business integrity, the department may take into account whether a store subject to a sanction or claim has been sold for less than fair market value.

(15) Not own, have previously owned, or have a legal interest in a business that has a WIC sanction currently in effect. This includes any business for which a vendor may be applying.

(16) Use a recordkeeping system that complies with the Washington state department of revenue requirements in WAC 458-20-254, maintains inventory records for Federal tax reporting, preserves original documents and records organized in a logical way that conforms to acceptable accounting methods and procedures.

(17) Comply with all federal and state nondiscrimination laws, regulations, and policies. This includes, but is not limited to, 7 C.F.R. Parts 15, 15a, and 15b and RCW 49.60.030.

(18) Comply with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336.

(19) Comply with all other federal, state, county, and city required licenses, permits and certifications.

(20) Exemptions.

(a) Oregon and Idaho vendors located on the Washington border and that serve Washington residents are exempt from Washington state business license, permit, and certification requirements. They shall meet all applicable business license, permit and certification requirements for their respective state.

(b) An "infant formula only provider" is exempt from the full line grocery store requirement. Infant formula only provider means an authorized vendor or pharmacy for whom WIC authorization is limited to the redemption of WIC checks issued for infant formula.

AMENDATORY SECTION (Amending WSR 11-23-125, filed 11/21/11, effective 12/22/11)

WAC 246-790-086 Requirements of an authorized ~~((retailer))~~ vendor. (1) ~~((An))~~ Authorized ~~((retailer))~~ ven-dors shall:

(a) Comply with the terms and conditions of their contracts;

(b) Continue to meet the ~~((retailer))~~ vendor selection criteria in WAC 246-790-077 throughout the term of the contract;

(c) Notify the department prior to ownership changes; ~~((and))~~

(d) Notify the department prior to store closures;

(e) Notify the department prior to changing telephone numbers or electronic mailing addresses;

(f) Safeguard WIC client-related data; and

(g) Comply with corrective action requested by the department or the United States Department of Agriculture (USDA).

(2) An authorized ~~((retailer))~~ vendor may reapply at the time of contract expiration; however, neither the department nor the ~~((retailer))~~ vendor has an obligation to enter into a subsequent contract.

AMENDATORY SECTION (Amending WSR 11-23-125, filed 11/21/11, effective 12/22/11)

WAC 246-790-105 Failure to meet WIC program requirements. (1) When ~~((a retailer))~~ an authorized vendor is out of compliance with the requirements of 7 C.F.R. 246.12, this chapter, or the contract, the department ~~((may))~~ will initiate appropriate enforcement action which may include notices of violation, unless the department determines that ~~((notifying the retailer))~~ notification would compromise the investigation; claims for reimbursement; and ~~((disqualification))~~ sanctions as set forth in the applicable federal regulations or the contract.

~~((2) The department shall disqualify an authorized retailer for violations stated in 7 C.F.R. 246.12(l).~~

(3) For violations of the requirements of this chapter, not specified in 7 C.F.R. 246.12(l), the department may take enforcement action based on a pattern of violations. Department actions may include:

(a) Notice of violation and offer of technical assistance for the first incident;

(b) Notice of violation and warning of disqualification for the second incident of the same type of violation;

(c) One year disqualification for the third incident of the same type of violation.

(4) A "pattern" of violations means more than one documented incident of the same type of violation within a thirty-six month period.

(5) An authorized retailer's contract is terminated on the effective date of a disqualification.

~~((6) An authorized retailer who has been disqualified may reapply at the end of the disqualification period.))~~ (2) Where a violation requires disqualification, the department may impose a civil penalty in lieu of disqualification if the department determines, in its sole discretion and in accordance with the department's participant access criteria, that the continued

operation of the store is necessary to assure adequate participant access.

(3) An authorized vendor's contract is terminated on the effective date of a disqualification.

(4) Where a sanction requires a pattern of violations, a "pattern" is established by more than one documented incident of the same type of violation within a contract period.

(5) A disqualified vendor may reapply at the end of the disqualification period.

(6) The department will document complaints against authorized vendors and any resulting corrective action.

(7) The effective date of all sanctions is twenty-eight days after authorized vendor receives notice of the department's decision to impose sanctions, unless otherwise specified in this chapter, the contract, or in the department's notice. The department, in its sole discretion, may temporarily suspend the contract in lieu of termination to resolve any uncertain matters including appeals.

AMENDATORY SECTION (Amending WSR 11-23-125, filed 11/21/11, effective 12/22/11)

WAC 246-790-125 ((Retailer)) Vendor appeal process. ~~((1) The retailer may request an administrative appeal of certain adverse actions as provided in 7 C.F.R. 246.18. Actions that the retailer may not appeal are described in 7 C.F.R. 246.18 (a)(1)(iii).~~

~~(2) A request for appeal must:~~

~~(a) Be in writing, state the issue, and contain a summary of the retailer's position on the issue;~~

~~(b) Be filed with the Department of Health, Adjudicative Service Unit, P.O. Box 47879, Olympia, WA 98504-7879, with a copy sent to the WIC Nutrition Program at P.O. Box 47886, Olympia, WA 98504-7886; and~~

~~(c) Be received by the department of health, adjudicative services unit within twenty-eight days of the date the retailer receives the notice unless otherwise specified in the program's notification of adverse action.~~

~~(3) The administrative hearing procedures of chapter 246-10 WAC apply to retailer administrative appeals. If a provision of chapter 246-10 WAC conflicts with a provision of 7 C.F.R. 246.18, the federal regulation shall prevail.) (1) The following department actions may not be appealed:~~

~~(a) The validity or appropriateness of the department's limiting criteria or the vendor selection criteria for minimum variety and quantity of WIC approved foods, business integrity, and current SNAP disqualification or civil monetary penalty instead of disqualification;~~

~~(b) The validity or appropriateness of the department's selection criteria for competitive price including, but not limited to, the peer group criteria and the criteria used to identify above fifty percent vendors;~~

~~(c) The validity or appropriateness of the department's participant access criteria and the department's participant access determinations;~~

~~(d) The department's determination whether or not to include an infant formula manufacturer, wholesaler, or distributor on the approved infant formula provider list;~~

~~(e) The validity or appropriateness of the department's prohibition of incentive items;~~

(f) The department's determination whether to notify an authorized vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established;

(g) The department's determination whether the authorized vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the authorized vendor was not aware of, did not approve of, and was not involved in the violation;

(h) The expiration of the authorized vendor contract;

(i) Disputes regarding food instrument payments and claims (other than the opportunity to justify or correct an overcharge or other error);

(j) Disqualification as a result of a disqualification from SNAP.

