

WSR 17-24-128
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed December 6, 2017, 11:46 a.m.]

November 27, 2017
Katherine I. Vasquez
Rules Coordinator

MAC AND TSOA SERVICES

Supplemental Notice to WSR 17-11-015.

Preproposal statement of inquiry was filed as WSR 16-16-011.

Title of Rule and Other Identifying Information: The department is proposing to create new sections in chapter 388-106 WAC, Long-term care services, for a new benefit package for medicaid alternative care (MAC) and tailored supports for older adults (TSOA).

Hearing Location(s): On January 23, 2018, at 10:00 a.m., at Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than January 24, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., on January 23, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by January 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Additional changes to the rules are being proposed under this supplemental as a result of comments received and additional internal review.

Reasons Supporting Proposal: The department is proposing to create new sections in chapter 388-106 WAC, Long-term care services, for two new benefit packages for MAC and TSOA as part of Washington's medicaid transformation demonstration.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.390.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Debbie Johnson, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2531.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

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

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

NEW SECTION

WAC 388-106-1900 What definitions apply to MAC and TSOA services? The following definitions apply to MAC and TSOA services:

"**Care plan**" means the plan developed by the department in TCARE or GetCare that summarizes the services described in WAC 388-106-1915 that you chose to receive.

"**Care receiver**" means an adult age fifty-five and over who has been authorized for MAC or TSOA services.

"**Caregiver**" means a spouse, relative, or friend (age eighteen and over) who has primary responsibility for the care or supervision of an adult who meets eligibility criteria and does not receive direct, public, or private payment such as a wage for the caregiving services they provide.

"**Caregiver assistance services**" are services that take the place of those typically performed by an unpaid caregiver in support of the care receiver's unmet needs for assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

"**Caregiver phases**" means the phases a caregiver experiences as the needs of the care receiver change, which in turn changes the responsibilities and tasks of caregiving. The change in responsibilities and tasks impacts the relationship between the caregiver and the care receiver. There are five phases showing the change in relationship roles from primarily family member to primarily caregiver.

"**Family caregiver**" means the same as "caregiver."

"**GetCare**" means a statewide web-based information system that includes a client management component for use by area agencies on aging (AAA) and other aging and disability network partners.

"**GetCare assessment**" is a process during which the department gathers information for an individual without a caregiver in the following areas: functional needs, diagnoses and conditions, behavior health supports, oral health, and nutritional health to assist the individual with choosing step three services.

"**GetCare screening**" is a process during which the department gathers information for an individual without a caregiver in order to determine risk scores. The information covers the following areas: function needs, fall risk, availability of informal help, memory and decision-making issues, and emotional well-being. The risk scores are used to determine if the individual is referred for a full GetCare assessment.

"**Health maintenance and therapies**" are clinical or therapeutic services that assist the care receiver to remain in their home or the caregiver to remain in their caregiving role and provide high quality care. Services are provided for the purpose of preventing further deterioration, improving, or maintaining current level of functioning.

"**Identity discrepancy**" means a negative psychological state that occurs when the activities and responsibilities that a

caregiver assumes with regard to the care receiver are inconsistent with the caregiver's expectations or personal norms concerning these activities and responsibilities.

"**MAC**" means medicaid alternative care, which is a federally funded program authorized under section 1115 of the Social Security Act. It enables an array of person-centered services to be delivered to unpaid caregivers caring for a medicaid eligible person who lives in a private residence (such as their own home or a family member's home) and chooses to receive community-based services.

"**Medicaid transformation project demonstration**" refers to the authority granted to the state by the federal government under section 1115 of the Social Security Act. This waiver is a five year demonstration to support health care systems prepare for and implement health reform and provide new targeted medicaid services to eligible individuals with significant needs. It includes MAC and TSOA programs.

"**Personal assistance services**" are supports involving the labor of another person to help the care receiver complete activities of daily living and instrumental activities of daily living that they are unable to perform independently. Services may be provided in the care receiver's home or to access community resources.

"**RDAD**" means reducing disability in Alzheimer's disease. This program is designed to improve the ability of the person with memory problems to complete activities of daily living while also helping caregivers provide assistance to the person.

"**Service provider**" means an agency or organization contracted with the department.

"**Specialized medical equipment and supplies**" are goods and supplies needed by the care receiver that are not covered under the medicaid state plan, medicare, or private insurance.

"**TCARE**" means tailored caregiver assessment and referral, which is an evidence-based caregiver coordination process designed to assist department assessors who work with family caregivers to support adults living with disabilities. TCARE is designed to tailor services to the unique needs of each caregiver to help reduce stress, depression, and burdens associated with caregiving. TCARE was developed by a research team at the University of Wisconsin-Milwaukee led by Dr. Rhonda Montgomery in collaboration with over thirty organizations serving family caregivers. The TCARE process is licensed for use by Tailored Care Enterprises, Inc.

"**TCARE assessment**" is a part of the TCARE process during which the department assessors gather responses to all of the TCARE screening questions and additional questions focused on both the caregiver's experience and the care receiver's situation, such as memory issues, behavioral needs, assistance needs with activities of daily living and instrumental activities of daily living, and diagnoses/conditions.

"**TCARE screening**" is a part of the TCARE process during which the department gathers information from the caregiver to determine scores and ranges for the caregiver's identity discrepancy, burdens, uplifts, and depression. The ranges are used to determine if the caregiver is referred for a full TCARE assessment.

"**Training and education**" are services and supports to help caregivers gain skills and knowledge to implement ser-

vices and supports needed by the care receiver to remain at home and skills needed by the caregiver to remain in their role.

"**TSOA**" means tailored supports for older adults, which is a federally-funded program approved under section 1115 of the Social Security Act. It enables the delivery of person-centered services to:

- (1) Caregivers who care for an eligible person as defined in WAC 388-106-1910; and
- (2) Eligible persons as defined in WAC 388-106-1910, without a caregiver.

NEW SECTION

WAC 388-106-1905 Am I eligible for MAC services?

- (1) You are eligible to receive MAC services if you, as a care receiver, meet the following criteria:
 - (a) Are age fifty-five or older;
 - (b) Meet nursing facility level of care as defined in WAC 388-106-0355;
 - (c) Meet medicaid financial eligibility requirements as defined in WAC 182-513-1605;
 - (d) Have an unpaid caregiver who:
 - (i) Is age eighteen or older;
 - (ii) Has participated in the following:
 - (A) Care plan for step one services;
 - (B) TCARE screening and care plan for step two services; or
 - (C) TCARE assessment and care plan for step three services;
 - (e) Live in a private residence (such as your own home or a family member's home) and choose to receive community based services; and
 - (f) Do not receive any other medicaid funded long-term services and supports (LTSS) while receiving MAC services.
 - (2) The department may use preliminary information you provide through a presumptive eligibility screening to determine if you, as the care receiver, meet the eligibility criteria in subsection (1) of this section in order to receive services while the formal eligibility determination is being completed. This is called presumptive eligibility.
 - (a) Your presumptive eligibility period ends with the earlier date of:
 - (i) The date you were confirmed not to meet full functional eligibility criteria; or
 - (ii) The last day of the month following the month when your MAC services were first authorized.
 - (b) In the event the department implements a wait list under WAC 388-106-1970 for MAC services, your presumptive eligibility ends.
 - (c) You may only receive services under presumptive eligibility once within a twenty-four month period.
 - (d) Under presumptive eligibility you may receive services as described in WAC 388-106-1915.

NEW SECTION

WAC 388-106-1910 Am I eligible for TSOA services?

- (1) You are eligible to receive TSOA services if you, as a care receiver, meet the following criteria:
 - (a) Are age fifty-five or older;

(b) Meet nursing facility level of care as defined in WAC 388-106-0355;

(c) Meet financial eligibility requirements defined in WAC 182-513-1615 or 182-513-1620;

(d) Live in a private residence (such as your own home or a family member's home) and choose to receive community-based services; and

(e) Meet the criteria in either (e)(i) or (ii) of this subsection:

(i) Have an unpaid caregiver who is age eighteen or older and has participated in the following:

(A) A care plan for step one services;

(B) A TCARE screening and care plan for step two services; or

(C) A TCARE assessment and care plan for step three services; or

(ii) You do not have an available caregiver and have participated in the following:

(A) A care plan for step one services;

(B) A GetCare screening and care plan for step two services; or

(C) A GetCare assessment and care plan for step three services.

(2) The department may use preliminary information you provide through a presumptive eligibility screening to determine if you, as the care receiver, meet the eligibility criteria in subsection (1) of this section in order to receive services while the formal eligibility determination is being completed. This is called presumptive eligibility.

(a) Your presumptive eligibility period ends with the earlier date of:

(i) The day the decision was made on your TSOA application;

(ii) The date you were confirmed not to meet functional eligibility criteria; or

(iii) The last day of the month following the month in which your presumptive eligibility services were authorized if you did not submit your TSOA application.

(b) In the event the department implements a wait list under WAC 388-106-1970 for TSOA services, your presumptive eligibility ends.

(c) You may only receive services under presumptive eligibility once within a twenty-four month period.

(d) Under presumptive eligibility, you may receive services as described in WAC 388-106-1915.

NEW SECTION

WAC 388-106-1915 What services may I receive in MAC and TSOA? MAC and TSOA services include the following three benefit levels referred to as steps in subsections (1) through (3) of this section. Caregivers and care receivers may receive services under any of the three steps depending upon their requests and needs identified in the screening process for step two and the assessment process for step three. Steps do not need to be used in order. For example, an individual may begin services at step two or three. In general, step one services are used by caregivers or care receivers requesting lesser supports than those using step three services.

(1) Step one: After the department obtains your demographics and approves your program eligibility, you may receive the following services:

(a) Information and referrals to family caregiver or community resources;

(b) A selection of the following services up to a one time limit of two hundred and fifty dollars:

(i) Training and education, which includes but is not limited to:

(A) Support groups;

(B) Group training;

(C) Caregiver coping and skill building training;

(D) Consultation on supported decision making;

(E) Caregiver training to meet the needs of the care receiver;

(F) Financial or legal consultation; and

(G) Health and wellness consultation;

(ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:

(A) Supplies;

(B) Specialized medical equipment, which includes durable medical equipment; and

(C) Assistive technology;

(iii) Caregiver assistance services, which includes but is not limited to short term respite to allow the caregiver to attend an educational event or training series; and

(iv) Health maintenance and therapy supports, which may include but are not limited to:

(A) Adult day health;

(B) RDAD and evidence based exercise programs;

(C) Health promotion and wellness services; and

(D) Counseling related to caregiving role.

(2) Step two: After the department obtains your demographics, approves your program eligibility, and completes a GetCare or TCARE screening, you may receive the following:

(a) Information and referrals to family caregiver or community resources;

(b) The following services up to an annual limit of five hundred dollars minus any expenditures for step one services:

(i) Training and education, which includes but is not limited to:

(A) Support groups;

(B) Group training;

(C) Caregiver coping and skill building training;

(D) Consultation on supported decision making;

(E) Caregiver training to meet the needs of the care receiver;

(F) Financial or legal consultation; and

(G) Health and wellness consultation;

(ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:

(A) Supplies;

(B) Specialized medical equipment, which includes durable medical equipment;

(C) Assistive technology; and

(D) Personal emergency response system (PERS);

(iii) Caregiver assistance services, which include but are not limited to:

- (A) Short-term respite to allow the caregiver to attend an educational event or training series;
- (B) Home delivered meals for the care receiver and caregiver;
- (C) Minor home modifications and repairs to the care receiver's home;
- (D) Home safety evaluation of the care receiver's home; and
- (E) Transportation, only in conjunction with the delivery of a service; and
- (F) Bath aide;
- (iv) Health maintenance and therapy supports, which include but are not limited to:
 - (A) Adult day health;
 - (B) RDAD and evidence based exercise programs;
 - (C) Health promotion and wellness services such as massage therapy and acupuncture therapy; and
 - (D) Counseling related to the caregiving role; and
 - (v) Personal assistance services for the TSOA without an unpaid caregiver, as described in WAC 388-106-1910(e)(ii), which include but are not limited to:
 - (A) Adult day care;
 - (B) Transportation, only in conjunction with the delivery of a service;
 - (C) Home delivered meals;

- (D) Home safety evaluation of the care receiver's home; and
- (E) Minor home modifications and repairs to the care receiver's home.
- (3) Step three:
 - (a) For MAC and TSOA care receivers with caregivers:
 - (i) You may receive information and referrals to family caregiver or community resources.
 - (ii) After the department has obtained your demographics and approved your program eligibility, the caregiver must complete a TCARE assessment in order to access step three services. In order to qualify for a TCARE assessment, the TCARE screening must result in at least three medium scores or one high score for the TCARE measures described in WAC 388-106-1932. TCARE uses an evidence-based algorithm to identify a primary goal based on the caregiver's answers to the TCARE assessment questions. An individualized care plan will be developed using the strategies and services recommended by the TCARE assessment and containing the services chosen by the caregiver up to the limits established in WAC 388-106-1920.
 - (iii) The Xs in the table below indicate the services that may be available for each strategy as defined in WAC 388-106-1930 and recommended by the TCARE assessment:

Services	Strategies				
	A	B	C	D	E
<i>Training and education</i>					
Group training		X			
Caregiver coping and skill building training	X	X	X	X	
Consultation on supported decision making	X	X	X		
Caregiver training to meet needs of care receiver	X	X	X		
Financial or legal consultation		X			
Health and wellness consultation		X			
Support groups	X	X	X		
<i>Specialized medical equipment and supplies</i>					
Supplies		X			
Specialized medical equipment		X			
Assistive technology		X			
Personal emergency response system		X			
<i>Caregiver assistance services</i>					
Home delivered meals		X			
Minor home modifications and repairs		X			
Housework/errands and yard work		X			
In-home respite, including a bath aide		X			
OT/PT evaluation	X	X		X	
Home safety evaluation		X			
Out-of-home respite		X			
Transportation		X			

Services	Strategies				
	A	B	C	D	E
<i>Health maintenance and therapy supports</i>					
Adult day health		X			
RDAD and evidence based exercise programs		X		X	
Health promotion and wellness services such as acupuncture and massage therapy				X	X
Counseling related to the caregiver role	X		X	X	

(b) For TSOA care receivers who do not have an available caregiver:

(i) You may receive information and referrals to community resources.

(ii) After the department has obtained your demographics and approved your program eligibility, you must complete a GetCare assessment in order to access step three services. In order to qualify for a GetCare assessment, the GetCare screening must result in a risk score of moderate or high as described in WAC 388-106-1933. An individualized care plan will then be developed based upon the needs identified in the assessment and the services you have selected up to the limits established in WAC 388-106-1920.

(iii) The services available include services noted in subsections (1) and (2) of this section (except for subsections (1)(b)(iii) and (2)(b)(iii) of this section) and the following personal assistance services:

- (A) Personal care;
- (B) Nurse delegation; and
- (C) Housework/errands and yard work.

NEW SECTION

WAC 388-106-1920 What is the maximum amount of step three services I may receive a month? (1) The maximum amount of step three services you and your caregiver may receive in MAC and TSOA is an average of five hundred and fifty dollars per month not to exceed three thousand three hundred dollars in a six month period unless the department authorizes additional funds through an exception to rule under WAC 388-440-0001.

(2) If you are a care receiver who does not have an available unpaid caregiver and you are receiving TSOA personal assistance services, the maximum amount of step three services you may receive per month is five hundred and fifty dollars unless the department authorizes additional funds through an exception to rule under WAC 388-440-0001.

NEW SECTION

WAC 388-106-1921 How does the TCARE assessment determine what step three services are recommended to my caregiver? (1) The TCARE assessment process gathers the following information reflecting the current status of both you and your caregiver in order to recommend services for your caregiver:

- (a) TCARE screening scores from the five measures described in WAC 388-106-1931;
- (b) Caregiver obligations;
- (c) Caregiver's phase in the caregiving journey;

(d) Potential risk of out-of-home placement;

(e) Care receiver's need for assistance with activities of daily living and instrumental activities of daily living;

(f) Care receiver's memory status, physical health conditions, and behavioral support needs; and

(g) Caregiver's understanding of the care receiver's level of need and the ability to safely provide care with the assistance of available resources/services.

(2) Based upon the information gathered during the TCARE assessment process described in subsection (1) of this section, one of three primary goals, as defined in WAC 388-106-1925, is established for your caregiver with at least one strategy identified for meeting that goal. One or more of the five strategies described in WAC 388-106-1930, which are linked to recommended services and supports that have the most potential to help your caregiver continue providing care safely while also addressing their needs as a caregiver, may be recommended to reach the established goal.

NEW SECTION

WAC 388-106-1925 What are the goals in TCARE?

The three primary goals for caregivers identified in TCARE are:

(1) Maintain current identity: The goal appropriate for caregivers who experience modest levels of identity discrepancy and stress and are willing and able to continue in their current role. Suggested support services will help caregivers make small adjustments in their personal norms and the manner in which they undertake their caregiving responsibilities.

(2) Embrace caregiver identity: The goal appropriate for caregivers who are likely to benefit from embracing a stronger identity as a caregiver and releasing, to some degree, their commitment to a familial identity. Suggested support services will encourage the caregiver to accept a greater identity with the caregiver role.

(3) Reduce caregiver identity: The goal appropriate for caregivers who are engaged in a level of caregiving that requires emotional or physical resources beyond their capability. Suggested support services will encourage caregivers to explore ways to reduce workload and stress related to their caregiving role.

NEW SECTION

WAC 388-106-1930 What is the purpose of the TCARE assessment?

The purpose of the TCARE assessment is to gather critical information about the caregiving context, identity, strengths, problems and concerns. These data are used to identify strategies and goals to address your

caregiver's needs. Program limits are established in WAC 388-106-1915.

(1) The five strategies in TCARE are:

(a) Strategy A: Change personal rules for care, which entails encouraging and helping your caregiver to change or adjust their personal rules or norms.

(b) Strategy B: Reduce or minimize work load, which focuses on reducing the amount or intensity of your caregiver's work load and therefore aligns your caregiver's behaviors with their expectations.

(c) Strategy C: Support positive self-appraisal, which focuses on offering positive affirmation and assuring your caregiver that the behaviors that they must engage in as a caregiver are consistent with their norms.

(d) Strategy D: Reduce generalized stress, which focuses on giving your caregiver tools and skills to cope with daily stresses of caregiving.

(e) Strategy E: Improve overall health, which encourages your caregiver to seek appropriate health services.

(2) Each service is mapped to a strategy(s) that may support your caregiver's needs. A service may be mapped to more than one strategy.

(3) Assessors assist you and your caregiver to understand the evidence based strategies and recommended services, choose the services to meet the identified goals, and create an individualized care plan.

NEW SECTION

WAC 388-106-1931 What are the TCARE screening measures? The following six TCARE screening measures and response options will be presented to your caregiver in order to receive step two services and to determine whether a TCARE assessment is needed for step three services:

(1) Identity discrepancy: How much do you agree or disagree with each statement:

(a) The things I am responsible for do not fit very well with what I want to do.

(b) I am not always able to be the person I want to be when I am with my care receiver.

(c) It is difficult for me to accept all the responsibility for my care receiver.

(d) I am having trouble accepting the way I relate to my care receiver.

(e) I am not sure that I can accept any more responsibility than I have right now.

(f) It is difficult for me to accept the responsibilities that I now have to assume.

(2) Relationship burden: Have your caregiving responsibilities:

(a) Caused conflicts with your care receiver?

(b) Increased the number of unreasonable requests made by your care receiver?

(c) Caused you to feel that your care receiver makes demands over and above what they need?

(d) Made you feel you were being taken advantage of by your care receiver?

(e) Increased attempts by your care receiver to manipulate you?

(3) Objective burden: Have your caregiving responsibilities:

(a) Decreased time you have to yourself?

(b) Kept you from recreational activities?

(c) Caused your social life to suffer?

(d) Changed your routine?

(e) Given you little time for friends and relatives?

(f) Left you with almost no time to relax?

(4) Stress burden: Have your caregiving responsibilities:

(a) Created a feeling of hopelessness?

(b) Made you nervous?

(c) Depressed you?

(d) Made you anxious?

(e) Caused you to worry?

(5) Depression: How often have you felt this way during the past week?

(a) I was bothered by things that usually don't bother me.

(b) I had trouble keeping my mind on what I was doing.

(c) I felt depressed.

(d) I felt that everything I did was an effort.

(e) I felt hopeful about the future.

(f) I felt fearful.

(g) My sleep was restless.

(h) I was happy.

(i) I felt lonely.

(j) I could not "get going."

(6) Uplifts: Have your caregiving responsibilities:

(a) Given your life meaning?

(b) Made you more satisfied with your relationship?

(c) Given you a sense of fulfillment?

(d) Left you feeling good?

(e) Made you enjoy being with your care receiver more?

(f) Made you cherish your time with your care receiver?

NEW SECTION

WAC 388-106-1932 How is the TCARE screening scored to determine if my caregiver is eligible for a TCARE assessment and related step three services. (1)

The TCARE screening measures are scored with a number value of one through six for the measure on identity discrepancy or one through five for the remaining measures based upon the caregiver's responses. Ranges for each measure determine whether the measure score is high, medium, or low. One high or three medium scores from the table in this subsection, except for the uplifts measure, will make a caregiver eligible for a TCARE assessment and step three services as described in WAC 388-106-1915 (3)(a)(ii). The following table indicates the score ranges for each measure:

	High	Medium	Low
Identity discrepancy	22-36	14-21	6-13
Relationship burden	13-25	8-12	5-7
Objective burden	24-30	18-23	6-17
Stress burden	17-25	12-16	5-11
Uplifts	19-30	13-18	6-12
Depression-CESD	26-40	19-25	10-18

(2) The scale used to score the responses within the identity discrepancy measure is:

- (a) Strongly disagree = one;
- (b) Disagree = two;
- (c) Disagree a little = three;
- (d) Agree a little = four;
- (e) Agree = five; and
- (f) Agree strongly = six.

(3) The scale used to score the responses to the relationship, objective, stress, and uplift measures are:

- (a) Not at all = one;
- (b) A little = two;
- (c) Moderately = three;
- (d) A lot = four; and
- (e) A great deal = five.

(4) The scale used to score the responses within the depression measures in WAC 388-106-1931 (5)(a), (b), (c), (d), (f), (g), (i) and (j) are:

- (a) Rarely or none of the time (less than one day in the last week) = one;
- (b) Some or a little of the time (one to two days in the last week) = two;
- (c) Occasionally or a moderate amount of time (three to four days in the last week) = three; and
- (d) All of the time (five to seven days in the last week) = four.

(5) The scale used to score the responses within the depression measures in WAC 388-106-1931 (5)(e) and (h) are:

- (a) Rarely or none of the time (less than one day in the last week) = four;
- (b) Some or a little of the time (one to two days in the last week) = three;
- (c) Occasionally or a moderate amount of time (three to four days in the last week) = two; and
- (d) All of the time (five to seven days in the last week) = one.

NEW SECTION

WAC 388-106-1933 How is the GetCare screening scored to determine if I am eligible for a GetCare assessment and related step three services? (1) For TSOA individuals who do not have an unpaid caregiver to support and are seeking step three TSOA services, the GetCare TSOA individual without a caregiver screening must result in a risk score of moderate or high to be eligible for a GetCare assessment, care plan, and associated step three services as described in WAC 388-106-1915 (3)(b)(ii).

(2) There are eight TSOA individual without a caregiver screening questions. The following table indicates the risk score allocated to each potential response to the eight screening questions:

No.	Question	Scoring					
		Response	Score	Response	Score	Response	Score
1	Do you need help to do the following? Bathing Bed mobility Medication management Transferring Ambulating Eating Toileting	Zero to two selected	Zero	Three or more selected	Two		
2	During the last six months, have you had a fall that caused injuries?	No	Zero	Yes	Two		
3	Do you have a family member/friend to give you help when you need it?	No	Zero	Yes	Two		
4	Have you thought about moving to other housing?	No	Zero	Yes	Two		
5	Do you live alone?	No	Zero	Yes	Two		
6	Do you or your family have concerns about your memory, thinking, ability to make decisions, or remembering to pay your bills?	No	Zero	Yes, somewhat concerned	One	Yes, very concerned	Two
7	Do you need help turning and repositioning?	No	Zero	Yes	Two		
8	Do you or your family have concerns about your mental or emotional well-being?	No	Zero	Yes, somewhat concerned	One	Yes, very concerned	Two

(3) The risk level is calculated by totaling the eight point scores determined by responses to the screening questions in subsection (2) of this section to determine the following risk categories:

Risk level	Point totals
Low risk	1-5
Moderate risk	6-10
High risk	11-16

NEW SECTION

WAC 388-106-1935 Where may I receive MAC and TSOA services? You may receive MAC and TSOA services:

- (1) In your own home; and
- (2) In the community setting where the authorized service occurs:
 - (a) Within the state of Washington; or
 - (b) In a recognized out-of-state bordering city as defined in WAC 182-501-0175.

NEW SECTION

WAC 388-106-1940 When will my MAC or TSOA services be authorized? Your MAC or TSOA services will be authorized when you:

- (1) Have completed initial requirements for intake including but not limited to screenings and assessments;
- (2) Are found to be at least presumptively eligible, both financially and functionally;
- (3) Have chosen a provider(s) qualified for payment; and
- (4) Have given consent for services and approved your care plan.

NEW SECTION

WAC 388-106-1945 When do my MAC or TSOA services begin? Your MAC or TSOA services may begin as early as the date authorized by the department.

NEW SECTION

WAC 388-106-1950 How do I remain eligible for MAC and TSOA services? (1) In order to remain eligible for MAC and TSOA services, you, as the care receiver must:

- (a) Remain functionally eligible as defined in WAC 388-106-0355 and financially eligible as defined in WAC 182-513-1605, 182-513-1615, and 182-513-1620; and
 - (b) Have your functional and financial eligibility reviewed at least annually.
- (2) If eligibility laws, regulations, or rules change, and if you as the caregiver or the care receiver do not meet the changed eligibility requirements, the department will terminate services, even if your circumstances have not changed. You will receive advance notice of any termination or change in your services and an opportunity to appeal.

NEW SECTION

WAC 388-106-1955 What do I pay for if I receive MAC or TSOA services? You, as a caregiver or a care receiver, will not be required to pay toward the cost of your MAC or TSOA services. This means that neither estate recovery nor participation towards cost of care are required.

NEW SECTION

WAC 388-106-1960 May I be employed and receive MAC or TSOA services? You, as the care receiver may be employed and receive MAC or TSOA services. Your caregiver may be employed in roles other than caregiving and receive services under MAC or TSOA.

NEW SECTION

WAC 388-106-1965 Are there limits to the services I may receive? The services you may receive under MAC or TSOA will not include the following:

- (1) Rent or mortgage;
- (2) Groceries;
- (3) Car repairs;
- (4) Utility bills;
- (5) Household appliances;
- (6) Vacation expenses;
- (7) Entertainment items such as TVs, radios, computers, cell phones;
- (8) Pet care items;
- (9) Gift cards;
- (10) Any services not defined in WAC 388-106-1915; and
- (11) Any services covered under your medicaid state plan coverage, medicare, private insurance, or other federal or state programs.

NEW SECTION

WAC 388-106-1970 Who may provide MAC and TSOA services? The following providers may provide MAC and TSOA services:

- (1) Durable medical equipment vendors and adult day health providers that have a core provider agreement with the health care authority; and
- (2) Providers who are contracted with the department to provide goods and services.

NEW SECTION

WAC 388-106-1975 Will there be a wait list for MAC and TSOA? (1) The department will implement a statewide wait list if program expenditures or enrollment exceeds availability of demonstration funding.

- (2) If the department implements a wait list for new MAC and TSOA applicants:
 - (a) We will stop conducting presumptive eligibility determinations and financial and functional eligibility assessments.
 - (b) We may reduce benefit limits for step one, two, and three to maintain department spending within available

demonstration funding. If we reduce benefit limits, individuals currently receiving benefits will maintain their current benefit level, including those with approved presumptive eligibility.

(c) If additional funding becomes available, applicants on a wait list for MAC or TSOA services will be considered on a first come first serve basis based upon their request date for MAC or TSOA services.

NEW SECTION

WAC 388-106-1980 When may the department terminate or deny MAC or TSOA services? (1) The department will deny or terminate MAC or TSOA services if you are not eligible for services pursuant to WAC 388-106-1905, 388-106-1910, and 388-106-1945.

(2) The department may deny or terminate your MAC or TSOA services if, after exhaustion of standard case management activities and the approaches delineated in the department's challenging cases protocol that must include an attempt to reasonably accommodate your disability or disabilities, one or more of the following conditions exist:

(a) Your rights and responsibilities as a client of the department are reviewed with you by a department representative under WAC 388-106-1300 and 388-106-1303, and you refuse to accept those services identified in your care plan that are vital to your health, welfare, or safety.

(b) You choose to receive services in your own home and you or others in your home demonstrate behaviors that are substantially likely to cause serious harm to you or your care provider.

(c) You choose to receive services in your own home and hazardous conditions in or immediately around your home jeopardize the health, safety, or welfare of you or your provider. Hazardous conditions include but are not limited to the following:

- (i) Threatening, uncontrolled animals (such as dogs);
- (ii) The manufacture, sale, or use of illegal drugs;
- (iii) The presence of hazardous materials (such as exposed sewage, evidence of a methamphetamine lab).

(3) The department will terminate services if the department does not receive written consent of the care plan within sixty days of the completion of your care plan. Written consent for step one and step two care plans may also be provided by secure email or other electronic means.

NEW SECTION

WAC 388-106-1985 Do I have the right to an administrative hearing regarding MAC or TSOA services? Yes, you may request an administrative hearing based on the rules outlined in WAC 388-106-1305 to contest the department's decisions regarding MAC or TSOA services.

NEW SECTION

WAC 388-106-1990 May I choose to receive traditional medicaid long term services and supports instead of services under the MAC program? Yes. You, as the care receiver, may choose to apply for traditional medicaid long term services and supports such as community first choice,

community option program entry system (COPES), new freedom, and residential support waiver, instead of services under the MAC program. You must contact your case manager who will assist you with this process.

WSR 18-01-005

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF REVENUE

(By the Code Reviser's Office)

[Filed December 6, 2017, 3:39 p.m.]

WAC 458-20-13601, proposed by the department of revenue in WSR 17-11-090, appearing in issue 17-11 of the State Register, which was distributed on June 7, 2017, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 18-01-006

WITHDRAWAL OF PROPOSED RULES PROFESSIONAL EDUCATOR STANDARDS BOARD

(By the Code Reviser's Office)

[Filed December 6, 2017, 3:40 p.m.]

WAC 181-79A-2510, proposed by the professional educator standards board in WSR 17-11-106, appearing in issue 17-11 of the State Register, which was distributed on June 7, 2017, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 18-01-007

WITHDRAWAL OF PROPOSED RULES HEALTH CARE AUTHORITY

(By the Code Reviser's Office)

[Filed December 6, 2017, 3:41 p.m.]

WAC 182-531-1675, proposed by the health care authority in WSR 17-11-140, appearing in issue 17-11 of the State Register, which was distributed on June 7, 2017, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 18-01-046
PROPOSED RULES
DEPARTMENT OF HEALTH
 [Filed December 12, 2017, 12:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-22-029.

Title of Rule and Other Identifying Information: Chapter 246-337 WAC, Residential treatment facility, the department of health (department) is proposing to amend the residential treatment facility (RTF) licensing regulations by restructuring, streamlining and updating rule language throughout the chapter. The proposal also clarifies language regarding restraint and seclusion, medication management, and resident care services.

Hearing Location(s): On January 24, 2018, at 1:00 p.m., at the Department of Health, Town Center 2, Room 145, 111 Israel Road, Tumwater, WA 98501.

Date of Intended Adoption: February 1, 2018.

Submit Written Comments to: Jeff Wise, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-3201, by January 24, 2018.

Assistance for Persons with Disabilities: Contact Jeff Wise, phone 360-236-4987, fax 360-236-3201, TTY 360-833-6388 or 711, email jeff.wise@doh.wa.gov, by January 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule language reorganizes and clarifies existing requirements for licensees and the department surveyors and investigators. The proposal also amends language regarding restraint and seclusion, medication management, and resident care services, and would set minimum construction standards that are scalable based on the type of the patients and services provided in each facility.

Reasons Supporting Proposal: The proposed rules are needed to support new behavioral health care models, create consistent standards with other state regulated facilities, increase safety in the built environment, and provide clear language that is understood by licensees and regulators. Proposed rule language supports facilities in providing integrated care and streamline regulation for licensees and the department.

Statutory Authority for Adoption: RCW 71.12.670.

Statute Being Implemented: Chapter 71.12 RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Julie Tomaro, 101 Israel Road S.E., Tumwater, WA 98501, 360-236-3540; Implementation and Enforcement: Nancy Tyson, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4796.

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

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Jeff Wise, Department of Health, P.O. Box 47850,

Olympia, WA 98504-7850, phone 360-236-4987, fax 360-236-3201, TTY 360-833-6388 or 711, email jeff.wise@doh.wa.gov.

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

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

Explanation of exemptions: See cost-benefit analysis, which may be obtained from the department of health.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The department used a minor cost threshold of one percent of the average annual payroll of one hundred thirty-three residential treatment facilities in Washington state, which is \$6,623. The proposal would require a handwashing sink in medication rooms, and clarified that certain facilities must have a restraint or seclusion room, depending on the services provided. Most facilities requiring such a room already have one in place. The construction costs for such a room and for a sink in medication rooms was determined to be approximately \$24,000. Because these are construction costs, the department amortized them over a period of ten years, which is \$2,400 per year, on average. When amortized, the annual cost does not exceed the minor cost threshold. There are also possible administrative costs to update policies and procedures which the department estimates to be not more than \$650.

December 11, 2017

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-001 Scope and purpose. (1) This chapter implements chapter 71.12 RCW and sets the minimum health and safety standards for licensure and operations of twenty-four hour private, county or municipal residential treatment facilities (RTF) providing health care services to persons with mental disorders or substance ~~((abuse))~~ use disorders.

(2) ~~((Additionally, these rules apply to residential treatment facilities licensed by the department of health under chapter 71.12 RCW and certified by the department of social and health services under chapter 71.05 RCW (Mental illness), chapter 70.96A RCW (Treatment for alcoholism,~~

intoxication and drug addiction), and chapter 71.34 RCW (Mental health services for minors).

(3)) These rules are intended to supplement other applicable federal, state and local laws, rules and ordinances. If any provision of this chapter is more restrictive than local codes and ordinances this chapter shall prevail over any less restrictive provision.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-005 Definitions. ~~((For the purpose of this chapter, the following words and phrases have the following meanings))~~ The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise:

(1) **"Administrator"** means an individual person responsible for managing the day-to-day operations of the ~~((RTF)) residential treatment facility.~~

(2) **"Adult"** means an individual ~~((age))~~ eighteen years of age or older.

(3) ~~((**"Approved"** means approved by the department, unless otherwise specified.~~

(4)) **"Authorized"** means mandated or permitted, in writing, by the administrator to perform an act that is within a health care provider's lawful scope of practice, or that was lawfully delegated to the health care provider or to the unlicensed staff member.

~~((5))~~ (4) **"Bathroom"** means a room containing at least one bathtub or shower.

~~((6) **"Chemical dependency"** means alcoholism, drug addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires.~~

(7) ~~**"Chemical dependency RTF"** means all or part of an RTF certified by DSHS under chapter 70.96A RCW, that provides twenty-four hour evaluation, stabilization and treatment services for persons with chemical dependency within one or more of the following service categories:~~

(a) ~~**"Acute detoxification"** as defined in chapter 388-805 WAC;~~

(b) ~~**"Subacute detoxification"** as defined in chapter 388-805 WAC;~~

(c) ~~**"Intensive inpatient services"** as defined in chapter 388-805 WAC;~~

(d) ~~**"Long term treatment services"** as defined in chapter 388-805 WAC;~~

(e) ~~**"Recovery house services"** as defined in chapter 388-805 WAC.~~

(8)) (5) **"Child"** or **"minor"** means an individual under the age of eighteen.

(9)) (6) **"Communicable disease"** means a disease caused by an infectious agent that can be transmitted from one person, animal, or object to another individual by direct or indirect means including transmission via an intermediate host or vector, food, water or air.

(10)) (7) **"Confidential"** means information that may not be disclosed except under specific conditions permitted or mandated by law or legal agreement between the parties concerned.

~~((11))~~ (8) **"Construction"** means:

(a) The erection of a facility;

(b) An addition, modification, alteration or change of an approved use to an existing facility; or

(c) The conversion of an existing facility or portion of a facility for use as a RTF.

~~((12) **"DASA"** means division of alcohol and substance abuse, within DSHS.~~

(13)) (9) **"Co-occurring services"** means services certified by DSHS-DBHR that combine mental health services and substance use disorder services under a single RTF license.

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

(14)) (11) **"DSHS-DBHR"** means the division of behavioral health and recovery within the Washington state department of social and health services.

~~((15) **"Emergency health care"** means services provided consistent with the health care needs of the resident for an acute illness, injury, or unexpected clinical event as determined by an authorized health care provider.~~

(16)) (12) **"Facility"** means a building ~~((or))~~ a portion of a building

(17) **"First aid"** means care for a condition that requires immediate assistance from an individual trained and certified in first aid procedures.

(18) **"Hand hygiene"** means handwashing, antiseptic hand wash, or antiseptic hand or surgical hand antiseptis.

(19) **"Health"** means a state of complete physical and mental well-being and not merely the absence of disease or infirmity), or multiple buildings under a single RTF license.

(20)) (13) **"Health assessment"** means a systematic physical examination of the person's body conducted by an ((authorized health care provider)) allopathic physician, osteopathic physician, naturopathic physician, allopathic physician's assistant, osteopathic physician's assistant, advanced registered nurse practitioner, registered nurse, or licensed practical nurse who is licensed under Title 18 RCW and operating within their scope of practice.

(21)) (14) **"Health care"** means any care, service, or procedure provided by a health care provider to diagnose, treat, or maintain a resident's physical or mental condition, or that affects the structure or function of the human body.

(22)) (15) **"Health care prescriber"** or **"prescriber"** means an allopathic physician, osteopathic physician, naturopathic physician, allopathic physician's assistant, osteopathic physician's assistant, or advanced registered nurse practitioner licensed under Title 18 RCW operating within their scope of practice who by law can prescribe drugs in Washington state.

(16) **"Health care provider"** means an individual who is licensed, registered or certified under Title 18 RCW to provide health care within a particular profession's statutorily authorized scope of practice.

(23)) (17) **"Health care screen"** means ~~((the process))~~ a systematic interview or use of a questionnaire approved by ((an authorized)) a health care ((provider)) prescriber to determine the health history and care needs of a resident.

~~((24))~~ (18) **"Licensee"** means the person, corporation, association, organization, county, municipality, public hospital district, or other legal entity, including any lawful successors ~~((thereto))~~ to whom the department issues a RTF license.

~~((25))~~ (19) **"Medication"** means a legend drug prescribed for a resident by an authorized health care ~~((provider, or))~~ prescriber. Medication also means nonprescription drugs, also called "over-the-counter medications," that can be purchased by the general public without a prescription.

~~((26))~~ (20) **"Medication administration"** means the direct application of a medication or device by ingestion, inhalation, injection, or any other means, whether self-administered by a resident, or administered by a parent or guardian ~~((for a minor((s))),~~ or an authorized health care provider.

~~((27))~~ **"Medication self administration" or "self medication administration"** means a process by which each resident obtains his/her container of medication from a supervised and secure storage area, removes the dose needed and ingests or applies the medication as directed on the label while being observed by staff.

(28) **"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 drugs.

(29) **"Medication protocol"** means a specific group of orders to be used for specific symptoms for specific residents and authorized by a health care provider.

~~((30))~~ (21) **"Medication administration error"** means a resident failing to receive the correct medication, medication at the correct time, the correct dose, or medication by the correct route.

(22) **"Mental health ((RTF)) services"** means ~~((all or part of a RTF providing twenty-four hour evaluation, stabilization and treatment services for persons with a mental disorder and certified by DSHS under chapters 71.05 or 71.34 RCW, within one or more of the following service categories:~~

(a) **"Adult residential treatment"** as defined in chapter 388-865 WAC;

(b) **"Inpatient evaluation and treatment"** as defined in chapter 388-865 WAC;

~~((c))~~ **"Child inpatient evaluation and treatment"** as defined in chapter 388-865 WAC.

~~((d))~~ **"Child long-term inpatient treatment"** as defined in chapter 388-865 WAC.

~~((31))~~ services certified by DSHS-DBHR under chapter 388-865 or 388-877A WAC to evaluate, stabilize, or treat one or more residents for a mental disorder.

(23) **"Parent((s)) or guardian"** means:

(a) A biological or adoptive parent who has legal custody of the child, including either parent if custody is shared under joint custody agreement; or

(b) An individual or agency judicially appointed as legal guardian or custodian of the child.

~~((32))~~ (24) **"Resident"** means an individual ~~((adult or child))~~ admitted to ~~((the))~~ a RTF licensed under this chapter.

~~((33))~~ (25) **"Residential treatment facility" or "RTF"** means a facility ~~((for purposes of evaluation and treatment or evaluation and referral of any individual with a chemical dependency or mental disorder.~~

(34) **"Restraint"** means a continuum of methods used to prevent or limit free body movement.

~~((35))~~ **"Room"** means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

~~((36))~~ in which twenty-four hour on-site care is provided for the evaluation, stabilization, or treatment of residents for substance use, mental health, or co-occurring disorders.

(26) **"Restraint"** means any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a resident to move his or her arms, legs, body or head freely; or a drug or medication when used as a restriction to manage the resident's behavior or restrict the resident's freedom of movement and is not a standard treatment or dosage for the resident's condition. Restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical or chemical restraint, accomplished with limited force and designed to:

(a) Prevent a resident from completing an act that would result in potential bodily harm to the resident or others or to damage property;

(b) Remove a disruptive resident who is unwilling to leave the area voluntarily; or

(c) Guide a resident from one location to another.

(27) **"Seclusion"** means the involuntary confinement of a resident alone in a room or area from which the resident is physically prevented from leaving.

~~((37))~~ **"Sink"** means a properly trapped plumbing fixture, capable of holding water, with approved potable hot and cold running water under pressure.

~~((38))~~ (28) **"Substance use disorder services"** means services certified by DSHS-DBHR under chapter 388-877B WAC to evaluate, stabilize, or treat one or more residents for alcoholism, drug addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(29) **"Survey"** means an inspection or investigation conducted by the department to evaluate and monitor a licensee's compliance with chapter 71.12 RCW and this chapter.

~~((39))~~ (30) **"Toilet room"** means a room containing a water closet (toilet).

~~((40))~~ **"WISHA"** means the state of Washington Industrial Safety and Health Act, chapter 49.17 RCW, administered by the Washington state department of labor and industries.)

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.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-010 ((Initial licensure and renewal process)) Licensing. An applicant may not open or operate a RTF until all requirements for licensure set forth in this section are met and the department has issued an initial, renewed, or amended RTF license listing the service type(s) approved to be provided in the RTF.

(1) Initial ~~(~~(~~(~~)~~)~~) licensure. An applicant for an initial RTF license must submit to the department ~~(~~(~~(~~)~~)~~ sixty days or more before starting):

(a) A completed application on form(s) provided by the department, signed by the owner or legal designee ~~(~~(~~(~~)~~)~~ including:

~~(i) The identity of each officer and director, or their equivalent, of the licensee);~~

~~((ii)) (b) Disclosure statements and criminal history background checks obtained within the previous three months of the application date for the administrator in accordance with ((chapter 43.43 RCW;~~

~~((iii)) WAC 246-337-055;~~

~~(c) The license fee specified in WAC 246-337-990; ((and (iv) A reduced floor plan on 8-1/2 x 11 size paper that shows each room within the facility in a manner that is easily seen and understood.~~

~~(b) Evidence of applicant's)~~

~~(d) Policies and procedures in compliance with chapter 71.12 RCW and this chapter ((including:~~

~~(i) The department approved construction documents and functional program plan;~~

~~(ii) Documentation of application for certification by DSHS under chapter 71.05 RCW (Mental illness), chapter 70.96A RCW (Treatment for alcoholism, intoxication and drug addiction), or chapter 71.34 RCW (Mental health services for minors);~~

~~((iii)) for review and approval by the department;~~

~~(e) A completed construction review application and fee, and functional program plan according to WAC 246-337-040;~~

~~(f) Written approval of the chief of the Washington state patrol, through the director of fire protection, as required by RCW 71.12.485 and chapter 212-12 WAC;~~

~~((iv) Compliance with all applicable federal, state and local laws, rules, and codes; and~~

~~(v) Completion of an initial on-site survey.~~

~~(e) Other information as required by the department.~~

~~(2) If the applicant has met all requirements for licensure set forth in subsection (1) of this section, the department shall issue a RTF license (listing the service categories). An RTF license is effective for one year from the date it is issued)) (g) Documentation of completion of an initial on-site survey; and~~

~~(h) Other information as required by the department.~~

~~((3)) (2) License renewal(~~(~~(~~)~~)~~). At least thirty calendar days before the expiration date of the current license, the licensee must submit to the department:

(a) A completed application on form(s) provided by the department;

(b) Disclosure statements and criminal history background checks obtained within the previous three months of the ~~((renewal))~~ application date for the administrator in accordance with ~~((chapter 43.43 RCW))~~ WAC 246-337-055;

(c) The renewal fee specified in WAC 246-337-990;

~~(d) ((Documentation satisfactory to the department of licensee's compliance with chapter 71.12 RCW and this chapter, including the following:~~

~~(i) Compliance with rules adopted by the chief of the Washington state patrol, through the director of fire protec-~~

~~tion, as required by RCW 71.12.485 and chapter 212-12 WAC;~~

~~(ii) Compliance with all applicable federal, state and local laws, and rules; and~~

~~(e) Other information as required by the department.~~

~~(4) At least sixty days)) Written approval from the chief of the Washington state patrol, through the director of fire protection, as required by RCW 71.12.485 and chapter 212-12 WAC; and~~

~~(e) Other information as required by the department.~~

~~(3) License amendment. Prior to changing any of the ((license)) service ((categories)) type(s) provided in the facility, number of resident beds, location or use of rooms ((as listed on the licensed room list, or)), the physical structure of the ((RTF,)) facility, or a change in the administrator, the licensee must submit to the department:~~

~~(a) ((Notify the department)) Notification in writing of the intended change;~~

~~(b) ((Request the department to determine the need for review by the department's construction review services; and~~

~~(e) If the change involves an approved increase in beds, the licensee must pay a fee under WAC 246-337-990;~~

~~(5) At least sixty days)) A completed application on form(s) provided by the department;~~

~~(c) The administrative fee and other applicable fee(s) specified in WAC 246-337-990;~~

~~(d) A request to the department to determine the need for review by the department's construction review services and Washington state fire marshal;~~

~~(e) If changing service type, policies and procedures in compliance with chapter 71.12 RCW and this chapter for review and approval by the department; and~~

~~(f) If changing administrators, disclosure statements and criminal history background checks obtained within the previous three months of the application date for the administrator in accordance with WAC 246-337-055.~~

~~(4) Change of ownership. Prior to selling, leasing, renting or otherwise transferring control of a ((license,)) RTF that results in a change of the state Uniform Business Identifier Number ((UBI #)), the licensee must submit to the department:~~

~~(a) The full name and address of the current licensee and prospective licensee;~~

~~(b) The name and address of the licensed RTF and the name under which the RTF will operate;~~

~~(c) Date of the proposed change;~~

~~(d) Plans for preserving resident records, consistent with WAC 246-337-095; and~~

~~(e) Other information as required by the department.~~

~~((6) A prospective new RTF owner shall apply for licensure by complying with subsection (1) of this section.~~

~~(7)) (5) A RTF license is not transferable.~~

~~(6) The licensee shall:~~

~~(a) Maintain and post a current RTF license in a conspicuous place on the premises;~~

~~(b) Provide services limited to each department approved service type; and~~

~~(c) Maintain the occupancy level not exceeding the licensed resident bed capacity of the RTF.~~

(7) Prior to issuing, renewing, or amending a license, the department shall:

- (a) Review and approve the licensing application;
- (b) Review and approve RTF policies and procedures according to this chapter, as applicable;
- (c) Verify compliance with RTF construction standards according to this chapter, as applicable;
- (d) Obtain written verification of compliance with RCW 71.12.485 and chapter 212-12 WAC administered by the Washington state patrol fire marshal fire protection service, as applicable; and
- (e) Determine whether the applicant or licensee meets the requirements in chapter 71.12 RCW and this chapter.

(8) The department may issue a single RTF license to include two or more buildings on the same campus if the applicant or licensee:

- (a) Meets the licensure requirements of chapter 71.12 RCW and this chapter; and
- (b) Operates the multiple buildings as a single integrated system with governance by a single authority or body over all staff and buildings.

(9) For the purposes of this section, "campus" means an area where all of the RTF's buildings are located on contiguous properties undivided by:

- (a) Public streets, not including alleyways used primarily for delivery services or parking; or
- (b) Other land that is not owned and maintained by the owners of the property on which the facility is located.

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.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-015 Service ((~~categories~~) types. A licensee ((~~may~~) must provide ((~~services under a single RTF license for~~)) one or more of the following types of services ((~~categories~~)) in the RTF:

- ~~(1) ((Chemical dependency acute detoxification;~~
- ~~(2) Chemical dependency subacute detoxification;~~
- ~~(3) Chemical dependency intensive inpatient;~~
- ~~(4) Chemical dependency long-term treatment;~~
- ~~(5) Chemical dependency recovery house;~~
- ~~(6) Mental health adult residential treatment (includes crisis services for twenty-four hours or more);~~
- ~~(7) Mental health inpatient evaluation and treatment;~~
- ~~(8) Mental health child long-term inpatient treatment;~~
- ~~(9) Mental health child inpatient evaluation and treatment.)~~ Mental health services;
- (2) Substance use disorder services; or
- (3) Co-occurring services.

NEW SECTION

WAC 246-337-021 On-site surveys, complaint investigations, and enforcement. (1) To determine compliance with chapter 71.12 RCW and this chapter, the department may:

- (a) Conduct unannounced on-site surveys upon initial licensure and annually thereafter, and as needed; and
- (b) Investigate complaints alleging noncompliance with chapter 71.12 RCW and this chapter.
- (2) The licensee shall assist the department during on-site surveys and investigations in a cooperative manner.
- (3) Notice of correction.
 - (a) When the department identifies deficiencies it does not determine to be major, broadly systemic, or of a recurring nature, the department will issue the administrator a notice of correction according to RCW 43.05.100.
 - (b) The "notice of correction" will include:
 - (i) A description of the condition that is not in compliance and the text of the specific section or subsection of the applicable law or rule;
 - (ii) A brief statement of what is required to achieve compliance;
 - (iii) The date by which the department requires compliance to be achieved;
 - (iv) Notice of the means to contact any technical assistance services provided by the department or other sources of technical assistance; and
 - (v) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.
- (4) Plan of correction.
 - (a) At the same time the department issues a notice of correction as identified in subsection (3) of this section, the department will provide instructions on how the administrator will complete and submit a plan of correction.
 - (b) The "plan of correction" must include:
 - (i) A statement that the administrator:
 - (A) Has or will correct each cited deficiency; and
 - (B) Will maintain correction of each cited deficiency.
 - (ii) A place for the administrator to describe the specific action(s) that must be taken to correct each cited deficiency;
 - (iii) A place for the administrator to indicate the individual responsible for assuring correction of each deficiency; and
 - (iv) A place for the administrator to indicate the time frame in which to complete the corrections.
 - (c) Time frames to correct each cited deficiency in the notice of correction must be approved by the department.
 - (d) Implementation of the corrective action must be completed within the approved time frame and is subject to verification by the department.
 - (e) The administrator or the administrator's designee shall:
 - (i) Complete, sign, date, and submit a written plan of correction to the department within ten business days of receiving a notice of correction; and
 - (ii) Submit to the department updated plans of correction as needed.
- (5) Directed plan of correction.
 - (a) When the department identifies deficiencies it determines to be broadly systemic, recurring, or of a significant threat to public health and safety, it will issue a directed plan of correction.

(b) The directed plan of correction will include:

(i) Direction from the department on the specific corrective action(s) required for the licensee to correct each cited deficiency; and

(ii) The time frames in which the department requires the licensee to complete each cited deficiency.

(c) The department may reduce the time frames in the directed plan of correction to the minimum necessary. Implementation of the directed corrective action(s) must be completed within the approved time frame and is subject to verification by the department.

(6) The department may deny, suspend, modify, or revoke a RTF license under chapters 71.12, 43.70, 34.05 RCW, and 246-10 WAC, if the applicant or licensees have:

(a) Failed to correct any deficiencies within the required time frames as described in subsections (3) through (5) of this section;

(b) Failed to comply with any other provision of chapter 71.12 RCW or this chapter;

(c) Failed to meet DSHS-DBHR certification standards under chapters 71.05, 70.96A, and 71.34 RCW.

(d) Been denied a license to operate a health care, child care, group care or personal care facility in this state or elsewhere, had the license suspended or revoked, or been found civilly liable or criminally convicted of operating the facility without a license;

(e) Committed, aided or abetted an illegal act in connection with the operation of any RTF or the provision of health care or residential services;

(f) Abandoned, abused, neglected, assaulted, or demonstrated indifference to the welfare and well-being of a resident;

(g) Failed to take immediate corrective action in any instance of assault, abuse, neglect, or indifference to the welfare of a resident; or

(h) Retaliated against a staff member, resident, or other individual for reporting suspected abuse or other alleged improprieties;

(7) The department may summarily suspend a license pending a proceeding for revocation or other action if the department determines a deficiency is an imminent threat to a resident's health, safety, or welfare.