(2) Except as provided in WAC 246-790-125(1), applicant or authorized vendor may file an appeal for the department's decision to decline an application, terminate a contract, impose a sanction, or other adverse action.

(3) The request for appeal must be filed in conformance with the following:

(a) A request for appeal must be filed with the Department of Health, Adjudicative Service Unit (ASU), P.O. Box 47879, Olympia, WA 98504-7879, with a copy sent to the department's WIC Nutrition Program at P.O. Box 47886, Olympia, WA 98504-7886;

(b) The request must be in writing, state the issue, contain a summary of the applicant or authorized vendor's position on the issue, and include a copy of the department's notice of adverse action;

(c) If applicable, a notice of appearance by the applicant or authorized vendor's attorney;

(d) The request must be filed no later than twenty-eight days from the date the applicant or authorized vendor receives the notice unless otherwise specified in the department's notification of adverse action.

(4) Proceedings under this chapter shall be in accordance with chapter 246-10 WAC as modified by the following:

(a) Within thirty days from the date ASU receives the request for appeal, the ASU or other designee of the secretary shall approve or deny the request. The notice of approval shall include a scheduling order setting forth a date, time, and place for a prehearing conference and the hearing.

(b) Without discovery request by the appellant, the department shall deliver its record of the decision to the appellant within thirty days from the issuance of the scheduling order.

(c) At the time provided in the scheduling order, the presiding officer shall conduct a telephonic prehearing conference. Following the prehearing conference, the presiding officer will issue a prehearing order defining conduct at hearing, which will establish the procedure for the hearing.

(d) At the time provided in the scheduling order, the presiding officer will conduct an in-person hearing in which the appellant and program will each have an opportunity to present its case and cross-examine adverse witnesses.

(e) The presiding officer shall decide the case based solely on whether the program has correctly applied federal and state statutes, regulations, policies, and procedures gov-

erning the WIC program, according to the evidence presented at the review.

(5) If a provision of chapter 246-10 WAC conflicts with a provision of 7 C.F.R. 246.18, the federal regulation shall prevail.

AMENDATORY SECTION (Amending WSR 11-23-125, filed 11/21/11, effective 12/22/11)

WAC 246-790-127 ((Retailer)) Vendor advisory committee. (1) The department shall facilitate a WIC ((retailer)) vendor advisory committee.

(2) The committee shall function in an advisory capacity.

(3) Participation is voluntary and there is no compensation.

(4) Invitations for participation may include authorized WIC ((retailers)) vendors, retail grocer associations, food manufacturers, wholesale suppliers, and retail checker labor unions.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-790-055 Adoption by reference.

WSR 14-21-112

PERMANENT RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed October 16, 2014, 11:32 a.m., effective November 16, 2014]

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

Purpose: WAC 246-840-740, this rule amendment will strengthen the terms and definitions, add clarity to existing rules, and add additional requirements. These amendments will help nurses, nursing technicians, and patients understand what constitutes sexual misconduct or boundary violations. By clarifying the boundaries of prohibited conduct, these amendments will assist in appropriate disciplinary action relating to sexual misconduct or boundary violations.

Citation of Existing Rules Affected by this Order: Amending WAC 246-840-740.

Statutory Authority for Adoption: RCW 18.79.110 and 18.130.050.

Adopted under notice filed as WSR 14-15-145 on July 23, 2014.

A final cost-benefit analysis is available by contacting Mary Dale, 111 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-4744, fax (360) 236-4738, e-mail mary.dale@doh.wa.gov.

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

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

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

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

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

Date Adopted: September 12, 2014.

Paula R. Meyer, MSN, RN, FRE
Executive Director

AMENDATORY SECTION (Amending WSR 07-19-131, filed 9/19/07, effective 10/20/07)

WAC 246-840-740 Sexual misconduct prohibited.
~~((1) What is the nursing commission's intent in prohibiting this type of misconduct?~~

~~Sexual or romantic conduct with a client or the client's family is serious misconduct because it harms the nurse/client relationship and interferes with the safe and effective delivery of nursing services. A nurse or nursing technician does not need to be "assigned" to the client in order for the nurse/client relationship to exist. The role of the nurse or nursing technician in the nurse/client relationship places the nurse or nursing technician in the more powerful position and the nurse or nursing technician must not abuse this power. Under certain circumstances, the nurse/client relationship continues beyond the termination of nursing services. Not only does sexual or romantic misconduct violate the trust and confidence held by health care clients towards nursing staff, but it also undermines public confidence in nursing. Nurses and nursing technicians can take measures to avoid allegations of such misconduct by establishing and maintaining professional boundaries in dealing with their clients.~~

~~(2) What conduct is prohibited?~~

~~Nurses and nursing technicians shall never engage, or attempt to engage, in sexual or romantic conduct with clients, or a client's immediate family members or significant others. Such conduct does not have to involve sexual contact. It includes behaviors or expressions of a sexual or intimately romantic nature. Sexual or romantic conduct is prohibited whether or not the client, family member or significant other initiates or consents to the conduct. Such conduct is also prohibited between a nursing educator and student.~~

~~Regardless of the existence of a nurse/client relationship, nurses and nursing technicians shall never use patient information derived through their role as a health care provider to attempt to contact a patient in pursuit of a nurse's own sexual or romantic interests or for any other purpose other than legitimate health care.~~

~~(3) What should a nurse or nursing technician do to avoid allegations of sexual or romantic misconduct?~~

~~Establishing and maintaining professional boundaries is critical to avoiding even the appearance of sexual or romantic misconduct. Nurses and nursing technicians can take certain preventative steps to make sure safeguards are in place at all times, such as:~~

(a) Setting appropriate boundaries with patients, physically and verbally, at the outset of professional relationships; and documenting such actions and the basis for such actions;

(b) Consulting with supervisors regarding difficulties in establishing and maintaining professional boundaries with a given client; and/or

(c) Seeking reassignment to avoid incurring a violation of these rules.

(4) What about former clients?

A nurse or nursing technician shall not engage or attempt to engage a former client, or former client's immediate family member or significant other, in sexual or romantic conduct if such conduct would constitute abuse of the nurse/client relationship. The nurse/client relationship is abused when a nurse or nursing technician uses and/or benefits from the nurse's professional status and the vulnerability of the client due to the client's condition or status as a patient.

(a) Due to the unique vulnerability of mental health and chemical dependency clients, nurses and nursing technicians are prohibited from engaging in or attempting to engage in sexual or romantic conduct with such former clients, or their immediate family or significant other, for a period of at least two years after termination of nursing services. After two years, sexual or romantic conduct may be permitted with a former mental health or chemical dependency client, but only if the conduct would not constitute abuse of the nurse/client relationship.

(b) Factors which the commission may consider in determining whether there was abuse of the nurse/client relationship include, but are not limited to:

(i) The amount of time that has passed since nursing services were terminated;

(ii) The nature and duration of the nurse/client relationship, the extent to which there exists an ongoing nurse/client relationship following the termination of services, and whether the client is reasonably anticipated to become a client of the nurse in the future;

(iii) The circumstances of the cessation or termination of the nurse/client relationship;

(iv) The former client's personal history;

(v) The former client's current or past mental status, and whether the client has been the recipient of mental health services;

(vi) The likelihood of an adverse impact on the former client and others;

(vii) Any statements or actions made by the nurse during the course of treatment suggesting or inviting the possibility of sexual or romantic conduct;

(viii) Where the conduct is with a client's immediate family member or significant other, whether such a person is vulnerable to being induced into such relationship due to the condition or treatment of the client or the overall circumstances.

(5) Are there situations where these rules do not apply?

These rules do not prohibit:

(a) The provision of nursing services on an urgent, unforeseen basis where circumstances will not allow a nurse or nursing technician to obtain reassignment or make an appropriate referral;

(b) The provision of nursing services to a spouse, or family member, or any other person who is in a preexisting, established relationship with the nurse or nursing technician where no evidence of abuse of the nurse/client relationship exists.)) (1) Sexual misconduct. A nurse or nursing technician shall not engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus, or any sexualized body part except as consistent with accepted standards of practice for examination, diagnosis, and treatment and within the nurse or nursing technician's scope of practice;

(c) Rubbing against a patient or client or key party for other than a legitimate health care purpose;

(d) Kissing, hugging, touching, fondling, or caressing of a romantic or sexual nature;

(e) Examination of or touching genitals without using gloves;

(f) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;

(g) Not providing the patient or client a gown or draping except as may be necessary in emergencies;

(h) Dressing or undressing in the presence of the patient, client, or key party;

(i) Removing patient or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;

(j) Encouraging masturbation or other sex act in the presence of the nurse or nursing technician;

(k) Masturbation or other sex act by the nurse or nursing technician in the presence of the patient, client, or key party;

(l) Suggesting or initiating a discussion of the possibility of a dating, sexual, or romantic relationship after the professional relationship ends;

(m) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(n) Soliciting, accepting, or going on a date with an individual the nurse or nursing technician knows, or reasonably should know, to be a patient, client, or key party;

(o) Discussing the sexual history, acts, or fantasies of the nurse or nursing technician;

(p) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(q) Making statements regarding the patient, client, or key party's body, appearance, sexual history, or sexual orientation for other than legitimate health care purposes;

(r) Any behavior including any verbal or physical contact which may reasonably be interpreted as sexually demeaning, humiliating, embarrassing, threatening, or harming a patient, client or key party;

(s) Photographing or filming the body or any body part or pose of a patient, client, or key party, for other than legitimate health care purposes or at the request of and for the benefit of, the patient, client, or key party; and

(t) Showing a patient, client, or key party sexually explicit photographs, for other than legitimate health care purposes.

(2) A nurse or nursing technician shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information or access to health care information to contact the patient, client or key party for other than legitimate health care.

(3) A nurse or nursing technician shall not engage, or attempt to engage, in sexual misconduct defined in subsection (1) of this section with a person he or she knows or should know is a former patient, client, or key party within two years after the provider-patient/client relationship ends, except as specified in subsection (5) of this section.

(4) After the two-year period of time described in subsection (3) of this section, a nurse or nursing technician shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section if:

(a) The patient, client, or key party will seek or require additional services from the nurse or nursing technician.

(b) There is an imbalance of power, influence, opportunity, and/or special knowledge of the professional relationship.

(5) A nurse who has provided psychological or psychiatric diagnostic or therapeutic services to a patient shall never engage, or attempt to engage, in sexual misconduct as defined in subsection (1) of this section with a former patient, former client, or former key party.

(6) When evaluating whether a nurse or nursing technician is prohibited from engaging, or attempting to engage, in sexual misconduct, the commission will consider factors including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another nurse or nursing technician;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the nurse or nursing technician and the patient or client during the time between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the nurse or nursing technician;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and vulnerability;

(i) Normal revisit cycle for the profession and service; and

(j) Imbalance of power in the nurse-patient relationship.

(7) Patient, client, or key party initiation or consent does not excuse or negate the nurse or nursing technician's responsibility.

(8) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another nurse or nursing technician;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to the nursing and nursing technician professions; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the nurse or nursing technician where there is no evidence of, or potential for, exploiting the patient or client, unless prohibited by another statute or rule.

(9) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense listed in RCW 9.94A.030.

(10) Definitions. For the purposes of this section, these terms shall have the following meaning:

(a) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(b) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian, and person authorized to make health care decisions for the patient or client.