(8) A licensee may contest a department decision or action according to the provision of RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.

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.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-025 Exemptions (~~(and)~~) or alternative means and methods of compliance. (1) An applicant or licensee may request an exemption or alternative means or methods of compliance from any part of this chapter by submitting a written request to the department(~~(, including)~~) that includes:

(a) The specific section, or sections, of rules for which the exemption or alternative means or methods of compliance is requested;

(b) An explanation of the circumstances involved;

(c) A proposed alternative that would ensure the safety and health of residents meeting the intent of the rule; and

(d) Any supporting research or other documentation.

(2) After review and consideration, the department may grant (~~(and)~~) the request if the exemption ((if the exemption)) or alternative means or methods of compliance does not:

(a) Negate the purpose and intent of these rules;

(b) Place the safety or health of the residents in the RTF in jeopardy;

(c) Reduce any fire and life safety or infection control laws or rules; or

(d) Adversely affect the structural integrity of a facility.

(3) The department will send a copy of the exemption or alternative means or methods of compliance decision to the licensee, and shall maintain the exemption or alternative means or methods of compliance as part of the current RTF file. The licensee shall maintain the documented exemption or alternative means or methods of compliance decision on file in the RTF.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-040 (~~(Review of construction documents and functional program-)) Construction review services requirements.~~ (1) Prior to beginning any construction or remodeling, the applicant or licensee must submit an application and fee specified in chapter 246-314 WAC, if applicable, to the department and receive written authorization by the department to proceed.

(2) (~~(The licensee or applicant must submit))~~ The requirements of chapter 246-337 WAC in effect at the time the application and fee are submitted to the department, and the project number as assigned by the department, apply for the duration of the construction project.

(3) Standards for design and construction. Construction shall comply with:

(a) The state building code as adopted by the state building code council under the authority of chapter 19.27 RCW; and

(b) The requirements in this chapter for new construction.

(4) Preconstruction. The applicant or licensee must request and attend a presubmission conference with the department for projects with a construction value of two hundred fifty thousand dollars or more. The presubmission conference shall be scheduled to occur at the end of the design development phase or the beginning of the construction documentation phase of the project.

(5) Construction document review. The applicant or licensee must submit accurate and complete construction documents for proposed new construction to the department for review within ten days of submission to the local authorities. The construction documents must include:

(a) A written functional program, in accordance with RCW 71.12.470, outlining the (~~(service categories and)~~)

types of services provided, types of residents to be served, and how the needs of the residents will be met including(~~;~~ but not limited to) a narrative description of:

- ~~((a))~~ (i) Program goals;
- ~~((b))~~ (ii) Staffing and health care to be provided consistent with WAC 246-337-080;
- ~~((c))~~ (iii) Infection control consistent with WAC 246-337-060;
- ~~((d))~~ Security and safety;
- ~~((e))~~ Seclusion and restraint)) (iv) Safety and security consistent with WAC 246-337-065;
- (v) Restraint and seclusion consistent with WAC 246-337-110;
- ~~((f))~~ (vi) Laundry consistent with WAC 246-337-112;
- ~~((g))~~ (vii) Food and nutrition consistent with WAC 246-337-111; ~~(and~~
- ~~((h))~~ (viii) Medication(~~;~~
- ~~(3) The licensee or applicant must submit accurate, timely, and complete construction documents that comply with all governing rules.~~
- (4) Construction documents must include:
 - ~~(a))~~ consistent with WAC 246-337-105; and
 - ~~(ix) Housekeeping.~~
 - (b) Drawings prepared, stamped, and signed by an architect or engineer 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))~~
 - (c) 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) Schedules 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;
 - ~~((e))~~ (d) Specifications that describe with specificity the workmanship and finishes; ~~(and~~
 - ~~(d))~~
 - (e) 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) A license may not be issued for a new RTF, a new facility within an RTF, or changes in resident bed capacity or licensed service category(ies) for a currently licensed RTF, without written approval from the department's construction review services unit and residential care services program.~~

~~(6) The applicant or licensee must:~~

- ~~(a) Comply with the standards as adopted by the Washington state building code council;~~
- ~~(b)) (f) An interim life safety measures plan to ensure the health and safety of occupants during construction and renovation; and~~
- ~~(g) An infection control risk assessment indicating appropriate infection control measures, keeping the surrounding area free of dust and fumes, and ensuring rooms or areas are well ventilated, unoccupied, and unavailable for use until free of volatile fumes and odors.~~

~~(6) Resubmittals. The licensee shall respond in writing when the department requests additional or corrected construction documents.~~

~~(7) Construction. The licensee or applicant shall comply with the following requirements during the construction phase:~~

- ~~(a) Assure conformance to the approved plans during construction;~~
- ~~((e)) (b) Submit addenda, change orders, construction change directives or any other deviation from the approved plans to the department prior to their installation; and~~
- ~~((d) Provide a written construction project completion notice to the department indicating:~~
 - ~~(i) The completion date; and~~
 - ~~(ii) The actual construction cost;~~
 - ~~(e) Make adequate provisions for the health, safety, and comfort of residents during construction projects.)) (c) Allow any necessary inspections for the verification of compliance with the construction documents, addenda, and modifications.~~

~~(8) Project closeout. The licensee or applicant shall not use any new or remodeled areas until:~~

- ~~(a) The department has approved construction documents;~~
- ~~(b) The local jurisdictions have completed all required inspections and approvals, when applicable or given approval to occupy; and~~
- ~~(c) The licensee or applicant notifies the department when construction is completed and includes:~~
 - ~~(i) A copy of the local jurisdiction's approval for occupancy;~~
 - ~~(ii) The completion date;~~
 - ~~(iii) The actual construction cost; and~~
 - ~~(iv) Additional information as required by the department.~~

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-045 Governance and administration.

The licensee must establish a governing body with responsibility for operating and maintaining the RTF. The governing body must provide organizational guidance and oversight to ensure that resources support and staff provides safe and adequate resident care including, but not limited to:

- (1) Adopting, periodically reviewing, and updating as necessary, policies that:
 - (a) Govern the organization and functions of the RTF including:

(i) A brief narrative explaining the scope of services provided;

(ii) An organization chart specifying the governing body, staff positions, and number of full- or part-time persons for each position; and

(iii) A policy addressing ~~((that))~~ the provision of sufficient resources such as personnel, facilities, equipment, and supplies ~~((are provided))~~ to meet the needs of the population served;

(b) Provide a process for communication and conflict resolution for both staff and residents; ~~((and))~~

(c) Provide clear lines of authority for both management and operation of the RTF; and

(d) Implement the requirements of this chapter and ensure they are:

(i) Kept current;

(ii) Made known to staff and available at all times; and

(iii) Complied with by staff.

(2) Establishing a job description and procedures for selecting and periodically evaluating a qualified administrator to ~~((assure that he or she carries))~~ carry out the goals and policies of the governing body. The administrator must:

(a) Be qualified through appropriate knowledge, experience and capabilities to supervise and administer the services ~~((properly));~~ and

(b) Be available at all times either in person, by telephone or similar electronic means, or ~~((assure that a designated))~~ designate an alternate who has similar qualifications and is available ~~((one hundred percent of the time, either in person, by telephone or electronic pager (or similar electronic means);))~~ to carry out the goals, objectives and standards of the governing body.

~~((3) ((Establishing written policies and procedures that implement all applicable rules, which are routinely reviewed by the administrator and the governing body to ensure they are kept current, made known to staff, made available at all times to all staff, and are complied with within the RTF.~~

~~((4))~~ Establishing a personnel system ~~((that assures))~~ whose:

(a) Personnel records of all employees and volunteers contain written job descriptions consistent with staff responsibilities and standards for professional licensing;

(b) Staff are assigned, oriented, trained, supervised, monitored, and evaluated;

(c) Staff who provide direct resident care, direct treatment, or manage the safety of a resident are competent by training, experience and capability;

~~((d) ((Contractors have current contracts on file clearly stating the responsibilities of the contractor;))~~ Contracts for contracted personnel are kept on file, kept current, and signed. Contracts must also clearly state the responsibilities for all contracted personnel; and

(e) Staff, contractors, consultants, students, volunteers, and trainees with unsupervised access to residents ((omphes)) comply with WAC 246-337-055.

~~((5) Establishing a RTF wide approach to a coordinated quality improvement program for resident care services under chapter 71.12 RCW addressing health and safety.))~~

NEW SECTION

WAC 246-337-048 Quality improvement program.

The licensee must establish policies and procedures to ensure ongoing maintenance of a coordinated quality improvement program to improve the quality of care provided to residents and to identify and prevent serious or unanticipated resident and facility outcomes. The licensee must:

(1) Establish a written performance improvement plan that is periodically evaluated.

(2) Collect, measure, and assess data on policies and procedures, and outcomes related to resident care and the environment including:

(a) Medication administration errors;

(b) Allegations of abuse;

(c) Death;

(d) Suicide;

(e) Injuries which result in serious or unanticipated outcomes;

(f) Restraint or seclusion use;

(g) Resident grievances;

(h) Security incidents; and

(i) Disruption of services through internal or external emergency or disaster event.

(3) Review serious or unanticipated resident or facility outcomes as specified in subsection (2) of this section, in a timely manner.

(4) Implement and document changes or improvements made to prevent future occurrences of any serious or unanticipated resident outcome specified in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-050 Management of human resources.

~~((1))~~ The licensee must ensure residents receive ~~((health care by adequate numbers of))~~ care from qualified staff authorized and competent to carry out assigned responsibilities ~~((including:~~

~~((1))~~);

~~((2))~~ A sufficient number of ~~((personnel))~~ staff must be present on a twenty-four hour per day basis to:

~~((a))~~ Meet the ((health)) care needs of the residents served; ~~((managing))~~

~~((b))~~ Manage emergency situations;

~~((c))~~ Provide crisis intervention ~~((implementation of health care));~~

~~((d))~~ Implement individual service plans; and

~~((e))~~ Carry out required monitoring activities.

~~((2) Personnel))~~ ~~((3))~~ At least one staff trained in basic first aid and age appropriate cardiopulmonary resuscitation (CPR) must be on-site twenty-four hours per day.

~~((4))~~ Staff must be trained, authorized, and where applicable credentialed ((where applicable) to carry out)) to perform assigned job responsibilities consistent with scopes of practice, resident population characteristics and the resident's individual service plan ~~((of care/treatment;~~

~~((3))~~ The presence of at least one individual trained in basic first aid and age appropriate cardiopulmonary resuscitation twenty-four hours per day).

~~((4))~~ (5) The licensee must document that staff receive the following training as applicable:

(a) Initial orientation and ongoing training to address the safety and health care needs of the residents served for all staff;

(b) Bloodborne pathogen training inclusive of HIV/AIDS training for staff involved in direct resident care or potential for having contact with blood or body fluids;

(c) If restraint or seclusion is used in the facility, initial and annual training in the proper and safe use of restraint or seclusion for staff required to perform restraint or seclusion procedures inclusive of:

(i) Techniques to identify staff and resident behaviors, events, and environmental factors that may trigger circumstances that require the use of restraint or seclusion;

(ii) The use of nonphysical intervention skills;

(iii) Choosing the least restrictive intervention based on an individualized assessment of the resident's medical or behavioral status or condition;

(iv) The safe application and use of all types of restraint or seclusion used in the RTF, including training in how to recognize and respond to signs of physical and psychological distress;

(v) Clinical identification of specific behavioral changes that indicate that restraint or seclusion is no longer necessary; and

(vi) Monitoring the physical and psychological well-being of the resident who is restrained or secluded including, but not limited to, respiratory and circulatory status, skin integrity, and vital signs; and

(d) Current basic first aid and age appropriate cardiopulmonary resuscitation for staff required to provide first aid or CPR.

(6) The licensee shall have written documentation (to verify credentials, training, and performance evaluations) for each staff member including (, but not limited to):

(a) Employment (application/hire);

(b) Hire date;

~~((b))~~ (c) Verification of education(,) and experience (and training);

~~((c))~~ (d) Current signed job description;

~~((d))~~ (e) Criminal history disclosure statement and results of a (Washington state patrol) background (inquiry; HIV/AIDS training or verification) check, according to WAC 246-337-055, completed within the previous three months of hire date and annually thereafter;

(f) Current (license/certification/registration-) license, certification, or registration, if applicable(,);

(g) Current basic first aid and age appropriate (cardiopulmonary resuscitation training-) CPR, if applicable(,);

(h) Current Washington state food and beverage service worker permit, (,) if applicable(,);

(i) Current driver's license, (,) if applicable(,);

(j) Initial and ongoing tuberculosis screening ((refer) according to the facility risk assessment and tuberculosis written plan according to WAC 246-337-060(,); and

(k) Annual signed performance evaluation(s)(,);

~~(l) Staff using restraint and seclusion procedures must receive initial and ongoing education and training in the proper and safe use of seclusion and/or restraints;~~

~~(m) Initial orientation and ongoing training to address the safety and health care needs of the population served.~~

~~(5) If);~~

(7) For the purposes of this section staff includes: Independent contractors, consultants, students, volunteers and trainees ((are)) providing direct ((on-site residential care, the licensee must ensure their compliance with this section)) care.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-055 Personnel criminal history, disclosure, and background inquiries. The licensee ((must ensure that)) shall screen all prospective staff, independent contractors, consultants, students, volunteers and trainees with unsupervised access to residents ((are screened)) for criminal history disclosure and background requirements using a Washington state patrol background check consistent with RCW 43.43.830 through 43.43.842. All background check reports and signed disclosure statements must be made available to the department upon request.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-060 Infection control. The licensee must ((ensure each resident's care is provided in an environment)) implement and maintain an infection control program that prevents the transmission of infections and communicable disease among residents, staff, and visitors ((including)) by:

(1) ((Implementing and maintaining an infection control program by assignment of responsibility for infection control and monitoring to a specified staff member.

(2) ~~Maintaining an infection control program that includes adoption and implementation of)~~ Developing written policies and procedures for:

(a) ((Meeting the standards as outlined in the most recent edition of the department's *Human Immune Deficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) Curriculum Manual*, including;

(i)) Hand hygiene;

((ii)) (b) Cleaning and disinfection;

((iii) Standard/universal)) (c) Standard precautions to prevent transmission of bloodborne pathogens in accordance with chapter 296-823 WAC;

((b)) (d) Resident((s with poor)) hygiene;

((e) Control of bloodborne pathogens in accordance with WISHA, chapter 296-823 WAC;

(d) Control)) (e) Preventing transmission of tuberculosis consistent with ((WISHA, department guidelines;)) the department's *Washington State Tuberculosis Services Manual*, DOH 343-071 June 2012, and chapter 246-170 WAC;

((e) Exclusion)) (f) Management of staff ((from work who have)) with a communicable disease in an infectious stage; ((and

(f))

(g) Environmental management; and

(h) Housekeeping functions.

~~((3) Ensuring that staff report notifiable conditions and cooperate with public health authorities to facilitate investigation of a case, suspected case, or outbreak of a notifiable condition, consistent with chapter 246-101 WAC.~~

~~(4)) (2) Complying with chapters 246-100 and 246-101 WAC.~~

~~(3) Providing ((the)) all necessary supplies and equipment ((necessary)) to implement the ((RTF)) infection control ((policies and procedures.~~

~~(5) Complying with chapter 246-100 WAC "Communicable and certain other diseases.") program.~~

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-065 ((Health and) Safety and security. The licensee must protect resident ((health and)) safety and security by developing written policies and procedures that are consistent with the requirements of this chapter((;)) and address:

(1) ~~((Coordination of interagency and intra-agency services, if any, to meet and provide for resident health care needs.))~~ Management of disorderly residents, visitors, or staff.

(2) ~~((The provision of health care services.))~~ The safety of residents during transportation, including:

(a) Disorderly residents;

(b) Minimum qualifications for transport staff; and

(c) Any additional equipment in transport vehicles to ensure safety such as car seats for infants and children, and first-aid kits.

~~(3) ((The provision for transportation for residents in accordance with Washington state laws and rules governing transportation.~~

~~(4) Smoking policies and procedures in compliance with applicable Washington state laws and rules.~~

~~(5)) Smoking, vaping, and tobacco use by residents, visitors, and staff.~~

(4) Security ~~((to protect residents, visitors, staff and property)), including ((, but not limited to)):~~

(a) Controlling all entrances and exits and accounting for access to and egress ((elopement and evacuation)) from the RTF; and

~~((Investigating, and recording all security incidents.~~

~~(6) Reporting to the department serious or undesirable resident outcomes including, but not limited to, death, suicide, or major disruption of services through internal or external emergency events.))~~ Conducting resident searches.

(5) Reporting to the department and other appropriate agencies, by the end of the next business day of the incident occurring, serious or undesirable outcomes that occur in the facility including:

(a) Allegations of abuse;

(b) Death;

(c) Suicide;

(d) Injuries resulting in an inpatient hospital stay; and

(e) Disruption of services through internal or external emergency or disaster.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-070 Emergency disaster plan. ~~((+))~~ The licensee must ~~((ensure resident health and safety by establishing and implementing))~~ establish and implement an emergency disaster plan designed ~~((for response))~~ to respond to internal and external emergency ~~((safety))~~ situations.

(1) The emergency disaster plan must:

(a) Be specific to ~~((the RTF, and))~~ each building that comprises the ~~((RTF))~~ facility;

(b) Be communicated to the residents and staff;

(c) Be coordinated with local emergency plans;

(d) Address actions the licensee will take if residents cannot return to the facility;

(e) Be posted or readily available to all staff and residents; and

(f) ~~((Require))~~ Include emergency phone numbers ~~((to be adjacent to appropriate phones)).~~

(2) The emergency disaster plan must identify:

(a) ~~((Who is))~~ The person responsible for each aspect of the plan;

(b) ~~((Procedures for accounting))~~ A system to account for all residents and staff during and after the emergency;

(c) ~~((How the premises will be evacuated, if necessary.))~~ Evacuation procedures and the meeting location after evacuation;

(d) ~~((How to address))~~ Care of residents with special needs during and after an emergency;

(e) Provisions ~~((for))~~ of emergency medications, food, water, clothing, shelter, heat and power for critical functions for three days;

(f) How family members will be contacted; and

(g) Arrangements for transportation ~~((arrangements if necessary)).~~

(3) ~~((The licensee must evaluate the effectiveness of the emergency plan, including:~~

~~(a) Review at least annually and revise as needed;~~

~~(b) Conduct and document, at least annually.))~~ Evacuation routes must be clearly posted in plain sight of residents and staff.

(4) The emergency disaster plan must include an evaluation process that includes:

(a) At least annually, conducting and documenting emergency drills for residents and staff; ~~((and~~

~~(e) Debrief))~~

(b) A debriefing and ((evaluate)) evaluation of the plan after each emergency incident or drill; and

(c) At least annually, documenting, reviewing and, as needed, revising the emergency disaster plan.

~~((4))~~ (5) Emergency supplies and first-aid equipment must be:

(a) In a designated ~~((location))~~ location(s);

(b) Readily available to staff ~~((during all hours of operation))~~ including during the transportation of residents;

(c) ~~((Sufficient in type and quantity according to staff and))~~ Available to meet residents' needs; and

(d) ~~((Sufficient to maintain a three-day emergency supply of dry or canned food and water for all staff and residents.))~~ Within applicable expiration dates.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-075 Resident rights. The licensee must establish a process to ensure resident rights are protected in compliance with chapter 71.12 RCW, this chapter, and ~~((with chapters 70.96A, 71.05, and/or 71.34 RCW, as applicable, depending))~~ other applicable laws, and are based on the service ((categories that are part of the RTF license)) types provided in the RTF. This process must address ~~((, at a minimum,))~~ how the RTF will:

(1) In an understandable manner, inform each resident ((in an understandable manner, his or her)) or their personal representative, designee or parent or guardian, of the following:

(a) All rights, treatment methods, and rules applicable to the proposed health care of ~~((a particular))~~ the resident;

~~(2) Document that each resident received a written copy of his or her rights on or before admission.~~

~~(3) Address use of emergency interventions such as use of youth behavior management guidelines, restraint and/or seclusion, the use of special treatment interventions, restriction of rights and parameters of confidentiality.~~

~~(4) Allow residents, their personal representatives, and parents, to review resident files in accordance with chapter 70.02 RCW.~~

~~(5) Ensure that);~~

(b) The estimated cost of treatment;

(c) The name, address and telephone number of the department;

(d) How to file a complaint with the department without interference, discrimination, reprisal or facility knowledge; and

(e) Use of applicable emergency interventions such as:

(i) Behavior management;

(ii) Restraint or seclusion, if used in the RTF;

(iii) Special treatment intervention such as room or personal searches;

(iv) Restrictions of rights; and

(v) Confidentiality parameters based on terms of admission or confinement.

(2) Treat each resident ((is treated)) in a manner that respects individual identity, human dignity and fosters constructive self-esteem ((by ensuring)). Each resident has the right to:

(a) Be free of abuse, including being deprived of food, clothes, or other basic necessities;

(b) Be free of restraint ~~((and/or))~~ or seclusion, except as provided in WAC 246-337-110;

(c) Participate or abstain from participation in social and religious activities;

(d) Participate in planning ~~((his or her))~~ their own health care and treatment ~~((that considers their own medical and/or mental health advance directives));~~

(e) Review or have their personal representative, designee, or parent or guardian review the resident's files in accordance with chapter 70.02 RCW;

(f) Refuse to perform services for the benefit of the RTF unless agreed to by the resident, ((as a part of)) documented in the individual ((health care)) service plan and in accordance with applicable law;

~~((f))~~ Inform each resident of the cost of treatment;

~~(g) Inform each resident in writing of the department contact information, including telephone number and mailing address;~~

~~(h) Inform each resident that the resident may file a complaint with the department regarding the RTF's noncompliance with any part of this chapter, without interference, discrimination or reprisal. The resident may choose whether to notify the RTF of the complaint;~~

~~(i) Promote a healthy, safe, clean and comfortable environment;))~~

~~(j) Protect each resident))~~ (g) Have a safe and clean environment; and

(h) Be free from invasion of privacy((:)); provided that reasonable means may be used to detect or prevent items that may be harmful or injurious to the resident or others, from being possessed or used on the premises.

~~((6))~~ (3) On or before admission, document that each resident, or the resident's personal representative, designee, parent or guardian receives a written copy of the resident's rights that includes all items in subsection (2) of this section.

(4) Protect the confidentiality of;

(a) Treatment and personal information when communicating with individuals not associated or listed in the ((resident individual's treatment)) resident's individual service plan or confidentiality disclosure form((:

~~(7));~~

(b) Residents when visitors or other nonresidents are in the RTF; and

(c) Residents receiving substance use disorder service in accordance with 42 C.F.R., Part II.

(5) Comply with reporting requirements of suspected incidents of child or adult abuse and neglect in accordance with chapters 26.44 and 74.34 RCW.

~~((8))~~ (6) Account for each resident's assets, including allowance, earnings from federal or state sources and expenditures.

~~((9))~~ (7) Assist each resident, upon request, in sending written communications of the fact of the resident's commitment in the RTF to friends, relatives, or other persons.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-080 Resident care services. ~~((1))~~ **Policies and procedures:** The licensee must establish and implement policies and procedures that describe how residents are provided care and personal equipment to meet their health care needs including:

~~(a) Admission, transfer, discharge and referral process.~~

~~(b) Addressing how the licensee provides or makes provision for health care services.~~

~~(c) Addressing the action of RTF personnel when medical emergencies or a threat to life arises when a physician or authorized health care provider is not present including:~~

~~(i) Having current policies and procedures signed by a physician or authorized health care provider, reviewed as needed and at least biennially;~~

~~(ii) How resident medical and related data shall be transmitted in the event of a transfer;~~

(iii) Need for the notification of legal guardian or next of kin, the department or other regulatory agencies in the event of a serious change in the resident's condition, transfer of a resident to another facility, elopement, death, or when unusual circumstances occur; and

(iv) ~~When to consult with internal or external resource agencies or persons e.g., poison control, fire department and police.~~

(d) Addressing how the RTF must provide for each resident's need for personal care items and durable medical equipment.

(e) ~~Addressing provisions for transfer and appropriate prenatal and postnatal care services for pregnant residents.~~

(f) Addressing how a licensee providing twenty four hours per day nursing service functions provides systems for supervision, assessment and delegation in accordance with applicable statute and rules including chapter 18.79 RCW; Nursing care.

(g) ~~Addressing how a licensee providing acute detoxification services must ensure resident health and safety including:~~

(i) A licensed nurse must be on-site when a resident is receiving acute detoxification services;

(ii) Registered nurse responsible for supervising resident care nursing services shall be on-site at least four hours per week and available on-call to the licensed practical nurse; and

(iii) Policies and procedures for acute detoxification services approved by an authorized health care provider.

(h) Addressing how licensees providing subacute detoxification services must ensure resident health and safety, including:

(i) Implementing policies and procedures establishing agreements with authorized health care providers or hospitals that includes:

(A) Criteria for determining the degree of medical stability of a potential resident in a subacute detoxification facility;

(B) Monitoring the resident after being admitted;

(C) Reporting abnormal symptoms according to established criteria;

(D) Criteria requiring immediate transfer to a hospital; and

(E) Resident discharge or transfer criteria;

(ii) Monitoring of residents by a staff including observing a resident for signs and symptoms of illness or trauma; and

(iii) Observing the resident to self-administer his or her own medication as prescribed by the resident's health care provider.

(2) ~~Delivery of resident care services:~~ The licensee must ensure the provision of or for that resident care services to meet the health care needs of the resident including:

(a) Admission is limited to residents for whom a facility is qualified by staff, services, equipment, building design and occupancy to give safe care.

(b) A health care screen of each resident that is to be conducted upon admission and updated as changes occur or when additional health care needs are identified.

(c) A completed comprehensive health assessment and medical history that is to be conducted by a health care provider following admission to an RTF, unless a current com-

prehensive health assessment or review was performed and is available upon admission to an RTF providing mental health or acute detoxification services.