(c) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients or clients, including palliative care, as consistent with standards of practice for the nursing and nursing technician professions. The activity must be within the scope of practice of the nurse or nursing technician.

(d) "Nurse" means a registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW.

(e) "Nursing technician" means a nursing student, registered under chapter 18.79 RCW and preparing for registered nurse licensure, who is employed in a hospital licensed under chapter 70.41 RCW, a nursing home licensed under chapter 18.51 RCW, or a clinic.

(f) "Patient" or "client" means an individual who receives health care from a nurse or nursing technician.

WSR 14-21-119

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 17, 2014, 10:36 a.m., effective November 17, 2014]

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

Purpose: The department is amending rules to update information concerning the division that licenses behavioral health agencies and certifies the services the agencies provide. References to the division of alcohol and substance abuse (DASA) are being removed and replaced with division of behavioral health and recovery (DBHR).

The adopted changes are not expected to impact eligibility and benefits for the Washington Basic Food program and the state-funded food assistance program (FAP) for legal immigrants as these rules and procedures are already in effect and being applied to Basic Food eligibility decisions. The changes provide updates to agency names and clarification only. Under RCW 74.08A.120, rules for FAP shall follow exactly the rules of the federal food stamp program (SNAP) except for the provisions pertaining to immigrant status.

Citation of Existing Rules Affected by this Order: Amending WAC 388-420-010 Alcohol and drug treatment centers and 388-408-0040 How does living in an institution affect my eligibility for Basic Food?

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: 7 C.F.R. 273.11.

Adopted under notice filed as WSR 14-17-130 on August 20, 2014.

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

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

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

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

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

Date Adopted: October 13, 2014.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-024, filed 11/29/06, effective 1/1/07)

WAC 388-408-0040 How does living in an institution affect my eligibility for Basic Food? (1) For Basic Food, an "institution" means a place where people live that provides residents more than half of three meals daily as a part of their normal services.

(2) Most residents of institutions are not eligible for Basic Food.

(3) If you live in one of the following institutions, you may be eligible for Basic Food even if the institution provides the majority of your meals:

- (a) Federally subsidized housing for the elderly;
- (b) Qualified drug and alcohol treatment centers when an employee of the treatment center is the authorized representative as described under WAC 388-460-0010;
- (c) Qualified DDD group homes for persons with disabilities;
- (d) A shelter for battered women and children when the resident left the home that included the abuser; or
- (e) Nonprofit shelters for the homeless.

(4) A qualified DDD group home is a nonprofit residential facility that:

(a) Houses sixteen or fewer persons with disabilities as defined under WAC 388-400-0040(6); and

(b) Is certified by the division of developmental disabilities (DDD).

(5) A qualified drug and alcohol treatment center is a residential facility that ((is)):

(a) ~~((Authorized))~~ Is authorized as a retailer by the U.S. Department of Agriculture, Food and Nutrition Service((:)) or

~~((b) Operated))~~ operated by a private nonprofit organization; and

~~((c) Certified by the division of alcohol and substance abuse (DASA) as:))~~ (b) Meets the division of behavioral health and recovery (DBHR) chemical dependency residential licensing and certification rules in WAC 388-877B-0200.

(6) The qualified drug and alcohol treatment center described in subsection (5) in this section must be:

~~((+))~~ (a) Receiving funds under part B of Title XIX of the Public Health Service Act;

~~((+))~~ (b) Eligible to receive funds under part B of Title XIX of the Public Health Service Act, but does not receive these funds; or

~~((+))~~ (c) Operating to further the purposes of part B of the Public Health Service Act to provide treatment and rehabilitation of drug addicts or alcoholics.

~~((+))~~ (7) Elderly or disabled individuals and their spouses may use Basic Food benefits to buy meals from the following meal providers if FNS has approved them to accept Basic Food benefits:

(a) Communal dining facility; or

(b) Nonprofit meal delivery service.

~~((7))~~ (8) If you are homeless, you may use your Basic Food benefits to buy prepared meals from nonprofit organizations the department has certified as meal providers for the homeless.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-420-010 Alcohol and drug treatment centers. (1) Food assistance is only available to a resident of a drug ~~((and))~~ and alcohol treatment center when the treatment center is((:))

~~((Administered))~~ administered by a public or private nonprofit agency((:and)). In addition, the residential treatment center must be:

~~((b) Certified by the division of alcohol and substance abuse (DASA):))~~ (a) Licensed by the division of behavioral health and recovery (DBHR) as a behavioral health agency (see chapter 388-877 WAC); and

(b) Certified by DBHR to provide chemical dependency residential treatment services (see WAC 388-877B-0200).

(2) A resident is considered a one person assistance unit. However if the resident's spouse or child is also living in the treatment center, the spouse or child is included in the resident's assistance unit.

(3) The resident must have a designated employee of the treatment center act as an authorized representative as specified in chapter 388-460 WAC.

(4) The authorized representative receives and uses the food assistance benefits for meals the resident is served in the treatment center.

(5) The authorized representative also has responsibilities as specified in chapter 388-460 WAC.

WSR 14-21-178
PERMANENT RULES
OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-26—Filed October 22, 2014,
10:29 a.m., effective November 22, 2014]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 48.30.010 requires that [the] commissioner include a detailed description of the facts upon which he relied and of facts upon which he failed to rely in defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive in the concise explanatory statement.

Purpose: The rule amends WAC 284-23-550 to provide for a variable interest rate to be paid by the insurer based upon current interest rates, rather than a set rate. The rule also amends WAC 284-23-550 to provide that it does not apply to policies with a death benefit of more than \$5,000 rather than \$25,000.

Citation of Existing Rules Affected by this Order: Amending WAC 284-23-550.

Statutory Authority for Adoption: RCW 48.02.060 and 48.30.010.

Adopted under notice filed as WSR 14-18-067 on August 29, 2014.

A final cost-benefit analysis is available by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail rules coordinator@oic.wa.gov.

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

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

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

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

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

Date Adopted: October 22, 2014.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 89-21-004, filed 10/5/89, effective 11/5/89)

WAC 284-23-550 Relationship of death benefits to premiums—Unfair practice defined. (1) It is an unfair practice for any insurer or fraternal benefit society to provide life insurance coverage on any person through a policy or certificate of coverage delivered on or after July 1, 1989, to or on behalf of such person in this state, unless the benefit payable at death under such policy or certificate will equal or exceed the cumulative premiums, as defined in subsection (4) of this section, paid for the policy or certificate, plus interest thereon at the rate of ~~((five percent per annum))~~ the monthly average of the five-year Constant Maturity Treasury rate reported by the Federal Reserve for the calendar month in which application for the policy is made compounded annually to the tenth anniversary of the effective date of coverage.

(2) This section applies to death benefits in relation to premiums, subject to the following provisions:

(a) When determining the relationship between benefits and premiums as set forth in subsection (1) of this section, neither premiums nor death benefits shall be adjusted for maturity benefits, surrender benefits, or policy loans.

(b) Annuity benefits, including annuity death benefits, and the premiums therefor shall be disregarded in applying this section.

(c) The following benefits, but not the premiums therefor, shall be disregarded in applying this section:

- (i) Accidental death benefits;
- (ii) Permanent disability benefits; and
- (iii) Any benefit similar to (c)(i) or (ii) of this subsection.

(3) For coverage which varies by duration, including coverage provided through dividends, the "benefit payable at death" for purposes of this section is the sum of the least death benefit during each policy year, for the lesser of ten years or the term of the coverage, including renewals, divided by the number of death benefits included in said sum.

(4) "Cumulative premiums," for purposes of this section, means all sums paid as consideration, net of dividends paid in cash in an orderly progression, for the coverage during the first ten years of the coverage, excluding amounts which are designated in the policy or certificate as providing for annuity benefits.

(5) The benefits required by this section shall be provided contractually.

(6) This section does not apply to:

(a) Life insurance where the minimum death benefit is ~~((twenty-five))~~ five thousand dollars or more; or

(b) Coverage under group life insurance policies unless the insured pays all or substantially all of the premium and coverage under individual conversions from such excluded policies; or

(c) Limited payment whole life insurance where the premiums are level at all times, if the least death benefit payable at any time equals or exceeds the total of all premiums which,

in the absence of death, would have been paid over the entire limited payment period.

(7) This section does not apply with respect to optional additional contributions paid to the insurer or fraternal benefit society under the terms of a universal life policy, which policy:

(a) Provides a guaranteed plan of insurance of at least ten years' duration on the basis of specified premiums and complies with subsections (1) through (5) of this section; and

(b) Contains a carefully expressed provision which clearly, fairly, and fully discloses the optional plan and the choice to participate therein; and

(c) Is designed so that the charges for, and the benefits to be derived from, the optional contributions are no less favorable to the insured than those which are applicable to the guaranteed plan required by (a) of this subsection.

(8) Approval of policy forms which do not comply with this section is withdrawn.

WSR 14-21-179

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2014-06—Filed October 22, 2014, 10:36 a.m., effective November 22, 2014]

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

Purpose: This rule amends the existing rule regarding the composition of the governing committee of the FAIR plan.

Citation of Existing Rules Affected by this Order: Amending WAC 284-19-140.

Statutory Authority for Adoption: RCW 48.02.060.

Other Authority: RCW 48.01.030.

Adopted under notice filed as WSR 14-19-070 on September 12, 2014.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: October 22, 2014.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 98-13-095, filed 6/16/98, effective 7/17/98)

WAC 284-19-140 Administration. (1) This program shall be administered by a governing committee (referred to as the committee) of the facility, subject to the supervision of the commissioner, and operated by a manager appointed by the committee.

(2) The committee consists of nine members, including five insurers, (~~(one of which is)~~) elected from each of the following:

(a) American Insurance Association (one member);

(b) (~~(Alliance of American Insurers;))~~ Property Casualty Insurers Association of America (two members);

(c) (~~(National Association of Independent Insurers;~~

~~(d))~~) All other stock insurers (one member); and

(~~(e))~~) (d) All other nonstock insurers (one member).

A sixth member shall be an insurer designated as the service insurer under the program. The commissioner shall designate a sixth member if there is more than one service insurer. The other three members are individuals who are appointed by the commissioner to serve, none of whom have a direct or indirect interest in any insurer except as a policyholder. The individual members serve for a period of one year or until their successors are appointed. Not more than one insurer in a group under the same management or ownership shall serve on the committee at the same time. One of the six insurers on the governing committee shall be a domestic insurer.

(3) The governing committee may issue operating procedures and other directives to carry out the purposes of this plan and directives of the commissioner.

(4) Each person serving on the committee or any subcommittee, each member of the facility, and each officer and employee of the facility shall be indemnified by the facility against all costs and expenses actually and necessarily incurred in connection with the defense of any action, suit, or proceeding in which he or she is made a party by reason of being or having been a member of the committee, or a member or officer or employee of the facility except in relation to matters as to which he or she has been judged in such action, suit, or proceeding to be liable by reason of willful misconduct in the performance of duties as a member of the committee, or a member or officer or employee of the facility. This indemnification does not apply to any loss, cost, or expense on insurance policy claims under the program. Indemnification is not exclusive of other rights to which such member or officer may be entitled as a matter of law.

WSR 14-21-187

PERMANENT RULES

SUPERINTENDENT OF

PUBLIC INSTRUCTION

[Filed October 22, 2014, 11:48 a.m., effective November 22, 2014]

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

Purpose: The changes add student achievement performance targets to the conditions that online providers must uphold in order to remain approved. New providers will con-

tinue to apply for approval in the same manner as in the past, but renewals will now be automatic, contingent on continuing to meet student performance targets and abiding by the assurances. In addition, the following changes have been made:

- Remove the requirement for single-district providers emerging as multidistrict providers to participate in the office of superintendent of public instruction's full review process.
- Add the requirement for teachers of online courses and programs to be evaluated annually as established in RCW 28A.405.100.
- Modify the approval assurance regarding provider responsibility for providing quality web systems in online courses.
- Add an assurance regarding instructional material adoptions by districts.