(d) ~~A health assessment by a health care provider, any time a resident exhibits signs and symptoms of an injury, illness or abnormality for which medical diagnosis and treatment are indicated.~~

(e) ~~Access to and availability of authorized health care providers to develop and implement the resident plan of care.~~

(f) ~~Sufficient numbers of trained personnel who are available to provide health care according to the resident's health care plan.~~

(g) ~~Provision for or access by referral to health care for residents admitted to the RTF including, but not limited to:~~

(i) ~~Assisting residents in following all prescribed treatments, modified diets, activities or activity limitations.~~

(ii) ~~Assisting residents to keep health care appointments.~~

(iii) ~~Medication administration or observing the resident self-administer his or her own medication as prescribed by the resident's authorized health care provider.~~

(iv) ~~Incorporating resident's health care needs and behavioral needs into the resident's overall health care plan;~~

(v) ~~Emergency health care.~~

(h) ~~Provision for twenty-four hours per day nursing service functions to include availability by phone; when the RTF provides mental health inpatient evaluation and treatment, mental health adult residential treatment, mental health child long-term inpatient treatment, mental health child inpatient evaluation and treatment, and/or chemical dependency acute detoxification.~~

(i) ~~Provision is made either on the premises, through a contract laboratory or through a health care provider for service(s) required by the resident.~~

(j) ~~Storing and labeling each resident's personal care items separately preventing contamination and access by other residents.~~

(3) ~~Documentation:~~ The licensee must ensure documentation of health care received or provided in the resident's health care record.)) (1) The licensee must establish and implement policies and procedures that:

(a) Describe how the licensee meets the residents' health care needs by satisfying the requirements of this section; and

(b) Are reviewed and approved by a health care prescriber at least biennially.

(2) The licensee must:

(a) Limit admission, transfer, discharge, and referral processes to residents for whom the RTF is qualified by staff, services, equipment, building design and occupancy to give safe care;

(b) Conduct or accept a current health care screening of each resident upon admission including a tuberculosis risk assessment and symptom screening;

(c) Refer residents for health care provided outside of the RTF as needed such as, but not limited to, laboratory, dental, ambulatory care or specialty services as needed;

(d) Assist residents in following all prescribed treatments, modified diets, activities or activity limitations;

(e) Assist residents to keep health care appointments;

(f) Provide access to a health assessment by a health care prescriber any time a resident exhibits signs or symptoms of

an injury, illness or abnormality for which a medical diagnosis and treatment are indicated;

(g) Provide access to tuberculosis testing if the resident is high-risk or symptomatic of tuberculosis;

(h) Address serious illness, medical emergencies, or threat to life, to include:

(i) Criteria for determining the degree of medical stability of residents;

(ii) Observing residents for signs and symptoms of illness or trauma;

(iii) Reporting abnormal signs and symptoms according to an established protocol;

(iv) Criteria requiring a resident's immediate transfer to a hospital;

(v) How staff transmits the resident's medical and related data in the event of a transfer;

(vi) How to notify the parent or guardian, personal representative or next of kin in the event of an emergency, threat to life, serious change in the resident's condition, transfer of a resident to another facility, or death; and

(vii) When to consult with internal or external resource agencies or entities such as poison control, fire department or police.

(i) Provide access to emergency and prenatal care for pregnant residents, and postnatal care services for residents and infants; and

(j) Assure provisions of each resident's personal care items and durable medical equipment including storing and labeling each resident's personal care items separately, preventing contamination, and preventing access by other residents.

(3)(a) RTFs performing the following duties must meet the staffing requirements in (b) of this subsection:

(i) Have a health care prescriber initiate or adjust medication that is administered by staff according to the resident's individual service plan;

(ii) Otherwise administer medications to the resident; or

(iii) Use restraint or seclusion.

(b) RTFs performing any duties described in (a) of this subsection must meet the following staffing requirements:

(i) A registered nurse, licensed practical nurse, or prescriber must be available on-site during medication administration or while restraint or seclusion is being used, and otherwise available by phone twenty-four hours per day, seven days per week; and

(ii) A prescriber or registered nurse who is responsible for the supervision of resident care and nursing services must be available on-site at least four hours per calendar week.

(4) RTFs which do not perform any duties described in subsection (3)(a) of this section but have a health care prescriber initiate or adjust medication for residents to self-administer according to the resident's individual service plan must have a registered nurse or licensed practical nurse available at least by phone twenty-four hours per day, seven days per week.

(5) RTFs which meet the conditions in subsection (3) or (4) of this section must:

(a) Perform a health assessment for each resident. A prescriber or licensed nurse operating within their scope of practice shall conduct and complete the assessment following the

resident's admission to the RTF unless a health assessment was performed within the past three months and is available to the RTF upon admission; and

(b) Develop and implement the policies and procedures explaining how nursing staff will be utilized including:

(i) Scheduling of hours on-site and availability by phone;

(ii) Supervision, assessment, and training of other staff;

(iii) Delegation to other staff;

(iv) Medication management;

(v) Treatment planning;

(vi) Health screenings;

(vii) Health assessments; and

(viii) If applicable, restraint or seclusion.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-085 Accepting a child with a parent in treatment. ~~((A chemical dependency facility that accepts)) (1) A RTF providing substance use disorder services and no mental health services may accept a child or children along with a parent in treatment ((must assure child care services are provided for the child and the services of a health care provider who is responsible for developing health care policies, provides consultation and monitors the child's health care. The facility shall:~~

~~(1)) as long as the parent is not receiving withdrawal management services.~~

~~(2) If the RTF provides withdrawal management, the child must be kept physically and visually separate from residents receiving withdrawal management services.~~

~~(3) A RTF that accepts a child with a parent in treatment must operate or arrange for child care which the child will attend during treatment hours of the parent. Child care facilities must be licensed by ((DSHS)) the department of early learning under:~~

~~(a) Chapter ((388-295)) 170-295 WAC((Minimum licensing requirements for child day care centers));~~

~~(b) Chapter ((388-151)) 170-297 WAC((School-age child care center minimum licensing requirements, chapter 388-155 WAC, Minimum licensing requirements for family child day care homes which the children will attend during treatment hours of the parent;~~

~~(2) Allow an infant under one month of age to be cared for by the staff of the RTF to supplement care by the mother;~~

~~(3) Allow the parent to be responsible for the care of his/her own child); or~~

~~(c) Chapter 170-296A WAC;~~

~~(4) During the hours the parent is not in treatment((with)) the RTF must require that the parent be responsible for the child's care under the following conditions:~~

~~(a) The parent's management of the child is subject to the policies and procedures of the RTF; and~~

~~(b) A parent may designate another resident to care for a child, if the designation is in writing and includes((:~~

~~(i)) a specified time period((;~~

~~(ii)), any special instructions((;~~

~~(iii) Is signed by)), and the parent, designee and staff member ((who approves)) sign an approval of the designation;~~

~~((4) Establish policies and procedures addressing the chronological and developmental needs of the children to be accepted;))~~

(5) The RTF shall obtain a health history for each child following admission;

~~(6)) and, if needed, develop with the parent a plan of care for each child that addresses the child's health care needs, including medications.~~

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.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-095 Resident health care records. The licensee must ensure the RTF meets the following requirements:

(1) Develop and implement procedures for maintaining current health care records as required by chapter 70.02 RCW and ~~((RCW 71.05.390 or by))~~ other applicable laws.

(2) Health care records may be integrated into a resident's individual service plan so long as the requirements of this section are met.

(3) Make health care records accessible for review by appropriate direct care staff, the resident, the parent or guardian, and the department in accordance with applicable law.

~~((3) Ensure health care records are legibly written or retrievable by electronic means;))~~

(4) Document ~~((medical))~~ health care information ~~((on the licensee's))~~ in a standardized ~~((forms))~~ manner.

(5) Record health care information by the health care provider or direct care staff with resident contact to include typed or legible handwriting in ~~((blue or black))~~ ink, verified by signature or unique identifier, title, date and time.

(6) Maintain the confidentiality and security of health care records in accordance with applicable law.

(7) Maintain health care records in chronological order in their entirety or ~~((chronological))~~ chronologically by sections.

(8) Keep health care records current with all documents filed according to the licensee's written timeline policy.

(9) ~~((Inclusion of))~~ Include the following, at a minimum, in each health care record:

(a) Resident's name, ~~((age))~~ date of birth, sex, marital status, date of admission, voluntary or other commitment, name of ~~((physician))~~ health care prescriber, diagnosis, date of discharge, previous address and phone number, if any;

(b) Resident's receipt of notification of resident's rights ~~((and responsibilities, if applicable));~~

(c) Resident's consent for health care provided by the RTF, unless the resident is admitted under an involuntary court order;

(d) A copy of any authorizations, advance directives, powers of attorney, letters of guardianship, or other similar documentation ~~((provided by the resident));~~

(e) Original reports, where available or, if not available, durable, legible copies of original reports on all tests, procedures, and examinations performed on the resident;

(f) ~~((Health assessments;~~

~~(g) Health care plan, including the names, relationship to the resident and addresses of those individuals the resident states with whom the RTF may))~~ Individual service plan according to WAC 246-337-100;

(g) Individuals whom the resident consents for the RTF to freely communicate with regarding the health care of the resident ((without violating the resident's right to confidentiality or privacy of health care information)) including the individual's name, relationship to the resident, and address;

(h) Dated and signed ~~((or initialed))~~ notes describing all health care provided for each contact with the resident pertinent to the resident's ~~((health care))~~ individual service plan including((, but not limited to)):

(i) Physical and psychosocial history;

~~((ii) ((Medication administration, medical/nursing services, and treatment provided, resident's response to treatment and any adverse reactions and resolution of medical issues;~~

~~((iii))~~ Health screening;

(ii) Health care service and treatment provided, including resident's response to treatment and any adverse reactions and resolution of health care issues and when applicable;

(iv) Medication administration, and medical staff notification of medication administration errors, adverse effects, or side effects;

(v) Use of restraint or seclusion consistent with WAC 246-337-110;

~~((iv))~~ (vi) Staff actions or response to health care needs;

(vii) Instructions or teaching provided to the resident in connection with his or her health care; and

~~((v))~~ (viii) Discharge summary, including:

(A) ~~((Concise review))~~ Summary of the resident's physical and mental history, as applicable;

(B) Condition upon discharge;

(C) List of current medications;

(D) Recommendations for services, follow-up or continuing care; and

~~((D))~~ (E) Date and time of discharge.

(10) ~~((Retaining))~~ Retain the health care records at least six years beyond the resident's discharge or death date, whichever occurs sooner, and at least six years beyond the age of eighteen.

(11) ~~((Destroying))~~ Destroy the health care records in accordance with applicable law and in a manner that preserves confidentiality.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-100 ((Health care)) Resident's individual service plan. (1) The licensee must ~~((ensure that))~~ develop and implement an individual ~~((health care))~~ service plan ((is developed and implemented)) for each resident based on ~~((health assessment(s) on admission and updated as additional needs are identified during treatment that includes the following:~~

~~((1) The health care plan must be prepared by one or more staff involved in the resident's care with participation by the~~

resident and by either his or her legal representative or parent when minors are involved;

(2) An initial or provisional health care plan addressing the health care needs of the resident on admission to a RTF;

(3) A discharge (aftercare) health care plan if the resident will require less than a fourteen-day treatment, if appropriate; and

(4) A comprehensive health care plan developed by participants providing health care to the resident addressing and including, but not limited to:

(a) Health care needs;

(b) Implementation, modification and review of health care needs documented in the health care plan and health care record;

(c) Needs of a mother and child during pregnancy and after delivery, if applicable;

(d) Work assignments given to residents as part of their health care plan, if applicable; and

(e) Discharge health care needs)) the resident's:

(a) Initial health on admission; and

(b) Health assessment(s).

(2) Individual service plans must:

(a) Be prepared by one or more staff involved in the resident's care with participation by the resident and by either his or her personal representative or parent or guardian when minors are involved;

(b) Address the needs of a mother and baby during pregnancy and after delivery, if applicable;

(c) Include work assignments given to a resident as part of their individual service plan, if applicable;

(d) Be updated as additional needs are identified during treatment; and

(e) Include a discharge health care plan.

AMENDATORY SECTION (Amending WSR 15-09-108, filed 4/20/15, effective 5/21/15)

WAC 246-337-105 Medication management. The licensee is responsible for ~~((the control and use of all medications within the RTF, including:~~

~~(1) Ensuring policies and procedures and medication protocols are developed, approved, reviewed and implemented by licensed health care providers, administration and pharmacist (as needed). The policies and procedures must be consistent with the rules of the department and the pharmacy quality assurance commission and address all aspects of medication administration, including the following:~~

~~(a) Timely procurement;~~

~~(b) Medication administration;~~

~~(c) Prescribing;~~

~~(d) Proper storage conditions addressing security, safety, sanitation, temperature, light, moisture and ventilation;~~

~~(e) Use of nonprescription drugs:~~

~~(i) List of drugs available;~~

~~(ii) Parameters of use;~~

~~(f) Receipt;~~

~~(g) Proper labeling;~~

~~(h) Disposal;~~

~~(i) Medication brought into RTF by a resident;~~

~~(j) Accountability;~~

~~(k) Starter supply of psychotropic, detoxification and emergency drugs not for a specific resident;~~

~~(l) Emergency allergy response kit of prepackaged medications and supplies for the treatment of anaphylactic shock; and~~

~~(m) Medications for short term authorized absence (pass) from the RTF, where applicable.~~

~~(2) Establishing and maintaining of)) implementing policies and procedures for the control and appropriate use of all drugs within the RTF in accordance with all applicable state and federal regulations. The policies and procedures to implement this section must be developed, approved, and reviewed by a health care prescriber and the RTF administrator, and must be consistent with this chapter.~~

~~(1) Procurement. Timely procurement of drugs must be achieved in one or more of the following ways:~~

~~(a) A pharmacy licensed under chapter 18.64 RCW provides resident specific drugs by prescription order to the RTF;~~

~~(b) A prescriber purchases drugs from a licensed wholesaler and is responsible for the drugs;~~

~~(c) The RTF is listed as a hospital pharmacy associated clinic under a hospital pharmacy license in accordance with chapter 18.64 RCW and applicable rules adopted by the Washington state pharmacy quality assurance commission;~~

~~(d) The RTF holds a health care entity license under chapter 18.64 RCW and purchases drugs consistent with chapter 246-904 WAC; and~~

~~(e) The resident brings his or her prescribed medication with them to the RTF.~~

~~(2) Storage and security.~~

~~(a) Storage of drugs must include limits on access to drugs to those staff authorized to assist, administer, or dispense drugs and addresses security, safety, sanitation, temperature, light, moisture and ventilation, and hand washing facilities. All drugs must be stored in accordance with United States pharmacopoeia standards and designated storage locations are constructed in accordance with WAC 246-337-126.~~

~~(b) Automated drug dispensing devices (ADDDs). For the purposes of this section, an ADDD has the same meaning as defined in WAC 246-874-010. ADDDs may be used to store drugs if:~~

~~(i) The ADDD is leased or owned by a prescriber who maintains sole responsibility for the drugs;~~

~~(ii) The RTF holds a health care entity license under chapter 18.64 RCW and complies with chapters 246-874 and 246-904 WAC; or~~

~~(iii) The RTF is operated in connection with a licensed hospital and complies with chapter 246-874 WAC and rules of the pharmacy quality assurance commission governing hospital pharmacy associated clinics.~~

~~(3) Inventory of stock drugs. The licensee shall document:~~

~~(a) Receipt and disposal of all drugs;~~

~~(b) Inventory of legend drugs;~~

~~(c) Inventory of controlled substances biennially, including:~~

~~(i) Keep all controlled substance records for a minimum of two years;~~

(ii) Have two authorized staff verify shift counts of controlled substances when transfer of accountability occurs. If an ADDD is used, staff must follow the policies and procedures developed for the ADDD; and

(iii) Report to the Washington state pharmacy quality assurance commission if the controlled substance counts or inventory indicate disappearances or unaccounted for discrepancies of controlled substances in accordance with WAC 246-873-080 and 246-887-020, and 21 C.F.R. Sec. 1301.76(b).

(4) Prescribing and administering drugs.

(a) An organized system must be established and maintained that ensures accuracy in receiving, transcribing and implementing ((policies and procedures)) orders for medication administration((, including ensuring)) that ensures residents receive the correct medication, dosage, route, time, and reason.

((3) Documentation of) (b) An authorized health care prescriber shall sign all written orders for legend drugs, controlled substances and vaccines. Orders, including telephone or verbal orders for legend drugs, controlled substances and vaccines must be signed as soon as possible, but no later than seventy-two hours after the telephone or verbal order has been issued.

(c) If using electronic prescribing, prescribers shall comply with RCW 69.50.312, chapter 246-870 WAC, and 21 C.F.R. Sec. 1311(c).

(d) A prescriber shall approve the use of self-administered nonprescription drugs. Staff shall provide the nonprescription drugs according to prescriber instructions.

(e) A prescriber shall:

(i) Develop an approved list of nonprescription drugs acceptable for residents that includes the parameters of use for each drug; and

(ii) Review and approve the list annually.

(f) The licensee shall address the way(s) medications are administered including:

(i) Staff-administered medication in which licensed staff operating within their scope of practice remove the drug from the container and provide it to the resident for ingestion or otherwise administer the drug to the resident;

(ii) Observed self-administration of medication in which residents obtain their container of medication from a supervised and secure storage area, remove the dose needed, ingest or otherwise take the medication as directed on the label while being observed by staff;

(iii) Independent self-administration of medication in which residents obtain their container of medication from either a supervised and secure storage area or from their personal belongings, remove the dose needed, ingest or otherwise take the medication as directed on the label without being observed by staff; or

(iv) Involuntary antipsychotic medication administration consistent with WAC 388-865-0570.

(g) Medication administration errors, adverse effects, and side effects must be reported and addressed;

(h) The licensee shall develop a policy and procedure for:

(i) The use, receipt, storage and accountability for residents receiving methadone from an outpatient methadone clinic, if applicable; and

(ii) Drugs given to a resident on temporary leave from the RTF.

(5) Documentation. All medications administered ((or)), observed being self-administered, or involuntarily administered must be documented on the medication administration record, including ((the following data)):

(a) Name and dosage of the medication;

(b) ((Start/stop date;)) Parameters of use;

(c) Date the medication order was initiated;

(d) Date the medication order was discontinued;

(e) Time of administration;

((+)) (f) Route;

((+)) (g) Staff or resident initials indicating medication was administered, or observed being self-administered ((or issued));

((+)) (h) Notation if medication was refused, held, wasted or not administered or observed being self-administered;

((+)) (i) Allergies; and

((+)) (j) Resident response to medication when given ((as necessary or)) "as needed ((PRN));

(i) Medical staff notification of errors, adverse effects, side effects; and

(j) Within established parameters for nonprescription drugs:

(4) Ensuring written orders are signed by an authorized health care provider with prescriptive authority for all legend drugs and vaccines. Verbal orders for legend drugs and vaccines must be signed by the prescriber as soon as possible, but no later than seven days after the verbal order.

(5) Ensuring use of nonprescription drugs that are self-administered are:

(a) Within parameters established for nonprescription drugs; and

(b) According to established list.

(6) Having a current established drug reference resource available for use by RTF staff)."

(6) RTF staff must have available to them a current established drug reference resource.

(7) For the purposes of this section:

(a) Controlled substance has the same meaning as defined in RCW 69.50.101; and

(b) Legend drugs has the same meaning as defined in RCW 69.41.010.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-110 Use of ((seclusion and)) restraint and seclusion. ((Any)) (1) This section only applies to an RTF that ((utilizes)) uses restraint or seclusion ((must ensure that restraint or seclusion is performed in compliance with chapters 70.96A, 71.05, 71.34 RCW, this chapter, and other applicable federal and state laws and rules. Restraint and seclusion must be performed in a manner that is safe, proportionate and appropriate to the severity of the behavior, the resident's)). The licensee shall have policies and procedures

addressing the application and use of restraint or seclusion consistent with this chapter.

(2) The following facilities must have a minimum of one seclusion room for seclusion or temporary holding of residents awaiting transfer:

(a) Any RTF certified under chapter 388-865 WAC as an evaluation and treatment facility, competency restoration facility or involuntary crisis triage facility; or

(b) Any RTF certified under chapter 388-877B WAC as a detoxification facility providing secure detoxification services as defined in RCW 70.96B.010.

(3)(a) At admission, the incoming resident must be informed and provided a copy of the RTF's policy regarding the use of restraint or seclusion. An acknowledgment that the information and policy has been received must be obtained in writing from the resident; or

(b) In the case of a minor, the resident's parent(s) or guardian(s) must be informed and provided a copy of the RTF policy and acknowledge in writing that the information has been received.

(4) Restraint or seclusion must be safe, based on:

(a) Assessment of behavior;

(b) Chronological and developmental age(¿);

(c) Size(¿);

(d) Gender(¿);

(e) Physical, medical, and psychiatric condition(¿); and

(f) Personal history.

~~((1) The licensee may use seclusion or)~~ (5) Restraint or seclusion must only be used in emergency situations ~~((needed))~~ to ensure the physical safety of the individual resident or other residents or staff of the ~~((facility))~~ RTF, and when less restrictive measures have been found to be ineffective to protect the resident or others from harm.

~~((2) Seclusion and restraint procedures must be implemented in the least restrictive manner possible in accordance with a written modification to the resident's health care plan and discontinued when the behaviors that necessitated the restraint or seclusion are no longer in evidence.~~

~~(3))~~ (6) A prescriber must authorize use of the restraint or seclusion.

(7) If the order for restraint or seclusion is verbal, the verbal order must be received by a registered nurse or licensed practical nurse.

(8) "Whenever needed" or "as needed" ~~((PRN))~~ orders for use of ~~((seclusion or))~~ restraint or seclusion are prohibited.

~~((4) A physician or other authorized health care provider must authorize use of the restraint or seclusion within one hour of initiating the restraint or seclusion.~~

~~(5))~~ (9) In emergency situations in which an order cannot be obtained prior to the application of restraint or seclusion, the order must be obtained either during the emergency application of the restraint or seclusion, or immediately after the restraint or seclusion has been applied. Policies and procedures must identify who can initiate the emergency application of restraint or seclusion prior to obtaining an order from a health care prescriber.

(10) Restraint and seclusion cannot be used simultaneously with persons under twenty-one years of age.

(11) Staff shall continuously observe and monitor residents in restraint or seclusion using:

(a) Face-to-face observation and monitoring; or

(b) Both direct sight video and two-way audio communications.

(12) The health care prescriber must:

(a) Limit each order of restraint or seclusion ~~((is limited in length of time to))~~ as follows:

~~((a))~~ (i) Adults: Four hours;

~~((b))~~ (ii) Children and adolescents ~~((ages))~~ at least nine ~~((to seventeen))~~ years old but less than eighteen years old: Two hours; and

~~((c))~~ (iii) Children under nine years of age: One hour~~((~~

~~(6) A physician or an authorized health care provider, authorized by the licensee, may));~~

(b) Be available to staff for consultation, at least by phone, throughout the period of emergency safety intervention;

(c) Examine the resident before the restraint or seclusion exceeds more than twenty-four hours; and

(d) Only renew the original order in accordance with ~~((these))~~ the limits in (a) of this subsection for up to a total of twenty-four hours. For each subsequent twenty-four hour period of restraint or seclusion, repeat the examination.

~~((7) A physician or an authorized health care provider must examine the resident, before the restraint or seclusion exceeds more than twenty-four hours. This procedure must be repeated for each subsequent twenty-four hour period of restraint or seclusion.~~

~~(8) Within one hour of initiation of restraint or seclusion, an authorized health care provider must conduct a face-to-face assessment of the physical and psychological well-being of the resident.~~

~~(9) The resident's clinical record must include the))~~ (13) A health care prescriber or registered nurse must, within one hour of initiation of restraint or seclusion, conduct a face-to-face assessment of the resident including the residents' physical and psychological status, behavior, appropriateness of intervention, and any complications resulting from the intervention of the resident and consult the ordering health care prescriber. If restraint or seclusion is discontinued before the face-to-face assessment is performed, the face-to-face assessment must still be performed.

(14) The following documentation ~~((should))~~ must be included in the residents' individual service plan when restraint or seclusion ~~((be))~~ is used:

(a) The original and any subsequent order for the restraint or seclusion including name of the ~~((physician or authorized))~~ health care ~~((provider authorizing restraint or seclusion))~~ prescriber;

(b) ~~((Date/time))~~ The date and time the order was obtained;

(c) The specific intervention ordered including length of time and behavior that would terminate the intervention;

(d) Time the restraint or seclusion began and ended; and

(e) Time and results of the one hour face-to-face assessment~~((;~~

~~(f) Resident behavior prior to initiation of restraint or seclusion;~~

~~(g) Any injuries sustained during the restraint or seclusion; and~~

~~(h) Post intervention debriefing with resident to discuss precipitating factors leading to the need for intervention.~~

~~(10) Safety health checks must be conducted and documented).~~

~~(15) During the period a resident is placed in restraint or seclusion, appropriately trained staff must assess the client and document in the individual service plan at a minimum of every fifteen minutes(, to include):~~

~~(a) Resident's behavior and response to the intervention used including the rationale for continued use of the intervention;~~

~~(b) Food/nutrition offered;~~

~~(c) Toileting; and~~

~~(d) Physical condition(, to include):~~

~~(11) Staff shall continuously observe and monitor residents in seclusion or restraint by an assigned staff member (face-to-face) or by staff using both video and audio equipment.~~

~~(12) Staff involved in the restraint or seclusion will debrief and address effectiveness and safety issues.~~

~~(13) The licensee must ensure that restraint and seclusion is carried out in a safe environment. This room must:~~

~~(a) Be designed to minimize potential for stimulation, escape, hiding, injury, or death;~~

~~(b) Have a maximum capacity of one resident;~~

~~(c) Have a door that opens outward;~~

~~(d) Have a staff-controlled, lockable, adjoining toilet room;~~

~~(e) Have a minimum of three feet of clear space on three sides of the bed; and~~

~~(f) Have negative pressure with an independent exhaust system with the exhaust fan at the discharge end of the system.~~

~~(14) Restraint equipment must be clean and in good repair)) of the resident.~~

~~(16) Additional documentation in the individual service plan must include:~~

~~(a) Alternative methods attempted or the rationale for not using alternative methods;~~

~~(b) Resident behavior prior to initiation of the restraint or seclusion;~~

~~(c) Any injuries sustained during the restraint or seclusion;~~

~~(d) Post intervention debriefing with the resident to include the names of staff who were present for the debriefing, and any changes to the resident's individual service plan that result from the debriefing; and~~

~~(e) In the case of a minor, notification of the parent or guardian including the date and time of notification, and the name of the staff person providing the notification.~~

~~(17) Within twenty-four hours after the initiation of the restraint or seclusion, staff and the resident shall have a face-to-face discussion. This discussion must, to the extent possible, include all staff involved in the intervention except when the presence of a particular staff person may jeopardize the well-being of the resident. Other staff and the resident's parent(s) or guardian(s) may participate in the discussion when it is deemed appropriate by the RTF. Discussions must be con-~~

ducted in a language that is understood by the resident and by the resident's parent(s) or legal guardian(s). The discussion must provide both the resident and the staff the opportunity to discuss the circumstances resulting in the use of restraint or seclusion and strategies to be used by the staff, the resident, or others that could prevent the future use of restraint or seclusion.

(18) Restraint or seclusion must be provided in a safe environment. Every licensee must:

(a) Perform a risk assessment that identifies risks in the physical environment to residents, staff and the public when any level of restraint or seclusion is carried out;

(b) Identify location(s) in the RTF where restraint or seclusion is performed;

(c) Ensure that risks in the physical environment are mitigated as appropriate to the type of restraint or seclusion used and the planned population; and

(d) Ensure that restraint or seclusion rooms are constructed as required in WAC 246-337-127. Previously reviewed and approved seclusion rooms are permitted to comply with the requirements of the rule under which they were constructed.