Citation of Existing Rules Affected by this Order:
Amending chapter 392-502 WAC.

Statutory Authority for Adoption: Chapter 28A.250 RCW and RCW 28A.150.290.

Adopted under notice filed as WSR 14-17-090 on August 19, 2014.

Changes Other than Editing from Proposed to Adopted Version: (1) Added a definition for "success rate" and replaced the performance target of "course completion rate plus course passing rate" with "success rate."

(2) Adjusted the implementation date of the student growth percentile performance targets from September 1, 2015, to September 1, 2016.

(3) Clarified that corrective action plans may take into account factors including, but not limited to, the specific performance targets that were not met and the provider's student demographics.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

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

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

Date Adopted: October 22, 2014.

Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 13-23-086, filed 11/19/13, effective 12/20/13)

WAC 392-502-010 Definitions. As used in this chapter, the term:

(1) "Multidistrict online provider" means:

(a) A private or nonprofit organization that enters into a contract with a school district to provide online courses or programs to K-12 students from more than one school district;

(b) A private or nonprofit organization or a school district that enters into contracts with multiple school districts to provide online courses or programs to K-12 students from those districts; or

(c) Except as provided in (c)(i) and (ii) of this subsection, a school district that provides online courses or programs to students who reside outside the geographic boundaries of the school district.

(i) "Multidistrict online provider" does not include a school district online learning program in which fewer than ten percent of the students enrolled in the program are from other districts under the interdistrict student transfer provisions of RCW 28A.225.225.

(ii) "Multidistrict online provider" also does not include regional online learning programs that are jointly developed and implemented through an interdistrict cooperative program between two or more school districts or between one or more school districts and an educational service district, unless the annual average headcount of students who reside outside the geographic boundaries of those school districts and who are enrolled in the regional online program is ten percent or more of the total program enrollment headcount. Any agreement establishing such a program must address, at minimum, how the districts share student full-time equivalency for state basic education funding purposes and how categorical education programs, including special education, are provided to eligible students.

(2) "Online course" means a course, or grade-level course work, in which:

(a) More than half of the course content is delivered electronically using the internet or other computer-based methods; and

(b) More than half of the teaching is conducted from a remote location through an online course learning management system or other online or electronic tools; and

(c) A certificated teacher has the primary responsibility for the student's instructional interaction pertaining to the online course. Primary responsibility means the teacher is the principal individual who provides instructional interactions that may include, but are not limited to, direct instruction, review of assignments, assessment, testing, progress monitoring, and educational facilitation; and

(d) Students have access to the teacher synchronously, asynchronously, or both.

An online course may be delivered to students at school as part of the regularly scheduled school day. An online course also may be delivered to students, in whole or in part, independently from a regular classroom schedule.

(3) "Online school program" means a school program that offers a sequential set of online courses or grade-level course work that may be taken in a single school term or throughout the school year in a manner that could provide a full-time basic education program if so desired by the student. Students may enroll in the program as part-time or full-time students.

An online school program may be delivered to students at school as part of the regularly scheduled school day. An online school program also may be delivered to students, in whole or in part, independently from a regular classroom schedule.

(4) "Online course provider" is an online provider that offers individual online courses that are not delivered as an online school program.

(5) "Online provider" means any provider of an online course or program, multidistrict online providers, all school district online learning programs, and all regional online learning programs.

~~((5))~~ (6) "Accrediting organizations" means the designated bodies identified by the superintendent of public instruction and published on the superintendent of public instruction web site. Accrediting organizations are for providers to use to satisfy the accreditation qualification for being an approved online provider.

~~((6))~~ (7) "Affiliate provider" means a school district that:

(a) Provides online courses offered by one or more approved online provider that provides the course content, the technology platform, and the instructional component of the courses; and

(b) Does not modify the content or instruction of the approved provider's offerings. An affiliate provider may not offer to its students any online course or courses that are provided by a nonapproved online provider.

~~((7))~~ (8) "Single-district provider" means a school district online provider that is not a multidistrict online provider or an affiliate provider.

~~((8))~~ (9) For the purposes of this section, "primarily" is defined as more than half.

(10) "Course success rate" is the percentage of total online enrollments where the student received a grade for the course that was one of the following: A, A-, B+, B, B-, C+, C, C-, D+, D, P, CR, S. Courses marked as E, F, N, NC, U, or W are not considered successful outcomes.

AMENDATORY SECTION (Amending WSR 13-23-086, filed 11/19/13, effective 12/20/13)

WAC 392-502-020 Online provider approval process and timeline. (1) This section sets forth the process that online providers must follow to be approved in accordance with RCW 28A.250.020. Beginning with the 2013-14 school year, all online providers must be approved by the superintendent of public instruction for districts to collect state funding, to the extent otherwise allowed by state law, for courses offered by those providers in accordance with WAC 392-502-080.

(2) All online providers seeking initial approval must apply to the superintendent of public instruction for approval as follows:

(a) Multidistrict online providers must submit an application as outlined on the superintendent of public instruction web site which will be reviewed for compliance with the designated approval criteria and must meet or exceed the acceptable defined score. Multidistrict online providers must com-

ply with the superintendent of public instruction's required assurances.

(b) Affiliate providers must submit an affiliate provider application as outlined on the superintendent of public instruction web site. Affiliate providers must also comply with the superintendent of public instruction's required assurances.

(c) Single-district providers must submit a single-district provider application as outlined on the superintendent of public instruction web site. Single-district providers must also comply with the superintendent of public instruction's required assurances.

~~((If, at the end of a school year, the annual average headcount for that school year of students who reside outside the geographic boundaries of a single-district provider and are enrolled in an online program offered by the single-district provider increases to ten percent or more of the total program enrollment headcount, the program shall be required to apply as a multidistrict online provider in the next approval cycle. The program may continue operating the year of the required approval review, but not the following school year unless approved as a multidistrict online provider.))~~

(3) The superintendent of public instruction makes decisions regarding approval of multidistrict provider applications submitted pursuant to this chapter no later than November 1st of each year. A multidistrict online provider's approval status takes effect the beginning of the school year following the date of the superintendent's approval of the online provider's application. Single-district and affiliate providers may apply at any point, and, subject to the requirements of approval, can be approved immediately by the superintendent of public instruction.

(4) Beginning with the 2012-13 school year, any proposed modifications to the conditions for approval, required assurances, approval criteria, and application forms will appear on the superintendent of public instruction web site by October 1st of each year. The superintendent will accept feedback on the proposed modifications from any interested parties prior to November 1st of each year. Any final modifications to the conditions for approval, required assurances, approval criteria, and application forms will appear on the superintendent of public instruction's web site by January 1st of each year.

AMENDATORY SECTION (Amending WSR 13-23-086, filed 11/19/13, effective 12/20/13)

WAC 392-502-030 Approval assurances ~~((and))~~, criteria, and performance targets. (1) This section sets forth the assurances ~~((and))~~, criteria, and performance targets that online providers must meet to be approved under this chapter.

(a) To be approved, online providers must provide the following assurances to the superintendent of public instruction:

(i) The online provider is accredited through an accrediting body as defined in WAC 392-502-010 and agrees to maintain accredited status for the duration of the approval period. Online providers may be candidates for accreditation at the time of application for approval provided that the provider earns full accreditation on the standard timeline.

(ii) Each course and program the online provider offers is aligned with at least eighty percent of the current applicable grade/subject area of Washington state standards. For courses with content that is not included in state standards, the online provider's courses are aligned with at least eighty percent of nationally accepted content standards set for the relevant subjects. Online providers must submit information to the superintendent regarding the standards alignment and the standards aligned.

(iii) All instruction delivered to Washington state students is delivered by Washington state certificated teachers who:

(A) Are assigned to instruct courses in a manner which meets the "highly qualified" definition under the No Child Left Behind Act and in a manner which meets the requirements set forth in chapter 181-82 WAC; and

(B) Are evaluated annually using the revised evaluative criteria and four-level rating system established in RCW 28A.405.100.

(iv) For online providers that offer high school courses, the courses offered by the online provider must be eligible for high school credit pursuant to WAC 180-51-050.

(v) All of the online provider's current and future courses in the applicable areas meet the credit/content requirements in chapter 392-410 WAC.

(vi) All advanced placement courses offered by the online provider have been approved in accordance with the college board advanced placement course audit. For advanced placement courses not yet offered at the time of application, the online provider must assure that those courses will be approved by the college board prior to offering those courses to students.

(vii) The online provider's data management systems ensure all student information remains confidential, as required by the Family Educational Rights and Privacy Act of 1974, as amended.

(viii) The online provider's web systems and content meet accessibility conformance levels specified in the list of approved provider assurances on the office of superintendent of public instruction's web site.

(ix) The online provider provides all information as directed or as requested by the office of superintendent of public instruction, the secretary for the department of education, and other federal officials for audit, program evaluation compliance, monitoring, and other purposes and to maintain all records for the current year and three previous years.

(x) The online provider informs the office of superintendent of public instruction in writing of any significant changes to the program including, but not limited to, changes in assurances, program description, fiscal status, or ownership.

(xi) The online provider upholds any pertinent federal or state laws, rules or regulations, in the delivery of the online courses or programs.

(xii) The online provider retains responsibility for the quality of courses, web systems, and content offered, regardless of any third-party contractual arrangements, partnerships or consortia, contributing to the content or delivery of the online courses or programs.

(xiii) The online (~~provider~~) school program complies with the state assessment requirements including, but not limited to, the requirements of chapter 28A.655 RCW and WAC 392-121-182, as applicable.

(xiv) All of the provider's current and future career and technical education (CTE) courses are aligned to Washington state CTE program standards and have been approved by the office of superintendent of public instruction's CTE office. CTE courses must be taught by a Washington certificated teacher who is also CTE-certificated in the subject area of the course.

(xv) The online provider agrees to abide by any additional assurances required by the superintendent of public instruction.

(xvi) The online (~~provider~~) school program agrees that all programs delivered as alternative learning experiences comply with the requirements of WAC 392-121-182. The online course provider agrees to disclose to OSPI the manner in which it supports the requirements of WAC 392-121-182 for online courses delivered outside of an online school program.

(xvii) Instructional materials used by online school programs in online courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(b) Multidistrict online providers must meet the following initial approval criteria by a preponderance of evidence submitted with the online provider's application:

(i) Course content and instructional design incorporating course goals and outcomes, materials and content organization, and student engagement.

(ii) Classroom management incorporating grading and privacy policies, internet etiquette, and expectations for communications.

(iii) Student assessment incorporating various types, frequent feedback, and appropriateness for the online learning environment.

(iv) Course evaluation and management incorporating strategies for obtaining feedback about the courses/programs and processes for quality assurance and updating content.

(v) Student support incorporating policies and systems to enhance the students' learning experience and their success.

(vi) School-based support incorporating strategies and systems to allow school-based staff to support student success.

(vii) Technology elements, requirements and support including descriptions and ease of navigation.

(viii) Staff development and support including training and online instructor performance reviews conducted on a planned and regularly scheduled basis.

(ix) Program management including timeliness and quality of teachers' responses to students, handling of fees, prompt distribution of materials and processing of enrollments, and handling fees and payments.

(x) The superintendent may require additional approval criteria pursuant to WAC 392-502-080.

(c) Beginning September 1, 2015, online school programs must meet or exceed each of the following annual performance targets:

(i) The online school program's course success rate must be greater than seventy percent. Programs with fewer than twenty online enrollments are not subject to this performance target.

(ii) The online school program's percentage of students taking online math courses who meet standard on the state math assessments must be greater than forty percent. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online math course and taken the state math assessment.

(iii) The online school program's percentage of students taking online English language arts courses who meet standard on the state English language arts assessments must be greater than fifty percent. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online English language arts course and taken the state English language arts assessment.

(d) Beginning September 1, 2016, online school programs must meet or exceed each of the following annual performance targets:

(i) The online school program's median math student growth percentile for students taking an online math course must be greater than the thirtieth percentile. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online math course and have a math student growth percentile.