(19) A seclusion room may be used for multiple purposes but must be equipped to allow immediate use for seclusion purposes.

NEW SECTION

WAC 246-337-111 Food and nutrition services.

Meals must meet resident nutritional needs, and are stored, prepared and served in accordance with chapter 246-215 WAC.

The licensee shall:

(1) Provide food and dietary services managed by a person knowledgeable in food services, and, when needed, consultative services provided by a registered dietician.

(2) Post current food handlers permits in the kitchen.

(3) Provide at least three meals at regular intervals without more than fourteen hours between the last meal of the day and the first meal of the next day.

(4) Consider age, gender, developmental age, activities and health conditions when developing meals.

(5) Make reasonable accommodations for cultural and religious preferences.

(6) Notify appropriate staff of any resident with food allergies or other medical conditions, symptoms of allergic reactions to watch for, and emergency measures to take if allergic reactions occur.

(7) Provide modified diets, nutrient supplements and concentrates to residents if prescribed or indicated by an authorized health care prescriber or registered dietician.

(8) Allow sufficient time for residents to consume meals.

(9) Require all staff and residents who perform food preparation for group consumption have a current food and beverage service worker's permit and be medically screened and cleared to perform food preparation. All residents who do not perform food preparation for group consumption but who work in the kitchen do not need a food and beverage worker's permit, but must be oriented and supervised by staff with a

current food and beverage worker permit at all times when working in the kitchen.

(10) Date, make available, and conspicuously post menus at least one week in advance.

(11) Keep records of all food served, including substitutions for at least three months.

(12) Prepare food on-site or have food provided by a licensed food establishment under chapter 246-215 WAC, Food and Drug Administration, or United States Department of Agriculture, with which the RTF has a signed contract or agreement and a written plan of action should food be in an unacceptable condition.

(13) Use commercial appliances if the kitchen provides meals for more than sixteen residents. A licensed RTF with sixteen or fewer residents may use domestic or home-type kitchen appliances. Domestic and home-type equipment must meet sanitation requirements of chapter 246-215 WAC.

NEW SECTION

WAC 246-337-112 Laundry services. The licensee shall:

(1) Provide to residents laundry facilities, equipment, handling and processes for linen and laundered items that are clean and in good repair, adequate to meet the needs of residents, and maintained according to the manufacturer's instructions;

(2) Provide laundry and linen services on the premises, or by commercial laundry;

(3) Handle, clean, and store linen according to acceptable methods of infection control including preventing contamination from other sources;

(4) Provide separate areas for handling clean laundry and soiled laundry;

(5) Require that all staff wear appropriate personal protective equipment and use appropriate infection control practices when handling grossly soiled laundry;

(6) Remove gross soil from laundry before washing and drying;

(7) Handle contaminated textiles and fabrics with minimum agitation to avoid contamination of air, surfaces and persons;

(8) 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. A resident's personal laundry, separate from other laundry, may be washed 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 for the textile, fabric, or clothing are used.

NEW SECTION

WAC 246-337-113 Resident sleeping room accommodations. In resident rooms used for sleeping, the licensee shall provide furniture appropriate for the age and physical condition of each resident, including:

(1) A bed at least thirty-six or more inches wide for adults and appropriate size for children, spaced at least thirty-six inches apart.

(2) Equipping each bed with:

(a) A mattress that is clean, in good repair, and fits the frame;

(b) One or more pillows that are clean, and in good repair for each resident over two and one-half years of age;

(c) Bedding that includes a tight-fitting sheet or cover for the sleeping surface, and a clean blanket or suitable cover; and

(d) Bedding that is in good repair, changed weekly or more often as necessary to maintain cleanliness.

(3) A single level nonstacking crib, infant bed, bassinet or playpen for children twenty-four months of age and younger meeting chapter 70.111 RCW, and including:

(a) Sleep equipment having secure latching devices; and

(b) A mattress that is:

(i) Snug-fitting to prevent the infant from becoming entrapped between the mattress and crib side rails;

(ii) Waterproof and easily sanitized; and

(iii) Free of crib bumpers, stuffed toys or pillows.

(4) A youth bed or regular bed for children twenty-five months of age and older.

(5) If bunk beds are used, prohibit children six years of age or less from using the upper bunk.

NEW SECTION

WAC 246-337-116 Animal management and safety.

The licensee must develop and implement policies and procedures that protect the health and safety of residents when service animals or, if allowed, therapy animals or pets are allowed on the premises. Policies and procedures must address:

(1) Animal immunizations;

(2) Animal behavior;

(3) The handling and cleanup of animal waste; and

(4) Animal health care needs.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-120 Facility(,s) and environment(,s and space) requirements. (1) The licensee must (~~ensure that each RTF~~) maintain the facility, exterior grounds, and component parts such as(~~, but not limited to,~~) fences, equipment, outbuildings, and landscape items (~~are~~) in a manner that is safe, free of hazards, clean, and (~~maintained~~) in good repair(~~, including:~~

~~(1) Each RTF shall be,~~

~~(2) Each facility must be~~ located on a site which is(~~:~~

~~(a) Free of standing water; and~~

~~(b)))~~ accessible by emergency vehicles on at least one street, road or driveway usable under all weather conditions and free of major potholes or obstructions.

~~((2) Develop and implement systems))~~ (3) Policies and procedures must be developed and implemented for routine preventative maintenance, including:

(a) Heating ventilation and air conditioning, plumbing and electrical equipment;

(b) Certification and calibration of biomedical and therapeutic equipment; and

(c) Documentation of all maintenance.

~~((3) Rooms shall be provided for dining, multipurpose, counseling, therapy and social activities, including:~~

~~(a) At least forty square feet per resident for the total combined area which is utilized for dining, social, educational, recreational activities and group therapies;~~

~~(b) A ceiling height of at least seven and one half feet over the required floor area throughout the RTF;~~

~~(c) At least one private area for visitation of residents and guests;~~

~~(d) Therapy rooms for individual and group counseling that maintain visual and auditory confidentiality in the ratio of at least one room per twelve residents; and~~

~~(e) A medical examination room, when there is routine physical examination of residents within the RTF. The examination room must be equipped with:~~

~~(i) An exam table with at least three feet of space on two sides and end of the table for staff access;~~

~~(ii) An examination light;~~

~~(iii) Storage units for medical supplies and equipment;~~

~~(iv) A handwashing sink;~~

~~(f) Dining room(s) or area(s) are large enough to accommodate all residents at a single sitting or in no more than three shifts. If the space is used for more than one purpose, that space must be designed to accommodate each of the activities without unreasonable interference with one another.~~

~~(4) Equip)) (4) Stairways must be equipped with more than one riser and ramps with slopes greater than one in twenty with handrails on both sides. Ends of handrails ((are)) must be designed in a manner that eliminates a hooking hazard.~~

~~(5) ((School facilities,)) Excluding child cares, school facilities serving residents on the same grounds as the RTF must meet all requirements for health and safety and comply with chapter 246-366 WAC((, Primary and secondary schools)).~~

~~(6) Access and egress control devices must be utilized to support the policies of the RTF.~~

NEW SECTION

WAC 246-337-124 Common room requirements.

The RTF shall include rooms for social, educational, and recreational activities, visitation, dining, toileting and bathing, as described in this section.

(1) Common areas. Provide at least forty square feet per resident for the total combined area which is used for dining, social, educational, recreational activities and group therapies.

(2) Visiting room(s). At least one private area for visitation of residents by guests.

(3) Dining room(s). Dining rooms or areas must be large enough to accommodate all residents at a single sitting or in no more than three shifts. If the space is used for more than one purpose, that space must be designed to accommodate each of the activities without unreasonable interference with one another.

(4) Toilet room(s) and bathroom(s). Toilet rooms and bathrooms must be available to residents including:

(a) A minimum of one toilet and handwashing sink for every eight residents. Urinals may count for up to one-third of the required toilets in a male-only toilet room;

(b) A toilet and handwashing sink in, or immediately accessible to each bathroom;

(c) A minimum of one bathing fixture for every eight residents;

(d) Rooms containing more than one toilet or more than one bathing area must:

(i) Be designated for use by one gender, unless it is a toilet room specifically designated for children under the age of six years; and

(ii) Provide for privacy during toileting, bathing, and dressing through the use of doors or dividers;

(e) Equipping each toilet room and bathroom with:

(i) Water resistant, smooth, easily cleanable, slip-resistant bathtubs, showers, and floor surfaces;

(ii) Washable walls to the height of splash or spray;

(iii) Washable cabinets and counter tops;

(iv) Plumbing fixtures designed for easy cleaning;

(v) Clean, nonabsorbent toilet seats free of cracks;

(vi) Grab bars installed at each toilet and bathing fixture;

(vii) Shatter resistant mirrors when appropriate;

(viii) Adequate lighting for general illumination;

(ix) One or more handwashing sink with soap and single use or disposable towels with a mounted paper towel dispenser, unless a blower or equivalent hand-drying device is provided; and

(x) Toilet tissue with a reachable mounted tissue dispenser by each toilet.

(f) Providing access to bath and toilet rooms by:

(i) Locating a toilet room and bath room on the same floor or level as the sleeping room of the resident; and

(ii) Providing access without passage through any food preparation area or from one bedroom through another bedroom.

(g) If a toilet room or bath room adjoins a bedroom, the bath room is restricted to use by those residents residing in the adjoining bedrooms.

NEW SECTION

WAC 246-337-126 Resident care room requirements. The facility shall include rooms for individual and group therapy, medical examination when there is routine physical examination of residents, and medication storage if applicable, as described in this section.

(1) Therapy room(s). Therapy rooms for individual and group counseling must maintain visual and auditory confidentiality. The facility must have at least one room per twelve residents.

(2) Medical examination room. The examination room must be equipped with:

(a) An exam table with at least three feet of space on two sides and end of the table for staff access;

(b) An examination light;

(c) Storage units for medical supplies and equipment; and

- (d) A handwashing sink.
- (3) Medication storage. A room shall be provided with:
 - (a) Lockable storage;
 - (b) Refrigeration if needed for pharmaceuticals stored;
 - (c) Temperature and moisture control appropriate to pharmaceuticals;
 - (d) In new construction, provide a handwashing sink; and
 - (e) Appropriate lighting.

NEW SECTION

WAC 246-337-127 Restraint or seclusion room requirements. This section only applies to an RTF that is approved to use restraint or seclusion. In new construction or modification, each restraint or seclusion room must:

- (1) Be designed to minimize potential for stimulation, escape, hiding, injury, or death, including:
 - (a) Walls, ceiling, and floors shall be designed to resist impact forces;
 - (b) Ceilings shall be monolithic without joints or crevices or shall be a minimum of nine feet high;
 - (c) All permanent building fixtures and details in the room shall be designed to prevent injury to the residents or staff; and
 - (d) Electrical switches and receptacles within the room are prohibited or covered to make them inaccessible.
- (2) Have a maximum capacity of one resident.
- (3) Be located and designed to permit visual and audible observation of the resident by direct or electronic means.
- (4) Be designed to facilitate entrance, transfer and containment of resident, including:
 - (a) Have a door that opens outward into a vestibule or controlled area away from the generally populated areas; and
 - (b) Have a staff-controlled, lockable, toilet room that adjoins either the treatment room or vestibule.
- (5) Provide appropriate space for the level of treatment being provided, including:
 - (a) Have a minimum of sixty square feet for seclusion;
 - (b) Have a minimum of eighty square feet if the room is also used for restraining residents; and
 - (c) Have a minimum of three feet of clear space on three sides of the bed, if a bed is provided.
- (6) Have negative air pressure with all air exhausted to the exterior of the building with the exhaust fan at the discharge end of the system.

NEW SECTION

WAC 246-337-128 Laundry and housekeeping room requirements. (1) Laundry. RTFs in which on-site laundry services are provided must:

- (a) Locate laundry equipment in rooms other than those used for open food storage, food preparation, or food service;
- (b) Equip laundry areas with:
 - (i) A utility sink;
 - (ii) A table or counter for folding clean laundry; and
 - (iii) At least one washing machine and one clothes dryer.
- (c) Provide separate areas for handling clean laundry and soiled laundry; and

(d) Ventilate laundry rooms and areas to the exterior including areas or rooms where holding soiled laundry for processing by off-site commercial laundry services.

(2) Housekeeping. A housekeeping room must be on each level of the RTF and equipped with:

- (a) Locking door(s);
- (b) A utility sink or equivalent means of obtaining and disposing of mop water separate from food preparation and service areas; and
- (c) Storage for cleaning supplies and wet mops.

NEW SECTION

WAC 246-337-129 Resident sleeping room requirements. (1) The licensee shall provide residents with an accessible, clean, well-maintained room with sufficient space, light, and comfortable furnishings for sleeping and personal activities.

- (2) Sleeping rooms must include:
 - (a) At least a three-foot clear access aisle from the entry door, along at least one side of each bed, and in front of all storage equipment;
 - (b) If a bunk bed is used, a minimum access aisle of five feet along at least one side of the bunk bed;
 - (c) Room identification;
 - (d) 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; and
 - (e) One or more outside windows that:
 - (i) Has adjustable curtains, shades, blinds, or equivalent installed at the windows for visual privacy;
 - (ii) Is shatterproof, screened, or of the security type as determined by the resident needs; and
 - (iii) Are marked with a solid color or barrier if clear glass windows or doors extend to the floor.
- (3) Sleeping rooms must be equipped with:
 - (a) One or more noncombustible waste containers;
 - (b) An individual towel and washcloth rack or an equivalent method to provide clean towels and washcloths; and
 - (c) Secured storage facilities for storing clothing and, when requested by the resident, storage in a lockable drawer, cupboard, locker, or other secure space somewhere in the building.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-130 Water supply, sewage and waste disposal. The licensee ~~((must))~~ shall ensure ~~((that))~~:

- (1) Water supply and waste disposal in each facility meet the provisions of chapter 246-290 or 246-291 WAC, whichever applies ~~((including: (1) Maintaining))~~;
- (2) Tempered water between one hundred and one hundred twenty degrees Fahrenheit in resident areas. ~~((2) Maintaining the))~~ (3) Plumbing systems free of cross connections. ~~((3) Assuring all))~~ (4) Sewage and waste water drain into a public sewer system in compliance with applicable

laws and rules, or meet the requirements of chapters 246-272 and 173-240 WAC, and local laws and rules.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-135 Heating, ventilation and air conditioning. ~~((+))~~ The licensee ~~((must))~~ shall ensure ~~((that all))~~:

(1) Rooms used by residents are able to maintain interior temperatures between sixty-five degrees Fahrenheit and seventy-eight degrees Fahrenheit year-round.

(2) Direct evaporative coolers ~~((may not be))~~ are not used for cooling. In existing facilities, no new or replacement evaporative coolers may be used after adoption of these rules. Facilities currently using direct evaporative coolers ~~((f))~~ such as swamp coolers or similar equipment ~~((g))~~ shall follow manufacturer's instructions and develop and implement a written preventive maintenance program.

(3) Excessive odors and moisture are prevented in all areas of the building ~~((must be ventilated to prevent excessive odors and moisture))~~. The ventilation system must be in compliance with ~~((chapter 51-13 WAC. Facilities))~~ the mechanical code as adopted by the Washington state building code council.

(4) RTFs licensed prior to July 1991 may continue to use windows for ventilating toilet rooms, bathrooms, and janitor rooms if the windows are equipped with sixteen gauge mesh screens.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-140 Lighting, emergency lighting, and electrical outlets. The licensee ~~((must))~~ shall ensure that lighting, emergency lighting, and electrical outlets are adequate and safe including:

(1) ~~((Light fixtures are protected))~~ Protection of bulbs and tubes against ~~((light bulb))~~ breakage by using canned lights, appropriately fitted shields, ~~((bulbs, or tubes manufactured with))~~ or shatter resistant materials in all areas occupied by residents, ~~((including common areas,))~~ and in medication and food preparation areas.

(2) Use of tamper resistant electrical outlets in each room or area occupied by children under age five or residents with unsafe behaviors ~~((must have tamper resistant electrical outlets))~~.

(3) ~~((Each))~~ Use of electrical outlets of the ground fault interrupter type or be controlled by a ground fault circuit interrupter when the outlet is within six feet of a sink or wet area ~~((must be of the ground fault interrupter type or be controlled by a ground fault circuit interrupter))~~.

(4) ~~((Provide))~~ Emergency lighting on each floor.

(5) ~~((Provide operable))~~ Exterior lighting with solar or battery backup at the exit and entry doors.

NEW SECTION

WAC 246-337-146 Cleaning, maintenance and refuse disposal. The licensee shall maintain the facility,

equipment, and furnishings in a safe and sanitary condition, and in good repair through the following requirements:

(1) Provide sanitary disposal and collection of garbage and refuse by:

(a) Use of containers constructed of nonabsorbent material, which are water-tight, covered, and adequate to store garbage and refuse;

(b) Having a storage area location convenient for resident and staff use;

(c) Having a clean and maintained area for containers to prevent:

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

(ii) Odors; and

(iii) Other nuisances.

(d) A disposal program for biohazardous and nonmedical waste using appropriate containers and disposal services.

(2) Provide adequate storage space for:

(a) Clean and soiled equipment and linens;

(b) Lockable, shelved storage impervious to moisture, for cleaning supplies, disinfectants and poisonous compounds; and

(c) Separate, locked storage for flammable materials or other fire and safety hazards.

(3) Provide a safe and cleanable area designated for pouring stock chemicals and cleaning supplies into separate, properly labeled containers if stock chemicals are used.

(4) Provide an effective pest control program so that the RTF is free of pests such as rodents and insects.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-337-020 Responsibilities and rights of the licensee and department.

WAC 246-337-035 Procedures to deny, suspend, modify or revoke a license.

WAC 246-337-090 Food and nutrition services.

WAC 246-337-115 Cleaning, maintenance and refuse disposal.

WAC 246-337-125 Toilet rooms and bathrooms.

WAC 246-337-145 Laundry.

WAC 246-337-150 Resident rooms, furnishings and storage.

WAC 246-337-155 Pet management and safety.

WSR 18-01-056

PROPOSED RULES

LIQUOR AND CANNABIS BOARD

[Filed December 13, 2017, 10:57 a.m.]

Supplemental Notice to WSR 17-21-112.

Preproposal statement of inquiry was filed as WSR 17-15-051.

Title of Rule and Other Identifying Information: WAC 314-02-060 What is a caterer's endorsement?, 314-02-061 What is required for offsite storage of liquor under a caterer's endorsement?, 314-02-092 What is a combination spirits, beer, and wine license?, 314-02-103 What is a wine reseller endorsement?, 314-38-020 Permits—Fees established, and 314-38-110 Nonprofit wine auction permit.

Hearing Location(s): On January 24, 2018, at 10:00 a.m., at 3000 Pacific Avenue S.E., Olympia, WA.

Date of Intended Adoption: February 7, 2018.

Submit Written Comments to: Karen McCall, P.O. Box 43098, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by January 24, 2018.

Assistance for Persons with Disabilities: Contact Karen McCall, phone 360-664-1631, fax 360-664-9689, email rules@lcb.wa.gov, by January 24, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules are needed to implement 2017 liquor legislation.

Reasons Supporting Proposal: Licensees need to know the requirements for new licenses passed in the 2017 legislative session.

Statutory Authority for Adoption: RCW 66.24.010, 66.24.035, 66.24.330.

Statute Being Implemented: RCW 66.24.010, 66.24.035, 66.24.330.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are required to implement 2017 legislation.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

December 13, 2018 [2017]

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

WAC 314-02-060 What is a caterer's endorsement?

(1) A spirits, beer, and wine restaurant (~~and~~), a beer and/or

wine restaurant, and a tavern applicant or licensee may apply for a caterer's endorsement, in order to extend the on-premises license privilege to allow the sale and service of liquor at locations other than liquor licensed premises. See RCW 66.24.420(6) (~~and~~), 66.24.320(2), and 66.24.330 for more information about this endorsement.

(2) The annual fee for this endorsement is three hundred fifty dollars.

AMENDATORY SECTION (Amending WSR 09-02-012, filed 12/29/08, effective 1/29/09)

WAC 314-02-061 What is required for (~~offsite~~) off-site storage of liquor under a caterer's endorsement? A spirits, beer, and wine restaurant licensee with a caterer's endorsement, (~~or~~) a beer and/or wine restaurant licensee with a caterer's endorsement, or a tavern licensee with a caterer's endorsement, may store its alcohol at locations described in RCW 66.24.320, 66.24.330, and 66.24.420 that are not on the licensed premises if the following conditions are met:

(1) The licensee must display the approval letter for storing liquor at each location;

(2) Liquor storage must be within the event location where catering services for events are provided;

(3) If the location is one for which the licensee has an on-going contract or agreement to provide liquor service at catered events, the contract or agreement must include the following:

(a) Names of the parties;

(b) Location and address where on-going liquor catering services are provided;

(c) A sketch and description of the facility that includes where the liquor will be stored, how the liquor will be secured to ensure public safety, and the provisions that restrict access to the liquor storage area to the licensee and the licensee's employees; and

(d) Signatures of the parties.

(4) For locations owned or leased by the licensee and for which the licensee provides liquor service at catered events, the licensee must submit copies of documents that evidence the ownership or leasehold interest.

NEW SECTION

WAC 314-02-092 What is a combination spirits, beer, and wine license? (1) Per RCW 66.24.632, a combination spirits, beer, and wine license is a retail license that allows a licensee to sell beer and wine, including strong beer, at retail in bottles, cans, and original containers for off-premises consumption, and to:

(a) Sell spirits in original containers to consumers for off-premises consumption and to permit holders;

(b) Sell spirits in original containers to retailers licensed to sell spirits for consumption on the premises, for resale at their licensed premises according to the terms of their licenses. No single sale may exceed twenty-four liters; and

(c) Export spirits.

(2) A combination spirits, beer, and wine licensee that intends to sell to an on-premises retailer must possess a basic permit under the Federal Alcohol Administration Act. This

permit must provide for purchasing distilled spirits for resale at wholesale. A copy of the federal basic permit must be submitted to the board. A federal basic permit is required for each location from which the combination spirits, beer, and wine licensee plans to sell to an on-premises retailer.

(3) A sale by a combination spirits, beer, and wine licensee is a retail sale only if not for resale to an on-premises spirits retailer. On-premises retail licensees that purchase spirits from a combination spirits, beer, and wine licensee must abide by RCW 66.24.630.

(4) A combination spirits, beer, and wine licensee must pay to the board seventeen percent of all spirits sales. (see WAC 314-02-109 for quarterly reporting requirements).

Reporting of spirits sales and payment of fees must be submitted on forms provided by the board.

(5) The board may issue a combination spirits, beer, and wine license:

(a)(i) For premises comprising at least ten thousand square feet of fully enclosed retail space within a single structure, including store rooms and other interior areas. This does not include any area encumbered by a lease or rental agreement; and

(ii) To applicants that the board determines will maintain appropriate systems for inventory management, employee training, employee supervision, and physical security of the product.

(b) For premises of a former contract liquor store; or

(c) To a holder of former state liquor store operating rights sold at auction.

(6) A spirits retail licensee may apply for a sampling endorsement to conduct spirits, beer, and wine sampling if they meet the following criteria:

(a) Be a participant in the responsible vendor program;

(b) Advertising:

(i) For combination spirits, beer, and wine retail licensees that are grocery stores, advertising samplings may not be placed in the windows or outside of the premises that can be viewed from the public right of way;

(ii) For combination spirits, beer, and wine retail licensees that are specialty stores, advertising of sampling may be advertised but not state that sampling is free of charge.

(c) Samplings are to be conducted in the following manner:

(i) Samplings service area and facilities must be located within the licensee's fully enclosed retail area and must be of a size and design that the licensee can observe and control persons in the area;

(ii) The licensee must provide a sketch of the sampling area. For combination spirits, beer, and wine licensees that are grocery stores, fixed or movable barriers are required around the sampling area to ensure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol. For combination spirits, beer, and wine licensees that are specialty stores, barriers are not required. The sketch is to be included with the application for the spirits sampling endorsement;

(iii) Each sample may be no more than one-half ounce of spirits, and no more than a total of one and one-half ounces of spirits samples per person during any one visit to the premises. Spirits samples may be altered with mixers, water,

and/or ice. For combination spirits, beer, and wine licensees that are grocery stores, beer and wine samples must be two ounces or less, up to a total of four ounces per person during any one visit to the premises. For combination spirits, beer, and wine licensees that are specialty stores, each beer and wine sample must be two ounces or less and no more than ten ounces of beer and/or wine may be provided to a customer during any one visit to the premises;

(iv) For combination spirits, beer, and wine licensees that are grocery stores, the licensee must have food available for the sampling participants;

(v) Customers must remain in the service area while consuming samples;

(vi) All employees serving spirits, beer, or wine during sampling events must hold a class 12 server permit;

(vii) For combination spirits, beer, and wine licensees that are grocery stores, there must be at least two employees on duty when conducting sampling events;

(viii) Sampling activities are subject to RCW 66.28.305 and 66.28.040.

(d) Licensees are required to send a list of scheduled sampling events to their regional enforcement office at the beginning of each month. The date and time for each sampling must be included;

(e) The cost for a beer and wine sampling endorsement is two hundred dollars. There is no charge for a spirits sampling endorsement.

(7) A combination spirits, beer, and wine licensee may sell beer in kegs or other containers holding at least four gallons and less than five and one-half gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(8) A combination spirits, beer, and wine licensee may sell beer and wine over the internet. See WAC 314-03-020 regarding internet sales and delivery.

(9) A combination spirits, beer, and wine applicant or licensee that is a grocery store may apply for an international exporter endorsement for five hundred dollars a year, which allows the sale of beer and wine for export to locations outside the United States.

(10) A combination spirits, beer, and wine licensee may apply for an endorsement to sell beer and cider growlers.

(a) Beer and cider must be sold in sanitary containers provided by the purchaser, licensee or the manufacturer and filled by the employee at the time of purchase.

(b) The taps must be located behind a counter where only employees have access or the taps must have locks preventing use unless unlocked and operated by an employee.

(c) Only employees of the licensee are permitted to operate the taps.

(d) All employees operating a tap must hold a class 12 alcohol server permit.

(e) The cost for the endorsement is one hundred twenty dollars.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-02-103 What is a wine retailer reseller endorsement? (1) A wine retailer reseller endorsement is issued to the holder of a grocery store liquor license ((~~or~~)), the

holder of a beer and/or wine specialty shop license, or the holder of a combination spirits, beer, and wine license to allow the sale of wine at retail to on-premises liquor licensees.

(2) For holders of a grocery store license: No single sale to an on-premises liquor licensee may exceed twenty-four liters.