(ii) The online school program's median English language arts student growth percentile for students taking an online English language arts course must be greater than the fortieth percentile. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online English language arts course and have an English language arts student growth percentile.

(e) Beginning September 1, 2015, online course providers' course success rate must be greater than seventy percent. Online providers must supply OSPI with student-level enrollment and performance information. Online course providers must also supply OSPI with a list of each district in the state that they served. An online course provider is not subject to this performance target if they have fewer than twenty online course enrollments.

(2) After review by the online learning advisory committee, the approval criteria with explanations and suggested supporting evidence will be posted on the superintendent of public instruction web site on or before the date the application is made available.

(3) Online provider's application will be reviewed by reviewers selected by the superintendent of public instruction for their experience and expertise. The reviewers will be provided orientations and training to review and score the online provider applications using the approval criteria and scoring protocols.

(4) Single-district provider online programs must incorporate the approval criteria developed by the superintendent of public instruction into the program design.

AMENDATORY SECTION (Amending WSR 12-03-067, filed 1/12/12, effective 2/12/12)

WAC 392-502-040 Appeal of the superintendent's decision. In the event the superintendent of public instruction denies an online provider's initial application for approval, the online provider may appeal the decision as follows:

(1) The online provider may file a revised application with the superintendent of public instruction no later than fifteen days after the online provider received notice of the denial.

(2) The superintendent of public instruction will designate an official to review the online provider's revised application. The designated official will notify the applicant in writing whether the revised application is approved or denied within forty-five business days of the superintendent's receipt of the revised application. This deadline for acting on the request may be extended by the superintendent of public instruction if additional information is required from the applicant.

(3) Decisions made by the superintendent of public instruction under WAC 392-502-020 and 392-502-060 may be appealed as provided for in RCW 34.05.514.

AMENDATORY SECTION (Amending WSR 13-23-086, filed 11/19/13, effective 12/20/13)

WAC 392-502-050 (~~Approval duration and~~) Conditions for continued approval. (~~Approvals will be for the four subsequent consecutive full school years.~~)

(1) Online providers that have been approved must annually provide the superintendent of public instruction information regarding the following:

- (a) Online provider's overall instructional program;
- (b) Content of individual online courses and online school programs;
- (c) Direct link to the online provider's web site;
- (d) Registration information for online learning programs and courses;
- (e) Teacher information and qualifications;
- (f) (~~Student to teacher ratios as defined by the superintendent of public instruction;~~
- (~~g~~) ~~Course completion and pass rates as defined by the superintendent of public instruction;~~ and
- (~~h~~)) Other descriptive, evaluative, and comparative information requested by the superintendent of public instruction.

(2) Online providers must carry out the program/courses described in the approval application, abide by the assurances listed in WAC 392-502-030 and certified in the application process, and maintain the approval criteria and performance targets listed in WAC 392-502-030.

AMENDATORY SECTION (Amending WSR 12-03-067, filed 1/12/12, effective 2/12/12)

WAC 392-502-060 Rescinding approvals. (1) Approved online providers that fail to comply with the conditions of approval in WAC 392-502-050, may be subject to rescindment of approval.

(2) Process for rescindment.

(a) The superintendent of public instruction or his or her designee will notify an online provider when there is substantial evidence that the online provider is not meeting one or more of the approval conditions and that the superintendent is considering rescindment. The notification will be in writing and will state the specific areas of concern.

(b) The online provider will be invited to submit a corrective action plan with a timeline to address the specific areas of concern. The corrective action plan must be submitted within fifteen business days of the superintendent's notification. If no corrective action plan is received by the superintendent of public instruction or his or her designee, the provider's approval will be rescinded.

(c) The superintendent of public instruction will consider the corrective action plan and determine whether the plan satisfactorily addresses the specific areas of concern, whether additional actions are necessary, or whether the plan is substantially incomplete and approval must be immediately rescinded. If a corrective action plan is required because of the provider's failure to meet performance targets as specified in WAC 392-502-030, the corrective action plan must include a rate of growth to achieve the performance targets. The corrective action plan may take into account factors including, but not limited to, the specific performance targets that were not met and the provider's student demographics. Before making this decision, the superintendent or his or her designee will provide an opportunity for the online provider to clarify and adjust its plan.

(d) Recognizing the serious nature of rescindment and its potential impact on students, districts and providers, the superintendent of public instruction or his or her designee will only rescind approvals if he or she finds that the ~~((multi-district))~~ online provider is unwilling to take the necessary corrective actions to bring the courses/programs in compliance with the approval assurances and criteria. If the superintendent of public instruction or his or her designee determines that ~~((a multi-district))~~ an online provider's approval must be rescinded, the implementation of the rescindment shall, to the greatest extent possible, be timed to prevent unnecessary disruption to the education of the students.

(e) The superintendent of public instruction reserves the right to immediately rescind approval of any provider where conditions exist that jeopardize academic or fiscal integrity or compromise the health and safety of students or staff.

(3) Rescinded providers are responsible for communicating that change in status to their clients. The superintendent of public instruction or his or her designee will remove rescinded providers from the agency's web site.

(4) Rescinded providers are permitted to submit for reapproval during subsequent approval application periods.

AMENDATORY SECTION (Amending WSR 10-01-099, filed 12/17/09, effective 1/17/10)

WAC 392-502-070 Period of initial approval and renewal process. ~~((1) The approval period is four years, and the renewal process is the same as the approval process.~~

~~((2) Approved providers must initiate their renewal no later than the approval cycle in their fourth year of approved~~

~~status in order to maintain approval for the following school year.))~~

~~((1) The initial approval of an online provider will be for a period of four consecutive full school years.~~

~~((2) In the final year of the online provider's approval, the superintendent of public instruction will automatically renew the approval for a successive one-year period on October 31st, to be effective at the start of the following school year.~~

~~((3) Nothing herein limits the authority of the superintendent of public instruction to rescind an online provider's approval pursuant to WAC 392-502-060.~~