(3) For holders of a beer and/or wine specialty shop license:

(a) No single sale may exceed twenty-four liters, unless the sale is made by a licensee that was formerly a state liquor store or contract liquor store.

(b) May sell a maximum of five thousand liters of wine per day for resale to retailers licensed to sell wine for consumption on the premises.

(4) A grocery store licensee or a beer and/or wine specialty shop licensee with a wine retailer reseller endorsement may accept delivery at its licensed premises or at one or more warehouse facilities registered with the board.

(5) The holder of a wine retailer reseller endorsement may also deliver wine to its own licensed premises from the registered warehouse; may deliver wine to on-premises licensees, or to other warehouse facilities registered with the board. A grocery store licensee or a beer and/or wine specialty shop licensee wishing to obtain a wine retailer reseller endorsement that permits sales to another retailer must possess and submit a copy of their federal basic permit to purchase wine at wholesale for resale under the Federal Alcohol Administration Act. A federal basic permit is required for each location from which the grocery store licensee or beer and/or wine specialty shop licensee holding a wine retailer reseller endorsement plans to sell wine to another retailer.

(6) The annual fee for the wine retailer reseller endorsement for a grocery store licensee is one hundred sixty-six dollars.

(7) The annual fee for the wine retailer reseller endorsement for a beer and/or wine specialty shop licensee is one hundred ten dollars.

(8) Sales made under the reseller endorsement are not classified as retail sales for taxation purposes.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-38-020 Permits—Fees established. The fees for permits authorized under RCW 66.20.010 are hereby established as follows:

(1) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(1).

(2) The fee for a special permit as authorized by RCW 66.20.010(2) for purchase of five gallons or less is established as five dollars and for purchase of over five gallons is established as ten dollars.

(3) A fee for a banquet permit, as authorized by RCW 66.20.010(3), is established in WAC 314-18-040.

(4) The fee for a special business permit, as authorized by RCW 66.20.010(4), is established in WAC 314-38-010(2).

(5) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(5).

(6) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(6).

(7) A special permit as authorized by RCW 66.20.010(7) shall be issued without charge to those eligible entities.

(8) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(8).

(9) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(9).

(10) The fee of thirty dollars is established for a special permit as authorized by RCW 66.20.010(10).

(11) The fee of seventy-five dollars is established for a special permit as authorized by RCW 66.20.010(11).

(12) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(13).

(13) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(14).

(14) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(15).

(15) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(16).

(16) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(17).

NEW SECTION

WAC 314-38-110 Nonprofit wine auction permit. (1)

A nonprofit auction permit is for a nonprofit organization to sell wine through a private auction not open to the public.

(2) The nonprofit organization must complete a nonprofit wine auction permit application and submit the application and fee to the WSLCB.

(a) The date and location of the auction must be specified on the application.

(b) The one-time event fee is twenty-five dollars multiplied by the number of wineries that are selling wine at the auction event.

(c) A list of event attendees must be submitted with the wine auction permit application.

(3) The holder of the permit may conduct wine tastings of the wine to be auctioned at the event.

(4) All wine sold by auction cannot be consumed during the event.

(5) Wine from multiple wineries may be sold at the auction. Each winery must be listed on the application.

(6) The permit must be posted in a conspicuous location at the premises for which the permit was issued during all times the permit is in use.

WSR 18-01-061

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed December 13, 2017, 3:37 p.m.]

Continuance of WSR 17-12-087.

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

Title of Rule and Other Identifying Information: Chapter 16-555 WAC, Washington strawberry commission.

Date of Intended Adoption: February 15, 2017.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, email tnorman@agr.wa.gov, fax 360-902-2092, by January 6, 2018.

Assistance for Persons with Disabilities: TTY 711.

Statutory Authority for Adoption: RCW 15.65.183 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

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

Name of Proponent: Washington strawberry commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Teresa Norman, Olympia, Washington, 360-902-2043.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture and the Washington strawberry commission are not named agencies under RCW 34.05.328 (5)(a)(i).

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

Is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

December 12, 2017

Kirk Robinson
Deputy Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 16-555-010 Definition of terms.
- WAC 16-555-020 Strawberry commodity board.
- WAC 16-555-030 Marketing order purposes.
- WAC 16-555-040 Assessments and collections.
- WAC 16-555-041 Time—Place—Method for payment and collection of assessments.
- WAC 16-555-050 Obligations of the board.
- WAC 16-555-060 Termination of the marketing order.
- WAC 16-555-070 Effective time.
- WAC 16-555-080 Separability.

WSR 18-01-074
PROPOSED RULES
LAKE WASHINGTON
INSTITUTE OF TECHNOLOGY

[Filed December 15, 2017, 7:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-22-043.

Title of Rule and Other Identifying Information: Amending chapter 495D-276 WAC relating to access to public

records; and adding chapter 495D-142 WAC relating to first amendment activities.

Hearing Location(s): On January 23, 2018, at 10:00 a.m., at Lake Washington Institute of Technology, W305A, 11605 132nd Avenue N.E., Kirkland, WA 98034.

Date of Intended Adoption: February 5, 2018.

Submit Written Comments to: William Thomas, 11605 132nd Avenue N.E., Kirkland, WA 98034, email bill.thomas@lwtech.edu, by January 22, 2018.

Assistance for Persons with Disabilities: Contact William Thomas, phone 425-739-8201, email bill.thomas@lwtech.edu, by January 19, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Lake Washington Institute of Technology proposes amending chapter 495-276 WAC to conform such chapter to (1) recent changes in the law concerning public records; (2) model rules recommended by the attorney general's office (chapter 44-14 WAC), and (3) current agency practices. Lake Washington Institute of Technology proposes adding chapter 495D-142 WAC to establish procedures and reasonable controls for the use of facilities by both noncollege and college groups.

Reasons Supporting Proposal: See purpose above.

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

Statute Being Implemented: Chapter 42.56 RCW.

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

Name of Proponent: Lake Washington Institute of Technology, governmental.

Name of Agency Personnel Responsible for Drafting: William Thomas, Lake Washington Institute of Technology, Kirkland, Washington, 425-739-8201; Implementation and Enforcement: Lake Washington Institute of Technology, Kirkland, Washington, 425-739-8201.

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

A cost-benefit analysis is not required under RCW 34.05.328. Lake Washington Institute of Technology is not a listed agency in RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and

rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

December 15, 2017
 Andrea Olson
 Special Assistant
 to the President

Chapter 495D-142 WAC

FIRST AMENDMENT ACTIVITIES FOR LAKE WASHINGTON INSTITUTE OF TECHNOLOGY

NEW SECTION

WAC 495D-142-010 Title. WAC 495D-142-010 through 495D-142-080 shall be known as use of community and technical College District 26 facilities by college groups and noncollege groups for first amendment activities.

NEW SECTION

WAC 495D-142-015 Definitions. For the purposes of this policy noncollege groups shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of Lake Washington Institute of Technology or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

For purposes of this policy, college groups shall mean individuals who are currently enrolled students or current employees of Lake Washington Institute of Technology or who are affiliated with a recognized student organization or a recognized employee group of the college.

The college is a limited public forum for noncollege groups. The limited public forum does not include college buildings or parking areas. College buildings, rooms, and parking areas may be rented in accordance with the college's facilities use policy.

NEW SECTION

WAC 495D-142-020 Statement of purpose. Lake Washington Institute of Technology is an educational institution provided and maintained by the people of the state of Washington. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and to which the college's buildings, facilities and grounds are dedicated and said buildings, facilities and grounds are not available for unrestricted use by noncollege groups. While said buildings, facilities and grounds are not available for unlimited use by college groups, it is recognized that Lake Washington Institute of Technology students and employees should be accorded opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The purpose of these time, place and manner regulations is to establish procedures and reasonable controls for the use of college facilities for both noncollege and college

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 noncollege groups or college groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression.

NEW SECTION

WAC 495D-142-030 Request for use of facilities.

Subject to the regulations and requirements of this policy, college or noncollege groups may use the campus limited forums for those activities protected by the first amendment. Examples of first amendment activities would include, but not necessarily be limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, mass protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints.

Noncollege groups that intend to be on campus to engage in first amendment activities (hereinafter "the event") are encouraged to provide notice to the campus safety and security department no later than forty-eight hours prior to the event along with the following information:

- (1) The name, address, and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization"); and
- (2) The name, address, and telephone number of a contact person for the sponsoring organization; and
- (3) The date, time, and requested location of the event; and
- (4) The nature and purpose of the event; and
- (5) The type of sound amplification devices to be used in connection with the event, if any; and
- (6) The estimated number of people expected to participate in the event.

However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility. Noncollege events are limited to the grounds outside of college buildings.

The use of sound amplification devices is limited to the limited public forum area as long as the sound amplification device is used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.

College groups are encouraged to notify the campus safety and security 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.

Information may be distributed as long as it is not obscene or libelous or incite imminent lawless action. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. To avoid excessive littering of the campus and/or greatly increased work requirements for college physical plant employees, groups are asked to cooperate with the college in limiting the distribution of information leaflets or pamphlets to the limited public forum site.

Speech that does no more than propose a commercial transaction shall not occur in connection with the event.

The limited public forum used by the group should be cleaned up and left in its original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary cleanup or for the repair of damaged property.

All fire, safety, sanitation or special regulations specified for the event are to be obeyed.

The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this policy.

The event must not obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events.

The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.

The event must not materially and substantially 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.

The event must also be in accordance with any other applicable college policies and regulations, regulations and policies of Lake Washington Institute of Technology, local ordinances and/or state or federal laws.

There shall be no first amendment activities and camping on college facilities or grounds between the hours of 10:00 p.m. and 6:00 a.m. Camping is defined to include sleeping, cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

NEW SECTION

WAC 495D-142-040 Additional requirements for noncollege groups. The limited public forum may not be used on the same date as any previously scheduled college event or activity at the site (aside from regularly scheduled classes) where it is reasonably anticipated that more than five hundred people will attend the college event or activity.

NEW SECTION

WAC 495D-142-050 The role of the president in first amendment decisions. The president of the college or designee may at any time, terminate, cancel or prohibit the event if it is determined, after proper inquiry, that the event does constitute or will constitute a clear and present danger to the college's orderly operation.

NEW SECTION

WAC 495D-142-060 Criminal trespass. Any person determined to be violating these regulations is subject to an

order from the college campus public safety department to leave the college campus. Persons failing to comply with such an order to leave the college campus are subject to arrest for criminal trespass.

NEW SECTION

WAC 495D-142-070 Posting of a bond and hold harmless statement. When using college buildings or athletic fields, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy.

When the college grants permission to a college group or noncollege group to use its facilities it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

NEW SECTION

WAC 495D-142-080 First amendment activities and protection of the college mission. The college recognizes and supports the rights of groups and individuals to engage in first amendment activities. This policy shall be interpreted and construed to support such activities while simultaneously balancing the needs and interests of the college to fulfill its mission as a state educational institution of Washington.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-010 Purpose. The purpose of this chapter is to ensure that College District 26 complies with the provisions of chapter ~~((42.17))~~ 42.56 RCW and in particular with those sections of that chapter dealing with public records.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-020 Definitions. (1) "Public record" includes any writing containing 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, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds or symbols, combination thereof and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, disks, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

(3) "College District 26" is an agency organized by statute pursuant to RCW 28B.50.040. College District 26 shall hereafter be referred to as the "~~((district))~~ college." Where appropriate, the term "~~((district))~~ college" also refers to the staff and employees of the ~~((district))~~ college.

AMENDATORY SECTION (Amending WSR 11-19-083, filed 9/20/11, effective 10/21/11)

WAC 495D-276-030 Description of central and field organization of College District 26. (1) College District 26 is a state agency established and organized under the authority of chapter 28B.50 RCW for the purpose of implementing the educational goals established by the legislature in RCW 28B.50.020. The administrative office of the ~~((district))~~ college is located on the Lake Washington Institute of Technology campus within the city of Kirkland, Washington. The Lake Washington Institute of Technology campus likewise comprises the central headquarters for all operations of the ~~((district))~~ college.

(2) The ~~((district))~~ college is operated under the supervision and control of a board of trustees. The board of trustees consists of five members appointed by the governor. The board of trustees normally meets at least once each month, as provided in WAC 495D-104-010. The board of trustees employs a president, an administrative staff, members of the faculty, and other employees. The board of trustees takes such actions and promulgates such rules and policies in harmony with the rules established by the state board for community and technical colleges, as are necessary to the administration and operation of the ~~((district))~~ college.

(3) The president of the ~~((district))~~ college is responsible to the board of trustees for the operation and administration of the ~~((district))~~ college. A detailed description of the administrative organization of the ~~((district))~~ college is contained within the policies and procedures manual for Lake Washington Institute of Technology, a current copy of which is available for inspection at the administrative office of the ~~((district))~~ college.

AMENDATORY SECTION (Amending WSR 11-19-083, filed 9/20/11, effective 10/21/11)

WAC 495D-276-040 Operations and procedures. (1) Formal decision-making procedures are established by the board of trustees through rules promulgated in accordance with the requirements of chapter 34.05 RCW, the Administrative Procedure Act.

(2) Informal decision-making procedures at the college, as established by the board of trustees, are set forth in the policies and procedures manual of Lake Washington Institute of Technology, a current copy of which is available for inspection at the administrative office of the ~~((district))~~ college.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-050 Public records available. All public records of the ~~((district))~~ college, as defined in this chapter, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by chapter 42.56 RCW ((42.17.310)) or other statutes.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-060 Public records officer. ~~((The district's public records shall be in the charge of the public records officer designated by the president. The person so designated shall be located in the district administrative office. The public records officer shall be responsible for the following: Implementation of the district's rules regarding release of public records, coordinating district employees in this regard, and generally ensuring compliance by district employees with the public records disclosure requirements in chapter 42.17 RCW-))~~ The public records officer will oversee compliance with the act but another college staff member may process the request. Therefore, these rules will refer to the public records officer or "designee." The public records officer or designee and Lake Washington Institute of Technology will provide the "fullest assistance" to requestors; create and maintain for use by the public and college officials an index to public records of Lake Washington Institute of Technology; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the Lake Washington Institute of Technology.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-080 Requests for public records. In accordance with the requirements of RCW ((42.17.290)) 42.56.100 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records are only obtainable by members of the public when those members of the public comply with the following procedures:

~~((1))~~ A request shall be made in writing. A form prescribed by the district shall be available at the district administrative office. The completed form shall be presented to the public records officer or, if the public records officer is not available, to any member of the district's staff at the district administrative office during customary office hours. The request shall include the following information:

- ~~(a)~~ The name of the person requesting the record;
- ~~(b)~~ The time of day and calendar date on which the request was made;
- ~~(c)~~ The nature of the request;
- ~~(d)~~ If the matter requested is referenced within the current index maintained by the public records officer, a reference to the requested record as it is described in such current index;
- ~~(e)~~ If the requested matter is not identifiable by reference to the current index, an appropriate description of the record requested.

~~(2)~~ In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer, or person to whom the request is made, to assist the member of the public in identifying the public record requested. (1) Any person wishing to request access to public records of Lake Washington Institute of Technology, or

seeking assistance in making such a request should contact the public records officer of the college at:

Public Records Officer
Attn.: Administrative Services
Lake Washington Institute of Technology
11605 132nd Avenue N.E.
Kirkland, WA 98034
425-739-8201
publicrecords@lwtech.edu

(2) A public records request must be for identifiable records. A request for all or substantially all records prepared, owned, used, or retained by the college is not a valid request for identifiable records, provided that a request for all records regarding a particular topic or containing a particular key-word or name shall not be considered a request for all of the college's records.

(3) A request should be made in writing on the Public Records Request form, or by letter, fax, or email addressed to the public records officer. The request should include the following information:

- (a) The name of the person requesting the record;
- (b) Address of the requestor;
- (c) Other contact information, including telephone number and any email address;
- (d) The date and time of day of the request;
- (e) Identification of the public records adequate for the public records officer or designee to locate the records;
- (f) If the matter requested is referenced within the current index maintained by the public records officer, a reference to the requested records as it is described in such current index;
- (g) If the requested matter is not identifiable by reference to the current index, an appropriate description of the record requested.

(4) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer, or person to whom the request is made, to assist the member of the public in identifying the public records requested.

(5) The college may deny a bot request that is one of multiple requests from the requestor to the college within a twenty-four-hour period, if the college establishes that responding to the multiple requests would cause excessive interference with other essential functions of the college. For these purposes, "bot request" means a request for public records that the college reasonably believes was automatically generated by a computer program or script.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-090 ((Copying)) Charges for public records. ((No fee shall be charged for the inspection of public records. The district may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records but such charges shall not exceed the amount necessary to reimburse the district for its actual costs incident to such copying. No person shall be released a record so copied until and unless

the person requesting the copied public record has tendered payment for such copying to the appropriate district employee. All charges must be paid by money order, cashier's check, or cash in advance.)) (1) **Cost.** Calculating the actual costs of charges for providing public records is unduly burdensome because it will consume scarce college resources to conduct a study of actual costs, and it is difficult to accurately calculate all costs directly incident to copying records, including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and sending requested records. Instead of calculating actual costs of charges for records, the college president or designee shall establish, maintain, and make available for public inspection and copying a statement of costs that the college charges for providing photocopies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120 (2)(b). The college may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor. The college may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.

(2) **Payment.** Payment may be made by cash, check, or money order to Lake Washington Institute of Technology. The college may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request, including a customized service charge. If the college makes a request available on a partial or installment basis, the college may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the college is not obligated to fulfill the balance of the request. The college will close a request upon thirty days when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-100 Determination regarding exempt records. (1) The ((district)) college reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 495D-276-080 is exempt pursuant to RCW ((42.17.310)) 42.56.210 or other statute. Such determination may be made in consultation with an assistant attorney general assigned to the district.

(2) Pursuant to RCW ((42.17.260)) 42.56.230, the ((district)) college reserves the right to delete identifying details when it makes available or publishes any public record when there is reason to believe that disclosure of such details would be an unreasonable invasion of personal privacy or impair a vital governmental interest: Provided, however, in each case, the justification for the deletion shall be explained fully in writing.

(3) Responses to requests for public records must be made promptly. For the purposes of this section, a prompt response occurs if the person requesting the public record is

notified within five business days as to whether his request for a public record will be honored.

(4) Every denial of a request for public records must be accompanied by a written statement, signed by the public records officer or his/her designee, specifying the reason for the denial, a statement of the specific exemption authorizing the withholding of the record, and a brief explanation of how the exemption applies to the public record withheld.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-110 Review of denials of public records requests. ~~((1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for a brief adjudicative proceeding. The written request shall specifically refer to the written statement which constituted or accompanied the denial.~~

~~(2) The written request by a person demanding prompt review of a decision denying a public record shall be submitted to the vice president of administrative services, or his or her designee.~~

~~(3) Within two business days after receiving the written request by a person petitioning for a prompt review of a decision denying a public record, the vice president, or his or her designee, shall complete such review.~~

~~(4) During the course of the review the vice president or his or her designee shall consider the obligations of the district to comply with the intent of chapter 42.17 RCW insofar as it requires providing full public access to official records, but shall also consider the exemptions provided in RCW 42.17.310 or other pertinent statutes, and the provisions of the statute which require the district 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.~~

~~(5) The vice president or designee's decision shall be final unless the requisition files a written appeal with the president under RCW 34.05.491.)~~ **(1) Petition for internal administrative review of denial of access.** Any person who objects to the denial or partial denial of a records request may petition in writing (including email) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer shall promptly provide the petition and any other relevant information to the president or appropriate vice president. That person will immediately consider the petition and either affirm or reverse the denial within two business days following the college's receipt of the petition, or within such other time as mutually agreed upon by the college and the requestor.

(3) Review by the attorney general's office. Pursuant to RCW 42.56.530, if Lake Washington Institute of Technology denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office

to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may obtain a court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-130 Records index. (1) The ~~((district))~~ college has available for the use of all persons a current index which provides identifying information as to the following records issued, adopted, or promulgated by the ~~((district))~~ college after September 1, 1991:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or any private party.

(2) The current index maintained by the ~~((district))~~ college shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-140 Adoption of form. The ~~((district))~~ college shall adopt an appropriate form for use by all persons requesting inspection and/or copying or copies of its records.

WSR 18-01-084
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed December 15, 2017, 12:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-10-114.

Title of Rule and Other Identifying Information: WAC 246-310-290 Hospice services—Standards and need forecasting method, the department of health (department) certif-

icate of need (CoN) program is proposing revision of current criteria, standards and need methodology for hospice service agencies.

Hearing Location(s): On January 31, 2018, at 9:30 a.m., at the Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: February 8, 2018.

Submit Written Comments to: Katherine Hoffman, P.O. Box 47852, Tumwater, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2321, by January 31, 2018.

Assistance for Persons with Disabilities: Contact Katherine Hoffman, phone 360-236-2979, fax 360-236-2321, TTY 360-833-6388 or 711, email katherine.hoffman@doh.wa.gov, by January 24, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes update and modernize WAC 246-210-290. The revisions more clearly describe and clarify the methodology used for projecting future need for hospice services. These projections are used in the CoN hospice services application review process. The proposed changes establish consistent, timely and efficient decision making by the department, and will result in increased patient access to affordable, quality health care, consistent with the intent of chapter 70.38 RCW.

Reasons Supporting Proposal: The current CoN hospice rules went into effect in March 2003, and require modernization. The proposed revisions are necessary to remain current and in alignment with national industry standards, guidelines, best practices, and statewide demographic shifts. The rules will provide increased access to end of life care and support services to populations in need of such services. The proposed rules support the statutory goals of chapter 70.38 RCW by making sure that patients have access to affordable, quality health care.

Statutory Authority for Adoption: RCW 70.38.135.

Statute Being Implemented: RCW 70.38.115.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Hoffman, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2979; Implementation and Enforcement: Janis Sigman, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2956.

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

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Katherine Hoffman, 111 Israel Road S.E., P.O. Box 47852, Tumwater, WA 98501, phone 360-236-2979, fax 360-236-2321, TTY 360-833-6388 or 711, email katherine.hoffman@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There are no costs associated with this rule. The rule does not impose any regulatory burden on providers, nor does it change, modify, add cost or otherwise alter the certificate of need application

process. With respect to the reduction in average daily census (ADC), the methodology assumes that existing hospice agencies will maintain their current volumes. The ADC identified in the final step of the methodology has been lowered from thirty-five to twenty-five. The department does not restrict an existing hospice's ability to recruit staff and to increase the number of patients they wish to serve but if a need is present and demonstrated in the calculations, this is a clear indication that the agency is not growing in line with population growth. Reducing ADC makes it easier for new applicants to enter the Washington hospice service market, benefiting both the consumer and provider. Additionally, reducing ADC does not affect existing providers since they already "hold steady" in the market, and a reduction in ADC allows new providers to serve the excess, or patients who are not being served. Reducing ADC causes projected need in less populated areas to be demonstrated earlier, thereby increasing access to services. With respect to the addition of exception language, hospice service providers must meet all other existing criteria as part of the application process, including numeric need. The supplementary documentation and analysis that would accompany an exception request may result in additional but nominal administrative burden, including gathering publicly available data and other material. While this may require applicants to extend efforts beyond the usual and ordinary CN application process, applicants are aware of planning area access issues well before their letter of intent is submitted, and are appropriately prepared to put forth arguments to support exception requests. The nominal additional costs that may be voluntarily incurred by providers is far outweighed by the public benefit of increased access in areas where there is need for hospice services, even though that need may not be apparent through numeric measures.

December 11, 2017

John Wiesman, DrPH, MPH

Secretary

AMENDATORY SECTION (Amending WSR 03-07-096, filed 3/19/03, effective 4/19/03)

WAC 246-310-290 Hospice services—Standards and need forecasting method. The following rules apply to any in-home services agency licensed or an applicant intending to become licensed to provide hospice services (~~(which has declared an intent)~~), and intending to become a medicare certified ((as a) or medicaid contracted service provider ((of hospice services)) in a designated ((service)) planning area.

(1) The definitions((-)) in this subsection apply throughout this section unless the context clearly indicates otherwise:

(a) "ADC" means average daily census and is calculated by:

(i) Multiplying projected annual hospice agency admissions by the most recent average length of stay in Washington ~~((t))~~, based on the most recent data reported to the Centers for Medicare and Medicaid Services (CMS) ~~((data))~~ to derive the total annual days of care; ~~((and))~~

(ii) Dividing ~~((this))~~ the total calculated in (a)(i) of this subsection by three hundred sixty-five (days per year) to determine the ADC.

(b) ("Current supply of hospice providers" means:

(i) Services of all providers that are licensed and medicare certified as a provider of hospice services or that have a valid (unexpired) certificate of need but have not yet obtained a license; and

(ii) Hospice services provided directly by health maintenance organizations who are exempt from the certificate of need program. Health maintenance organization services provided by an existing provider will be counted under (b)(i) of this subsection.

(c) "Current hospice capacity" means:

(i) For hospice agencies that have operated (or been approved to operate) in the planning area for three years or more, the average number of admissions for the last three years of operation; and

(ii) For hospice agencies that have operated (or been approved to operate) in the planning area for less than three years, an ADC of thirty-five and the most recent Washington average length of stay data will be used to calculate assumed annual admissions for the agency as a whole for the first three years.

(d) "Hospice agency" or "in-home services agency licensed to provide hospice services" means a person administering or providing hospice services directly or through a contract arrangement to individuals in places of temporary or permanent residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and a volunteer and, for the purposes of certificate of need, is or has declared an intent to become medicare eligible or certified as a provider of services in the medicare program.

(e)) "Average length of stay" means the average covered days of care per person for Washington state as reported by CMS.

(c) "Base year" means the most recent calendar year for which hospice survey data is available as of September 30th of each year.

(d) "CMS" means the Centers for Medicare and Medicaid Services.

(e) "Current supply of hospice providers" means all providers of hospice services that have received certificate of need approval to provide services within a planning area. State licensed only and volunteer hospices are excluded from the current supply of hospice providers.

(f) "Hospice services" means symptom and pain management provided to a terminally ill ((individual)) person, and emotional, spiritual and bereavement support for the ((individual)) terminally ill person and family in a place of temporary or permanent residence ((and may include the provision of home health and home care services for the terminally ill individual.

(f)) provided under the direction of an interdisciplinary team composed of at least a registered nurse, social worker, physician, spiritual counselor, and a volunteer.

(g) "OFM" means the Washington state office of financial management.

(h) "Planning area" or "service area" means ((each)) an individual ((county)) geographic area designated by the department ((as the smallest geographic area for which hospice services are projected)) for which hospice need projec-

tions are calculated. For the purposes of ((certificate of need, a planning or combination of)) hospice services, planning area((s may serve as the service area.

(g) "Service area" means, for the purposes of certificate of need, the geographic area for which a hospice agency is approved to provide medicare certified or medicaid eligible services and which consist of one or more planning areas)) and service area have the same meaning.

(i) "Projection year" means the third calendar year after the base year. For example, reviews using 2016 survey data as the base year will use 2019 as the projection year.

(2) The department ((shall)) will review a hospice application((s)) using the concurrent review cycle described in ((this)) subsection (3) of this section, except when the sole hospice provider in the service area ceases operation. Applications to meet this need may be accepted and reviewed in accordance with the regular review process described in WAC 246-310-110 (2)(c).

(3) Applications must be submitted and reviewed according to ((the following schedule and procedures)) Table A:

((a)) Letters of intent must be submitted between the first working day and last working day of September of each year.

(b) Initial applications must be submitted between the first working day and last working day of October of each year.

(c) The department shall screen initial applications for completeness by the last working day of November of each year.

(d) Responses to screening questions must be submitted by the last working day of December of each year.

(e) The public review and comment for applications shall begin on January 16 of each year. If January 16 is not a working day in any year, then the public review and comment period must begin on the first working day after January 16.

(f) The public comment period is limited to ninety days, unless extended according to the provisions of WAC 246-310-120 (2)(d). The first sixty days of the public comment period must be reserved for receiving public comments and conducting a public hearing, if requested. The remaining thirty days must be for the applicant or applicants to provide rebuttal statements to written or oral statements submitted during the first sixty-day period. Also, any interested person that:

(i) Is located or resides within the applicant's health service area;

(ii) Testified or submitted evidence at a public hearing; and

(iii) Requested in writing to be informed of the department's decision, shall also be provided the opportunity to provide rebuttal statements to written or oral statements submitted during the first sixty-day period.

(g) The final review period shall be limited to sixty days, unless extended according to the provisions of WAC 246-310-120 (2)(d).

(4) Any letter of intent or certificate of need application submitted for review in advance of this schedule, or certificate of need application under review as of the effective date of this section, shall be held by the department for review according to the schedule in this section.

(5) When an application initially submitted under the concurrent review cycle is deemed not to be competing, the department may convert the review to a regular review process.

(6) Hospice agencies applying for a certificate of need must demonstrate that they can meet a minimum average daily census (ADC) of thirty-five patients by the third year of

operation. An application projecting an ADC of under thirty-five patients may be approved if the applicant:

- (a) Commits to maintain medicare certification;
- (b) Commits to serve one or more counties that do not have any medicare-certified providers; and
- (c) Can document overall financial feasibility.

Table A

		<u>Application Submission Period</u>			<u>Department Action</u>	<u>Application Review Period</u>		
<u>Concurrent Review Cycle</u>	<u>Letters of Intent Due</u>	<u>Receipt of Initial Application</u>	<u>End of Screening Period</u>	<u>Applicant Response</u>	<u>Beginning of Review</u>	<u>Public Comment</u>	<u>Rebuttal</u>	<u>Ex Parte Period</u>
<u>Cycle 1 (Chelan, Douglas, Clallam, Clark, Skamania, Cowlitz, Grant, Grays Harbor, Island, Jefferson, King, Kittitas, Klickitat, Okanogan, Pacific, San Juan, Skagit, Spokane, and Yakima).</u>	<u>Last working day of November of each year.</u>	<u>Last working day of December of each year.</u>	<u>Last working day of January of each year.</u>	<u>Last working day of February of each year.</u>	<u>March 16 of each year or the first working day thereafter.</u>	<u>45-Day public comment period (including public hearing). Begins March 17 or the first working day thereafter.</u>	<u>30-Day rebuttal period. Applicant and affected person response to public comment.</u>	<u>75-Day ex parte period. Department evaluation and decision.</u>
<u>Cycle 2 (Adams, Asotin, Benton, Columbia, Ferry, Franklin, Garfield, Kitsap, Lewis, Lincoln, Mason, Pend Oreille, Pierce, Snohomish, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, and Whitman).</u>	<u>Last working day of December of each year.</u>	<u>Last working day of January of each year.</u>	<u>Last working day of February of each year.</u>	<u>Last working day of March of each year.</u>	<u>April 16 of each year or the first working day thereafter.</u>	<u>45-Day public comment period (including public hearing). Begins April 17 or the first working day thereafter.</u>	<u>30-Day rebuttal period. Applicant and affected person response to public comment.</u>	<u>75-Day ex parte period. Department evaluation and decision.</u>

(4) Pending certificate of need applications. A hospice service application submitted prior to the effective date of these rules will be reviewed and action taken based on the rules that were in effect on the date the application was received.

(5) The department will notify applicants fifteen calendar days prior to the scheduled decision date if it is unable to meet the decision deadline on the application(s). In that event, the department will establish and commit to a new decision date.

(6) When an application initially submitted under the concurrent review cycle is deemed not to be competing, the department may convert the review to a regular review process.

(7) Current hospice capacity will be determined as follows:

(a) For hospice agencies that have operated in a planning area for three years or more, current hospice capacity is calculated by determining the average number of admissions for the last three years of operation;

(b) For hospice agencies that have operated (or been approved to operate) in a planning area for less than three

years, an ADC of twenty-five and the most recent Washington average length of stay data will be used to calculate assumed annual admissions for the hospice agency as a whole for the first three years to determine current hospice capacity. If a hospice agency's reported admissions exceed an ADC of twenty-five, the department will use the actual reported admissions to determine current hospice capacity;

(c) For a hospice agency that is no longer in operation, the department will use the historical three-year admissions to calculate the statewide use rates, but will not use the admissions to calculate planning area capacity;

(d) For a hospice agency that has changed ownership, the department will use the historical three-year admissions to calculate the statewide use rates, and will use the admissions to calculate planning area capacity.

(8) Need projection. The following steps will be used to project the need for hospice services.

(a) Step 1. Calculate the following ((~~four~~) two) statewide predicted hospice use rates using ((~~CMS and~~) department of health ((~~data or other available data sources~~)) survey and vital statistics death data:

(i) The ~~((predicted))~~ percentage of ~~((cancer))~~ patients age sixty-five and over who will use hospice services. This percentage is calculated by dividing the average number of ~~((hospice))~~ unduplicated admissions over the last three years for patients ~~((the age of))~~ sixty-five and over ~~((with cancer))~~ by the average number of past three years statewide total deaths age sixty-five and over ~~((from cancer))~~.

(ii) The predicted percentage of ~~((cancer))~~ patients under sixty-five who will use hospice services. This percentage is calculated by dividing the average number of ~~((hospice))~~ unduplicated admissions over the last three years for patients under the age of sixty-five ~~((with cancer))~~ by the ~~((current statewide total of))~~ average number of past three years statewide total deaths under sixty-five ~~((with cancer))~~.

~~((iii))~~ The ~~predicted~~ percentage of ~~noneancer~~ patients sixty-five and over who will use hospice services. This percentage is calculated by dividing the average number of hospice admissions over the last three years for patients age sixty-five and over with diagnoses other than cancer by the current statewide total of deaths over sixty-five with diagnoses other than cancer.

~~((iv))~~ The ~~predicted~~ percentage of ~~noneancer~~ patients under sixty-five who will use hospice services. This percentage is calculated by dividing the average number of hospice admissions over the last three years for patients under the age of sixty-five with diagnoses other than cancer by the current statewide total of deaths under sixty-five with diagnoses other than cancer).

(b) Step 2. Calculate the average number of total resident deaths over the last three years for each planning area by age cohort.

(c) Step 3. Multiply each hospice use rate determined in Step 1 by the planning areas average total resident deaths determined in Step 2, separated by age cohort.

(d) Step 4. ~~((Add the four subtotals derived))~~ Using the projected patients calculated in Step 3 ((to project)), calculate a use rate by dividing projected patients by the three-year historical average population by county. Use this use rate to determine the potential volume of hospice ((services in each planning area)) use by the projected population by the two age cohorts identified in Step 1, (a)(i) and (ii) of this subsection using OFM data.

(e) Step 5. ~~((Inflate the potential volume of hospice service by the one year estimated population growth (using OFM data-))~~ Combine the two age cohorts. Subtract the most recent three-year average hospice capacity in each planning area from the projected volumes calculated in Step 4 to determine the number of projected admissions beyond the planning area capacity.

(f) Step 6. ~~((Subtract the current hospice capacity in each planning area from the above projected volume of hospice services to determine unmet need-))~~ Multiply the unmet need from Step 5 by the statewide average length of stay as determined by CMS to determine unmet need patient days in the projection years.

~~((g))~~ ~~((Determine the number of hospice agencies in the proposed planning area which could support the unmet need with an ADC of thirty-five.~~

~~((8))~~ Step 7. Divide the unmet patient days from Step 6 by 365 to determine the unmet need ADC.

(h) Step 8. Determine the number of hospice agencies in the planning areas that could support the unmet need with an ADC of twenty-five.

(9) If the department becomes aware of a facility closure fifteen calendar days or more prior to the letter of intent submission period, the department will update the methodology for the application cycle. If a closure occurs fewer than fifteen calendar days prior to the letter of intent submission period, the department will not update the methodology until the next year.

(10) In addition to demonstrating numeric need under subsection (7) of this section, ((hospice agencies)) applicants must meet the ((other)) following certificate of need requirements ((including WAC 246-310-210-)):

(a) Determination of need((-) under WAC 246-310-210;

(b) WAC 246-310-220 ((-)) Determination of financial feasibility((-WAC 246-310-230-)) under WAC 246-310-210;

(c) Criteria for structure and process of care((- and WAC 246-310-240-)) under WAC 246-310-230; and

(d) Determination of cost containment under WAC 246-310-240.

~~((9))~~ If two or more hospice agencies are competing to meet the same forecasted net need, the department shall consider at least the following factors when determining which proposal best meets forecasted need:

(a) Improved service in geographic areas and to special populations;

(b) Most cost efficient and financially feasible service;

(c) Minimum impact on existing programs;

(d) Greatest breadth and depth of hospice services;

(e) Historical provision of services; and

(f) Plans to employ an experienced and credentialed clinical staff with expertise in pain and symptom management.

~~((10))~~ (11) To conduct the superiority evaluation to determine which competing applications to approve, the department will use only the criteria and measures in this section to compare two or more applications to each other.

(a) The following measures must be used when comparing two or more applications to each other:

(i) Improved service to the planning area;

(ii) Specific populations including, but not limited to, pediatrics;

(iii) Minimum impact on existing programs;

(iv) Greatest breadth and depth of hospice services; and

(v) Published and publicly available quality data.

(b) An application will be denied if it fails to meet any criteria under WAC 246-310-210, 246-310-220, 246-310-230, or 246-310-240 (2) or (3).

(12) The department may grant a certificate of need for a new hospice agency in a planning area where there is not numeric need.

(a) The department will consider if the applicant meets the following criteria:

(i) All applicable review criteria and standards with the exception of numeric need have been met;

(ii) The applicant commits to serving medicare and medicaid patients; and

(iii) A specific population is not being served; or

(iv) The population of the county is low enough that the methodology has not projected need in five years, and the population of the county is not sufficient to meet an ADC of twenty-five.

(b) If more than one applicant applies in a planning area, the department will give preference to a hospice agency that proposes to be physically located within the planning area.

(c) The department has sole discretion to grant or deny application(s) submitted under this subsection.

(13) Any hospice agency granted a certificate of need for hospice services must provide services to the entire county for which the certificate of need was granted.

(14) Failure to operate the hospice agency ((in accordance with)) as approved in the certificate of need ((standards)) may be ((grounds)) a basis for revocation or suspension of ((an)) a hospice agency's certificate of need, or other appropriate action.

WSR 18-01-093

PROPOSED RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed December 18, 2017, 1:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-21-053 on October 13, 2017.

Title of Rule and Other Identifying Information: The department is amending WAC 220-340-500 as it relates to the requirement to maintain footcandle lighting devices on shrimp nets as recommended by the federal National Marine Fisheries Service Eulachon Recovery Plan.

Hearing Location(s): On February 9-10, 2018, at 8:00 a.m., at the Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: March 17, 2018.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, email Rules.Coordinator@dfw.wa.gov, fax 360-902-2155, by February 1, 2018.

Assistance for Persons with Disabilities: Contact Delores Noyes, phone 360-902-2349, TTY 360-902-2207, email Delores.Noyes@dfw.wa.gov, by January 30, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending its rules based on the formal recommendations of the federal National Marine Fisheries Service Eulachon Recovery Plan in order to reduce the bycatch of eulachon smelt which is listed under the Endangered Species Act as a threatened species.

Reasons Supporting Proposal: The reason is based on the recommendation of the federal National Marine Fisheries Service Eulachon Recovery Plan.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Statute Being Implemented: None.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dan Ayres, 48 Devonshire Road, Montesano, WA 98563, 360-249-4628; and Enforcement: Chief Steve Bear, 1111 Washington Street, Olympia, WA 98501, 360-902-2373.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule changes do not affect hydraulics.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The analysis is based on the cost to individual boat owners/operators of following the rule once it is implemented. The rule requires the use of LED lights on shrimp trawl gear which individually costs approximately \$1,300 per net. Based on local revenues for the shrimp trawling industry, this is a de minimis cost to boat owners/operators during an average season.

December 18, 2017

Scott Bird

Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-500 Commercial ocean pink shrimp trawl fishery—Coastal waters. It is unlawful to fish for, possess or deliver ocean pink shrimp taken for commercial purposes from the waters of the Exclusive Economic Zone, except as provided for in this section:

Area

(1) It is unlawful to fish for ocean pink shrimp within the territorial boundaries of the state. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Season

(2) It is unlawful to fish for, take, or possess on board a fishing vessel, pink shrimp, except during the following time: The open season for trawl gear is April 1 through October 31 of each year. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Gear

(3) It is unlawful to fish with trawl gear for pink shrimp for commercial purposes unless an approved by-catch reduction device is used in each net. A by-catch reduction device, also known as a finfish excluder, uses a rigid panel or grate of narrowly spaced bars to guide fish out of an escape hole forward of the panel, generally in the top of the net. An approved by-catch reduction device must meet the following criteria:

(a) The exterior circumference of the rigid panel must fit completely within the interior circumference of the trawl net;

(b) None of the openings between the bars in the rigid panel may exceed 0.75 inches;

(c) The escape hole must, when spread open, expose a hole of at least 100 square inches; and

(d) The escape hole must be forward of the rigid panel and must begin within four meshes of the furthest aft point of attachment of the rigid panel to the net.

(4) It is unlawful to modify by-catch reduction devices in any way that interferes with their ability to allow fish to escape from the trawl, except as provided by special gear permit as described in subsection (5) of this section.

(5) Testing of by-catch reduction devices is allowed by special gear permit only, consistent with the terms and conditions of the permit.

(6) It is unlawful to remove trawl gear from the vessel prior to offloading shrimp without advance notification to WDFW enforcement. To provide advance notification, contact 360-902-2936, and then press zero when the recording begins.

(7) It is unlawful to fish with trawl gear for pink shrimp for commercial purposes unless footrope lighting devices that have been approved by the department are used in each net. A list of approved footrope lighting devices is available from the department. Footrope lighting devices must meet the following criteria:

(a) Lighting devices must be operational;

(b) Lighting devices must be securely attached within six inches of the forward leading edge of the bottom panel of trawl netting; and

(c) Each trawl net must have a minimum of five lighting devices, spaced four feet apart in the central sixteen feet of each net.

(8) It is unlawful to modify footrope lighting devices or device placement on the footrope in any way inconsistent with subsection (7)(c) of this section, except as provided by special gear permit as described in subsection (9) of this section.

(9) Testing of footrope lighting devices or placement on the footrope is allowed by special gear permit only, consistent with the terms and conditions of the permit.

(10) A violation of subsections (3) through (6) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

~~((8))~~ (11) It is unlawful to land or deliver pink shrimp to an original receiver that exceeds the following count per pound restriction: The count per pound must average no more than 160 shrimp per pound for a minimum of two samples, increasing at a rate of one sample per one thousand pounds landed or in possession, up to a maximum requirement of twenty samples. Such samples shall consist of at least one pound each of whole, unbroken shrimp taken at random from throughout the individual load landed or in possession. This landing restriction shall apply only to loads of 3,000 pounds of shrimp or more. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Incidental catch

~~((9))~~ (12) It is unlawful to take salmon incidental to any shrimp trawl fishery.

~~((10))~~ (13) It is unlawful to retain any bottomfish species taken incidental to any shrimp trawl fishery, except as provided for in WAC 220-355-100.

~~((11))~~ (14) It is unlawful to retain any species of shellfish, except that it is permissible to:

(a) Retain up to 50 pounds round weight of other shrimp species taken incidentally in the ocean pink shrimp fishery; and

(b) Retain octopus or squid.

~~((12))~~ (15) A violation of subsections ~~((9) through (11))~~ (12) through (14) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

License

~~((13))~~ (16) An ocean pink shrimp delivery license is required to operate the gear provided for in this section, and it allows the operator to retain shrimp taken in the waters of the Exclusive Economic Zone.

A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Permit

~~((14))~~ (17) It is unlawful to fish for, retain, land, or deliver shrimp taken with trawl gear without a valid shrimp trawl fishery permit.

~~((15))~~ (18) It is unlawful to take, retain, land, or deliver any shrimp or groundfish taken with trawl gear without complying with all provisions of a shrimp trawl fishery permit.

~~((16))~~ (19) A violation of subsection ~~((14) or (15))~~ (17) or (18) of this section is punishable under RCW 77.15.750.

WSR 18-01-095

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed December 18, 2017, 1:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-083 on August 16, 2017.

Title of Rule and Other Identifying Information: The department is amending WAC 220-354-030 to allow crew members to retain salmon during a commercial salmon fishery.

Hearing Location(s): On February 9-10, 2018, at 8:00 a.m., at the Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: March 17, 2018.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, email Rules.Coordinator@dfw.wa.gov, fax 360-902-2155, by February 1, 2018.

Assistance for Persons with Disabilities: Contact Delores Noyes, phone 360-902-2349, TTY 360-902-2207, email Delores.Noyes@dfw.wa.gov, by January 30, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending its rules based on the long-standing practice of allowing crew members to retain a limited amount of salmon for personal use during a commercial salmon fishery.

Reasons Supporting Proposal: The rule is needed to clarify limits for salmon taken for personal use during an open commercial salmon fishery.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Statute Being Implemented: None.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Deputy Chief Mike Cenci, 1111 Washington Street, Olympia, WA 98501, 360-902-2938; and Enforcement: Chief Steve Bear, 1111 Washington Street, Olympia, WA 98501, 360-902-2373.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule changes do not affect hydraulics.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There are no known costs to individual boat owners/operators for implementing this rule.

December 18, 2017
Scott Bird
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

WAC 220-354-030 Sale and purchase of commercial caught salmon. (1) It is unlawful for any person licensed to take salmon for commercial purposes as required under chapter 77.65 RCW to:

(a) Retain for personal use more than ~~((the equivalent of one daily sport bag limit for the area being fished. All salmon taken under commercial license must be recorded on state of Washington fish receiving tickets. The daily limit and possession limit described in this subsection also apply to crew members of the licensed fishing vessel))~~ three salmon per landing and delivery, regardless of species, provided that:

(i) The commercial season is open for the species taken; and

(ii) The fish retained are lawful to possess when taken by the gear type for which the person is licensed to fish; and

(iii) The daily limit and possession limit described in this subsection also apply to crew members of the licensed fishing vessel.

(b) Fail to report and document all salmon taken during a commercial fishery on state of Washington fish receiving tickets, including fish retained for personal use.

~~((b))~~ (c) Sell any salmon ((he takes)) taken under such license to anyone other than a wholesale fish buyer located within or outside the state of Washington: ((Provided, That a

~~person who is himself a wholesale fish buyer may sell his catch to individuals or corporations other than wholesale fish buyer))~~ Except that a person who is licensed as a wholesale fish dealer under the provisions of RCW 77.65.280 may sell his catch to individuals or corporations other than licensed wholesale fish dealers.

~~((e))~~ (d) Sell, barter or attempt to sell or barter salmon eggs that have been removed from the body cavity of salmon unless all carcasses from which eggs have been removed are sold to the same buyer except this subsection does not apply to troll caught salmon or the eggs from such salmon.

~~((f))~~ (e) Discard salmon that may be lawfully retained except fishers may discard salmon that are unmarketable due to pinniped predation.

(2) It is unlawful for a wholesale fish buyer to purchase or attempt to purchase salmon eggs without also purchasing all male and female salmon taken by the fisher, including the salmon carcasses from which the eggs were removed.

(3) Violation of subsection (1)(a) of this section is punishable under RCW 77.15.550 Violation of commercial fishing area or time—Penalty.

(4) Violation of subsection (1)(b) of this section is punishable under RCW 77.15.280 Reporting of fish or wildlife harvest—Rules violation—Penalty.

(5) Violation of subsection (1)(c) of this section is punishable under RCW 77.15.620 Engaging in fish dealing activity—Unlicensed—Penalty.

(6) Violation of subsections (1)(d) and (2) of this section are punishable under RCW 77.15.260 Unlawful trafficking in fish, shellfish, or wildlife—Penalty.

(7) Violation of subsection (1)(e) of this section is punishable under RCW 77.15.170 Waste of fish and wildlife—Penalty.

WSR 18-01-097

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed December 18, 2017, 3:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-15-010.

Title of Rule and Other Identifying Information: WAC 246-310-715 General requirements, 246-310-720 Hospital volume standards, 246-310-725 Physician volume standards, and 246-310-745 Need forecasting methodology, the department of health (department) is proposing realignment of the certificate of need (CN) standards for institutional and individual volume standards for elective percutaneous coronary intervention (PCI).

Hearing Location(s): On January 25, 2018, at 10:30 a.m., at the Department of Health, Point Plaza East, Room 152, 310 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: February 1, 2018.

Submit Written Comments to: Katherine Hoffman, P.O. Box 47852, Tumwater, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2321, by January 25, 2018.

Assistance for Persons with Disabilities: Contact Katherine Hoffman, phone 360-236-2979, fax 360-236-2321, TTY 360-833-6388 or 711, email katherine.hoffman@doh.wa.gov, by January 18, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes amend WAC 246-310-715, 246-310-720, 246-310-725, and 246-310-745 by reducing the current adult elective PCI volume standards for institutions from three hundred to two hundred, and for individual practitioners from seventy-five to fifty to promote safe and effective elective PCI based on the most recent clinical research and literature.

Reasons Supporting Proposal: The existing CN rules went into effect in December 2008 and require updating. The existing rules provide that all elective PCI programs must comply with annual volume standards of three hundred elective PCI procedures per year and seventy-five elective PCI procedures per physician. Recent consensus clinical research and literature establish an institutional volume standard of two hundred elective PCI procedures per year, and fifty elective PCI per physician. The proposed revisions are necessary to remain current and in alignment with national industry standards, guidelines and best practices, as well as the most recent clinical research. The proposed rules support the statutory goals of chapter 70.38 RCW by making sure that patients have access to safe, affordable, quality services, while benefiting communities and protecting patients by assuring standards of care to maintain competence and excellence in service delivery.

Statutory Authority for Adoption: RCW 70.38.135.

Statute Being Implemented: RCW 70.38.115.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Hoffman, 111 Israel Road, Tumwater, WA 98501, 360-236-2979; Implementation and Enforcement: Janis Sigman, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2956.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Katherine Hoffman, 111 Israel Road S.E., P.O. Box 47852, Tumwater, WA 98501, phone 360-236-2979, fax 360-236-2321, TTY 360-833-6388 or 711, email katherine.hoffman@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There are no costs associated with this rule. The rule does not impose any regulatory burden on providers, nor does it change, modify, add cost or otherwise alter the certificate of need application process. Reducing elective PCI procedure volumes for institutions and providers is consistent with nationally recognized standards and statewide trends, benefits communities and protects patients by setting standards of care to maintain competency and excellence in service delivery. A full analysis of life expectancy and value of resulting improved health

after elective PCI weighed against the overall cost of providing the service is beyond the scope of this analysis, but should be a consideration when evaluating the overall impact of reducing elective PCI volume thresholds. However, the relative benefit of more favorable outcomes at facilities with updated minimum volume standards outweighs both the financial and societal costs of the potential decline in access and quality resulting from rigid, outdated volume thresholds. Additionally, existing adult elective PCI providers will be able to maintain current volumes while making it easier for new applicants to enter the service market, benefitting both the consumer and providers. Reducing institutional and operator volumes will likely not affect existing adult elective PCI providers since these providers already "hold steady" in the market, and lowering volume standards allows new providers to serve the excess, or patients who are not being served, increasing access and assuring that patients are receiving high quality, cost effective care. For these reasons, this rule does not impose more than minor costs on businesses as defined by RCW 19.85.020(2).

December 14, 2017

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 09-01-113, filed 12/19/08, effective 12/19/08)

WAC 246-310-715 General requirements. The applicant hospital must:

(1) Submit a detailed analysis of the impact that their new adult elective PCI services will have on the Cardiovascular Disease and Interventional Cardiology Fellowship Training programs at the University of Washington, and allow the university an opportunity to respond. New programs may not reduce current volumes at the University of Washington fellowship training program.

(2) Submit a detailed analysis of the projected volume of adult elective PCIs that it anticipates it will perform in years one, two and three after it begins operations. All new elective PCI programs must comply with the state of Washington annual PCI volume standards of of (~~three~~) two hundred) by the end of year three. The projected volumes must be sufficient to assure that all physicians working only at the applicant hospital will be able to meet volume standards of (~~seventy-five~~) fifty PCIs per year. If an applicant hospital fails to meet annual volume standards, the department may conduct a review of certificate of need approval for the program under WAC 246-310-755.

(3) Submit a plan detailing how they will effectively recruit and staff the new program with qualified nurses, catheterization laboratory technicians, and interventional cardiologists without negatively affecting existing staffing at PCI programs in the same planning area.

(4) Maintain one catheterization lab used primarily for cardiology. The lab must be a fully equipped cardiac catheterization laboratory with all appropriate devices, optimal digital imaging systems, life sustaining apparatus, intra-aortic balloon pump assist device (IABP). The lab must be staffed by qualified, experienced nursing and technical staff with

documented competencies in the treatment of acutely ill patients.

(5) Be prepared and staffed to perform emergent PCIs twenty-four hours per day, seven days per week in addition to the scheduled PCIs.

(6) If an existing CON approved heart surgery program relinquishes the CON for heart surgery, the facility must apply for an amended CON to continue elective PCI services. The applicant must demonstrate ability to meet the elective PCI standards in this chapter.

AMENDATORY SECTION (Amending WSR 09-01-113, filed 12/19/08, effective 12/19/08)

WAC 246-310-720 Hospital volume standards. (1) Hospitals with an elective PCI program must perform a minimum of ~~((three))~~ two hundred adult PCIs per year by the end of the third year of operation and each year thereafter.

(2) The department shall only grant a certificate of need to new programs within the identified planning area if:

(a) The state need forecasting methodology projects unmet volumes sufficient to establish one or more programs within a planning area; and

(b) All existing PCI programs in that planning area are meeting or exceeding the minimum volume standard.

AMENDATORY SECTION (Amending WSR 09-01-113, filed 12/19/08, effective 12/19/08)

WAC 246-310-725 Physician volume standards. Physicians performing adult elective PCI procedures at the applying hospital must perform a minimum of ~~((seventy-five))~~ fifty PCIs per year. Applicant hospitals must provide documentation that physicians performed ~~((seventy-five))~~ fifty PCI procedures per year for the previous three years prior to the applicant's CON request.

AMENDATORY SECTION (Amending WSR 09-01-113, filed 12/19/08, effective 12/19/08)

WAC 246-310-745 Need forecasting methodology. For the purposes of the need forecasting method in this section, the following terms have the following specific meanings:

(1) "Base year" means the most recent calendar year for which December 31 data is available as of the first day of the application submission period from the department's CHARS reports or successor reports.

(2) "Current capacity" means the sum of all PCIs performed on people (aged fifteen years of age and older) by all ~~((CON))~~ certificate of need approved adult elective PCI programs, or department grandfathered programs within the planning area. To determine the current capacity for those planning areas where a new program has operated less than three years, the department will measure the volume of that hospital as the greater of:

(a) The actual volume; or

(b) The minimum volume standard for an elective PCI program established in WAC 246-310-720.

(3) "Forecast year" means the fifth year after the base year.

(4) "Percutaneous coronary interventions" means cases as defined by diagnosis related groups (DRGs) as developed under the Centers for Medicare and Medicaid Services (CMS) contract that describe catheter-based interventions involving the coronary arteries and great arteries of the chest. The department will exclude all pediatric catheter-based therapeutic and diagnostic interventions performed on persons fourteen years of age and younger are excluded. The department will update the list of DRGs administratively to reflect future revisions made by CMS to the DRG to be considered in certificate of need definitions, analyses, and decisions. The DRGs for calendar year 2008 applications will be DRGs reported in 2007, which include DRGs 518, 555, 556, 557 and 558.

(5) "Use rate" or "PCI use rate," equals the number of PCIs performed on the residents of a planning area (aged fifteen years of age and older), per one thousand persons.

(6) "Grandfathered programs" means those hospitals operating a certificate of need approved interventional cardiac catheterization program or heart surgery program prior to the effective date of these rules, that continue to operate a heart surgery program. For hospitals with jointly operated programs, only the hospital where the program's procedures were approved to be performed may be grandfathered.

(7) The data sources for adult elective PCI case volumes include:

(a) The comprehensive hospital abstract reporting system (CHARS) data from the department, office of hospital and patient data;

(b) The department's office of certificate of need survey data as compiled, by planning area, from hospital providers of PCIs to state residents (including patient origin information, i.e., patients' zip codes and a delineation of whether the PCI was performed on an inpatient or outpatient basis); and

(c) Clinical outcomes assessment program (COAP) data from the foundation for health care quality, as provided by the department.

(8) The data source for population estimates and forecasts is the office of financial management medium growth series population trend reports or if not available for the planning area, other population data published by well-recognized demographic firms.

(9) The data used for evaluating applications submitted during the concurrent review cycle must be the most recent year end data as reported by CHARS or the most recent survey data available through the department or COAP data for the appropriate application year. The forecasts for demand and supply will be for five years following the base year. The base year is the latest year that full calendar year data is available from CHARS. In recognition that CHARS does not currently provide outpatient volume statistics but is patient origin-specific and COAP does provide outpatient PCI case volumes by hospitals but is not currently patient origin-specific, the department will make available PCI statistics from its hospital survey data, as necessary, to bridge the current outpatient patient origin-specific data shortfall with CHARS and COAP.

(10) Numeric methodology:

Step 1. Compute each planning area's PCI use rate calculated for persons fifteen years of age and older, including inpatient and outpatient PCI case counts.

(a) Take the total planning area's base year population residents fifteen years of age and older and divide by one thousand.

(b) Divide the total number of PCIs performed on the planning area residents over fifteen years of age by the result of Step 1 (a). This number represents the base year PCI use rate per thousand.

Step 2. Forecasting the demand for PCIs to be performed on the residents of the planning area.

(a) Take the planning area's use rate calculated in Step 1 (b) and multiply by the planning area's corresponding forecast year population of residents over fifteen years of age.

Step 3. Compute the planning area's current capacity.

(a) Identify all inpatient procedures at ~~((CON))~~ certificate of need approved hospitals within the planning area using CHARS data;

(b) Identify all outpatient procedures at ~~((CON))~~ certificate of need approved hospitals within the planning area using department survey data; or

(c) Calculate the difference between total PCI procedures by ~~((CON))~~ certificate of need approved hospitals within the planning area reported to COAP and CHARS. The difference represents outpatient procedures.

(d) Sum the results of (a) and (b) or sum the results of (a) and (c). This total is the planning area's current capacity which is assumed to remain constant over the forecast period.

Step 4. Calculate the net need for additional adult elective PCI procedures by subtracting the calculated capacity in Step 3 from the forecasted demand in Step 2. If the net need for procedures is less than ~~((three))~~ two hundred, the department will not approve a new program.

Step 5. If Step 4 is greater than ~~((three))~~ two hundred, calculate the need for additional programs.

(a) Divide the number of projected procedures from Step 4 by ~~((three))~~ two hundred.

(b) Round the results down to identify the number of needed programs. (For example: $((575/300 = 1.916))$ 375/200 = 1.875 or 1 program.)

WSR 18-01-100
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Services and Enterprise Support Administration)

[Filed December 19, 2017, 9:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-102.

Title of Rule and Other Identifying Information: The department is proposing to create new WAC 388-01-005; repeal WAC 388-01-040; and amend WAC 388-01-010, 388-01-015, 388-01-020, 388-01-030, 388-01-050, 388-01-060, 388-01-070, 388-01-080, 388-01-090, 388-01-100, 388-01-

110, 388-01-120, 388-01-130, 388-01-140, WAC 388-01-150, 388-01-160, 388-01-170, 388-01-180, 388-01-190, and 388-01-200.

Hearing Location(s): On February 6, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than February 7, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., February 6, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by January 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amended rules add language to clarify, update, and ensure clear policies for responding to public records requests under chapter 42.56 RCW, and align policy to comply with new statutes. The proposed repeal of WAC 388-01-040 removes existing redundant language, and the proposed new WAC 388-01-005 adds a new definition section for rule clarity.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 42.56.040.

Statute Being Implemented: Chapter 42.56 RCW.

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

Name of Proponent: [DSHS], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Natasha House, DSHS Public Records Officer, P.O. Box 45135, Olympia, WA 98504, 360-902-8484.

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

A cost-benefit analysis is not required under RCW 34.05.328. Amendments to chapter 388-01 WAC clarify current department policy and are not considered "significant legislative rules."

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

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

December 13, 2017

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 18-02 issue of the Register.

WSR 18-01-102
PROPOSED RULES
RECREATION AND CONSERVATION
OFFICE

(Recreation and Conservation Funding Board)

[Filed December 19, 2017, 9:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-22-12 [17-22-120].

Title of Rule and Other Identifying Information: Amending chapter 286-06 WAC, Public records.

Hearing Location(s): On January 31, 2018, at 11:00 a.m., at the Natural Resources Building, Conference Room #172, 1111 Washington Street S.E., Olympia, WA 98501. This is a meeting of the recreation and conservation funding board.

Date of Intended Adoption: January 31, 2018.

Submit Written Comments to: Name: Patty Dickason, 1111 Washington Street S.E., P.O. Box 40917, Olympia, WA 98504, email patty.dickason@rco.wa.gov, fax 360-902-3026, by January 25, 2018. Written comments may also be submitted through the web site of the recreation and conservation office on the policy and rule-making page at <https://www.rco.wa.gov/about/Rulemaking.shtml>.

Assistance for Persons with Disabilities: Contact Patty Dickason, phone 360-902-3085, fax 360-902-3026, email patty.dickason@rco.wa.gov, by January 25, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The recreation and conservation office is proposing rule making to amend chapter 286-06 WAC, Public records. The purpose of chapter 286-06 WAC is to implement requirements of the Public Records Act (PRA) including the process the recreation and conservation office uses for disclosing records and charging fees.

The salmon recovery funding board conducts access to public records in the same manner as chapter 286-06 WAC as described in WAC 420-04-100(2).

This update will modernize the rule to reflect the current law, technology, and processes.

Reasons Supporting Proposal: The rule was last updated in November 2014. Since then, the Public Records Act has been amended by the state legislature. The rule needs to be revised to meet requirements of the current law.

This update will modernize the rule to reflect the current law, technology, and processes and thus be more functional and allow the recreation and conservation office to better serve the public, the legislature, our partners and other constituents when seeking agency public records.

Statutory Authority for Adoption: RCW 42.56.100 Public Records Act—Protection of public records—Public access.

Statute Being Implemented: Chapter 42.56 RCW.

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

Name of Proponent: Recreation and conservation office on behalf of the recreation and conservation funding board, governmental.

Name of Agency Personnel Responsible for Drafting: Patty Dickason, Olympia, Washington, 360-902-3085; Implementation: Patty Dickason/Tammy Finch, Olympia,

Washington, 360-902-3085/360-725-3936; and Enforcement: Scott Robinson, Olympia, Washington, 360-902-0207.

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

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

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

Is exempt under RCW 42.56.070, 42.56.120.

Explanation of exemptions: The model rules are advisory only and apply only to government agencies, not small businesses. RCW 42.56.570. To the extent there are costs assessed by public agencies providing records in response to PRA requests by small businesses, the authorized costs are set out in statute and apply to all requestors.

December 18, 2017

Kaleen Cottingham

Agency Director

AMENDATORY SECTION (Amending WSR 14-22-100, filed 11/4/14, effective 12/5/14)

WAC 286-06-070 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the office, from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

(2) **Records index.**

(a) An index of public records is available for use by members of the public, including:

(i) Archived files;

(ii) Equipment inventory;

(iii) Office and board policies and procedures, including manuals;

(iv) Active project files;

(v) Publications such as brochures and special reports;

(vi) Policy statements entered after June 30, 1990, as defined in RCW 34.05.010, including grant program manuals; and

(vii) Rule-making files, as described in RCW 34.05.370, for each rule proposed for adoption in the Washington State Register and adopted.

(b) Before June 30, 1990, the office did not maintain an index of:

(i) Declaratory orders containing analysis or decisions of substantial importance to the office in carrying out its duties;

(ii) Interpretive statements as defined in RCW 34.05.-010; and

(iii) Policy statements as defined in RCW 34.05.010.

(c) The following general records and files are available by reference to topic, and generally arranged alphabetically or chronologically within such topic. Due to volume, costs, and complexity; however, no master index is maintained:

(i) Administrative files;

(ii) Comprehensive park-recreation plans;

(iii) Summaries of office staff meetings;

(iv) Closed or inactive project files;

(v) General correspondence;

(vi) Attorney general opinions;

(vii) Financial records;

(viii) Summaries and memoranda of office and board meetings;

(ix) Final adjudicative proceeding orders entered after June 30, 1990, as defined in RCW 34.05.010 that contain an analysis or decision of substantial importance to the office or board in carrying out its duties (each listed alphabetically by subject with a phrase describing the issue or issues and relevant citations of law);

(x) Declaratory orders entered after June 10, 1990, that contain an analysis or decision of substantial importance to the office or board in carrying out its duties (each listed alphabetically by case name with a phrase describing the issue or issues and relevant citations of law); and

(xi) Interpretive statements as defined in RCW 34.05.-010 (each indexed by the office or board program).

(3) **Organization of records.** The office will maintain its records in a reasonably organized manner. The office will take reasonable actions to protect records from damage and disorganization. A requestor shall not take records from the office without the permission of the public records officer or designee. A variety of records is available on the office's web site at www.rco.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) **Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the office should make the request in writing on the office's request form, or by letter, fax, or email addressed to the public records officer and include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any email address;
- Identification of the public records adequate for the public records officer or designee to locate the records; and
- The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit.

(c) A form is available for use by requestors at the office of the public records officer and online at www.rco.wa.gov.

(d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

(5) A public records request must be for identifiable records. A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records under this chapter, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency's records.

(6) An agency may deny a bot request that is one of multiple requests from the requestor to the agency within a twenty-four hour period, if the agency establishes that responding to the multiple requests would cause excessive interference with other essential functions of the office. For

purposes of this subsection, "bot request" means a request for public records that an office reasonably believes was automatically generated by a computer program or script.

AMENDATORY SECTION (Amending WSR 14-22-100, filed 11/4/14, effective 12/5/14)

WAC 286-06-085 Processing of public records requests—Electronic records. (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the office and is generally commercially available, or in a format that is reasonably translatable from the format in which the office keeps the record. Costs for providing electronic records are governed by WAC 44-14-07003.

(3) **Customized access to databases.** With the consent of the requestor, the office may provide customized access under RCW 43.41A.130 if the record is not reasonably locatable or not reasonably translatable into the format requested. The office may charge a fee consistent with RCW ((43.41A-130)) 43.105.355 for such customized access.

AMENDATORY SECTION (Amending WSR 14-22-100, filed 11/4/14, effective 12/5/14)

WAC 286-06-090 Costs of providing copies of public records. (1) **Costs for paper and electronic copies.**

~~((a) There is no fee for inspecting public records in the office or emailing electronic records to a requestor, unless another cost applies such as a scanning fee.~~

~~(b) The office will charge an amount necessary to reimburse its costs for providing paper and electronic copies of records, including costs for electronic copies on a CD-ROM and scanning paper or other nonelectronic records.~~

~~(c) The fee amounts shall be reviewed from time to time by the office, and shall represent the costs of providing copies of public records and for use of the office's copy equipment, including staff time spent copying records, preparing records for copying, and restoring files. This charge is the amount necessary to reimburse the office for actual costs for copying. The charge for special copy work of nonstandard public records shall reflect the total cost, including the staff time necessary to safeguard the integrity of these records.~~

~~(d) Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.~~

~~(e) The office will not charge sales tax when it makes copies of public records unless it uses an outside vendor to make the copies.~~

~~(2) **Costs of mailing.** The office may also charge actual costs of mailing, including the cost of the shipping container.~~

(3) **Payment.** Payment may be made by cash, check, or money order to the office.)) The following copy fees and payment procedures apply to requests to the office under chapter 42.56 RCW.

(2) Pursuant to RCW 42.56.120 (2)(b), as amended by section 3, chapter 304, Laws of 2017, the office will not be calculating actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The office does not have the resources to conduct a study to determine all its actual copying costs;

(b) To conduct such a study would interfere with other essential agency functions; and

(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records.

(3) The office will charge for copies of records consistent with the fee schedule established in RCW 42.56.120(2).

(a) No fee shall be charged for the inspection of public records or locating public documents and making them available for copying, unless another cost applies such as a copy fee;

(b) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records;

(c) Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;

(d) Five cents per each four electronic files or attachments uploaded to email, cloud-based data storage service, or other means of electronic delivery;

(e) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically;

(f) The cost of any digital storage media or device provided by the office, the cost of any envelope or container used to mail the copies to the requestor, and the cost of any postage or delivery charge;

(g) The office will not charge sales tax when it makes copies of public records unless it uses an outside vendor to make the copies;

(h) A requestor may ask the office to provide, and if requested the office shall provide, an estimated summary of the applicable charges before any copies or scans are made and the requestor may revise the request to reduce the number of copies to be made and reduce the applicable charges;

(i) The office shall not impose copying charges under this section for access to or downloading of records that the agency routinely posts on its public internet web site prior to receipt of a request unless the requestor has specifically requested that the agency provide copies of such records through other means;

(j) The office shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations;

(k) The charges for copying methods used by the office are summarized in the fee schedule available on the office's web site at www.rco.wa.gov.

(4) Fee waivers are an exception and are available for some small requests under the following conditions:

It is within the discretion of the public records officer to waive copying fees when: (a) All of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages; or (b) all of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of one hundred printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(5) The public records officer may require advanced payment. An advance deposit of twenty-five percent of the estimated fees may be required when the fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The office will notify the requestor of when payment is due.

(7) Payment should be made by check or money order to the recreation and conservation office. The office will not accept cash payment.

(8) The office will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

WSR 18-01-108

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed December 19, 2017, 10:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-15-133.

Title of Rule and Other Identifying Information: Chapter 16-131 WAC, Marijuana-infused edibles, the department is proposing rules to regulate marijuana-infused edible (MIE) products as directed by the Washington state legislature under chapter 138, Laws of 2017 (SHB 1462).

Hearing Location(s): On January 25, 2018, at 2:00 p.m., at the Washington State Department of Agriculture, Natural Resources Building, 1111 Washington Street S.E., Conference Room 259, Olympia, WA 98504; and on January 26, 2018, at 11:00 a.m., at the Washington State Department of Agriculture, 222 North Havana, Conference Room 202, Spokane, WA 99202.

Date of Intended Adoption: February 8, 2018.

Submit Written Comments to: Henri Gonzales, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wdsarulescomments@agr.wa.gov, fax 360-902-2092, by January 26, 2018, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule is to outline the requirements for MIE processing. The processing of MIE products are the same as other food processing under the Washington Food Processing Act (chapter 69.07 RCW). This rule provides additional details on MIE definitions, MIE endorsement, initial application, application approval, specific MIE labeling, allowable MIE product

types, processing requirements, and inspection and enforcement procedures, including a penalty matrix for MIE violations.

Reasons Supporting Proposal: The department was directed by the 2017 legislature to adopt rules regulating the processing of MIE products. The rules must be written and interpreted to be consistent with the rules adopted by the Washington state liquor and cannabis board (WSLCB) and the Washington state department of health. The department has been conducting contract inspections on MIE operations for WSLCB since June 2014 and the rules provide the transition of the enforcement of MIE production to the department by April 1, 2018.

Statutory Authority for Adoption: RCW 69.07.020, 69.07.200, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 69.07 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Claudia G. Coles, 1111 Washington Street S.E., Olympia, WA 98504, 206-321-1124; **Implementation and Enforcement:** Lucy Severs, 1111 Washington Street S.E., Olympia, WA 98504, 360-725-5761.

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

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(3), 19.85.040(1), and 34.05.310 (4)(e).

Explanation of exemptions: The proposed rule adopts either the actual language or by reference provisions of existing laws and regulations, including chapter 69.07 RCW (Washington Food Processing Act); chapter 16-165 WAC (food inspection); chapter 16-167 WAC (intrastate commerce in foods); chapter 314-55 WAC (marijuana licenses, application process, requirements, and reporting); 21 C.F.R., Part 101.4 (Food Labeling—Designation of Ingredients); 21 C.F.R. Part 101.100 (Exemptions from Labeling); the Food

Allergen Labeling and Consumer Protection Act of 2004 (P.L. 108-282, Title II); and 21 C.F.R., Part 150 (Fruit Butters, Jellies, Preserves, and Related Products). The proposed rule also adopts a penalty matrix for MIE violations of the Washington Food Processing Act. The department need only consider costs incurred by businesses for compliance with the rule (RCW 19.85.040(1)). Fines, penalties, or defense costs associated with enforcement actions for failure to comply with the rules are similarly not costs that need to be considered when analyzing the economic impact.

December 19, 2017
Candance A. Jacobs
Assistant Director

Chapter 16-131 WAC

MARIJUANA-INFUSED EDIBLES

NEW SECTION

WAC 16-131-010 Purpose of this chapter. The purpose of this chapter is to establish rules pursuant to chapter 69.07 RCW relating to:

- (1) Procedures to obtain and maintain a marijuana-infused edible endorsement;
- (2) Requirements for marijuana-infused edible processing facilities; and
- (3) Requirements for marijuana-infused edible labeling.

NEW SECTION

WAC 16-131-020 Definitions. In addition to the definitions in RCW 69.07.010, the following definitions apply to this chapter:

"**MIE**" has the same meaning as "marijuana-infused edible" in RCW 69.07.010.

"**MIE processing**" means the same as "marijuana-infused edible processing" in RCW 69.07.010. The term includes all activities covered by "food processing" under RCW 69.07.010. The term also includes packaging of MIEs and bottling operations (preparing bottles, filling, and capping).

"**MIE processing facility**" means the room or rooms where MIEs are processed.

"**MIE processor**" means a person who holds an MIE endorsement.

"**WSLCB**" means the same as "board" in RCW 69.07.010; the state liquor and cannabis board.

NEW SECTION

WAC 16-131-030 General requirements. (1) For initial authorization to produce MIEs, a person must obtain an MIE endorsement as provided under RCW 69.07.200 and WAC 16-131-040.

(2) An MIE processor must comply with all laws to which other food processors are subject including, but not limited to, chapter 69.07 RCW, Washington Food Processing Act, chapter 16-165 WAC, Food inspection, and chapter 16-167 WAC, Intrastate commerce in foods.

(3) An MIE processor in good standing may renew an endorsement through the department of revenue as provided in RCW 69.07.200.

(4) A person must hold an MIE endorsement and obtain the department's approval of each MIE as provided in WAC 16-131-050 before offering the MIE for sale.

(5) All communication in connection with MIEs from an applicant or endorsement holder to the department must reference the applicant or endorsement holder's WSLCB license number and the name under which the WSLCB license is held.

(6) An MIE endorsement is valid for only one location.

(7) MIE processing facilities must comply with all applicable state, county, and municipal laws and ordinances that apply to conducting business in the MIE processing facility location.

NEW SECTION

WAC 16-131-040 Initial application requirements.

(1) Persons seeking to produce MIEs must apply to the department of revenue as required under RCW 69.07.200. The initial endorsement is not valid until the department approves the applicant's submittals required under this section, inspects the MIE processing facility, and determines that the applicant and facility substantially complies with applicable laws and regulations.

(2) Once the department receives the endorsement application from department of revenue's business licensing service, the department will contact the applicant and provide electronic copies of required forms for the applicant to complete.

(3) Before the department will begin evaluation of an initial application, the applicant must submit the following:

(a) Full facility plans as required under WAC 16-131-090;

(b) A detailed floor plan or diagram of the MIE processing facility as required under WAC 16-131-090;

(c) All documents required under WAC 16-131-050 for each initially proposed MIE;

(d) Documentation verifying that the water supply meets standards in WAC 16-165-130.

(4) Once the department determines that an initial applicant's submittal is complete and satisfactory, the department will contact the applicant to schedule an inspection. The MIE processing facility must be production ready at the time of inspection; perishable ingredients are not required to be in stock.

(5) Following the inspection, the department will notify the applicant of its decision to approve or deny the endorsement. If approving the endorsement, the department will identify the MIE products approved for processing.

NEW SECTION

WAC 16-131-050 MIE approval. (1) An MIE is specific to its form, formulation and ingredients, including color and flavor. The same formulation and ingredients in different forms (for example, powder and solid forms) are different MIEs.

(2) A person must obtain the department's review and approval for each MIE before offering it for sale.

(3) A person must provide the following information to the department in electronic format for each proposed MIE product:

(a) The product name;

(b) The written recipe;

(c) A description of the processing steps for the MIE product;

(d) A description of the packaging; and

(e) A copy of the proposed ingredient label conforming to WAC 16-131-060.

(4) The department will approve only the types of MIEs that comply with WAC 16-131-070.

(5) Any change in the ingredients of an approved MIE requires department review and approval as provided in subsection (2) of this section.

(6) The department may require another facility inspection if a newly proposed or reformulated MIE introduces a new type of processing in the MIE processing facility. For example, the department will require a new inspection if a facility that previously produced baked goods proposes to add a bottled beverage MIE.

NEW SECTION

WAC 16-131-060 MIE labeling. (1) MIE processors must submit a copy of the proposed ingredient label for each MIE to the department for approval. The proposed ingredient label may not be used without the department's written approval.

(2) MIE product labels must comply with the WSLCB's packaging and labeling requirements under chapter 314-55 WAC and, for the purposes of the MIE endorsement, additionally display:

(a) A statement of ingredients as specified under 21 C.F.R. 101.4 (2017). The ingredient statement must identify sulfites, if present, as required under 21 C.F.R. 101.100 (2017) and the names of Food and Drug Administration certified color additives such as FD&C Yellow 5 and the like, if present.

(b) Allergens (milk, egg, fish, crustacean shellfish, tree nuts, wheat, peanuts, soybeans) as specified under the Food Allergen Labeling and Consumer Protection Act of 2004 (P.L. 108-282, Title II).

(3) The following sample label illustrates the ingredient and allergen labeling requirements:

Chocolate Peanut Butter Walnut Brownie

Ingredients: Brown Sugar (Sugar, Invert sugar, Cane molasses), All-purpose flour (Wheat flour, Niacin, Reduced iron, Thiamine mononitrate, Riboflavin, Folic acid), Milk chocolate (Sugar, Whole milk powder, Cocoa butter, Cocoa mass, Soy lecithin, Vanilla), Peanut Butter (Peanuts, Sugar, Molasses, Hydrogenated vegetable oil, Mono and diglycerides, Salt), Chopped Walnuts, Dextrose, Salt, Artificial Flavoring, Leavening (Sodium bicarbonate), Cannabis Extract.

CONTAINS: Milk, Peanuts, Soy, Walnuts, Wheat

NEW SECTION

WAC 16-131-070 MIE product types. (1) All MIEs must comply with WAC 314-55-077.

(2) The department will not approve an MIE for commercial sale unless it complies with WAC 314-55-077 and is a low hazard food that typically does not support bacterial or toxigenic growth. Such foods include, but are not limited to:

(a) Baked goods that do not require refrigeration such as cookies, brownies, fruit pies and fruit tarts;

(b) Candies and chocolates;

(c) Stove top treats, which are candies or confections made from sugar or syrup to which flavorings and/or colorants are added such as molded chocolates, fruit rolls, roasted coated nuts, and nonbaked bars or granola products;

(d) Flavored water beverages (like vitamin style waters), carbonated beverages, and lemonade style beverages. Product safety is formulation dependent; the department may reject some formulations as potentially hazardous;

(e) Dry mixes such as coffee granules, leaf tea, soup mixes, beverage mixes, and seasonings;

(f) Jams, jellies, and related products made in accordance with 21 C.F.R. Part 150;

(g) Roasted nut butters, such as peanut butter, almond butter, etc.;

(h) Honey and syrups;

(i) Vinegars, tinctures, and tonics. If infused with dried marijuana, the processor must strain and entirely remove all plant parts and particulates from the final product. Use of other plant parts and particulates for infusion, such as herbs and garlic, is prohibited (see WAC 314-55-077);

(j) Tablets and capsules.

(3) A processor may infuse oils or fats (canola oil, olive oil, coconut oil, butter, etc.) with marijuana and use such for preparation of MIEs intended for sale. Retail sale of MIE oils and fats is prohibited. Use of other plant parts and particulates for infusion in oils and fats, such as herbs and garlic, that is intended for use in production of retail MIEs is prohibited (see WAC 314-55-077 and 314-55-104).

(4) The department will not approve an MIE for commercial sale if it is a potentially hazardous food. The following nonexhaustive list includes foods prohibited as MIEs:

(a) Any food that must be temperature controlled (frozen, refrigerated, hot holding) for food safety (see WAC 314-55-077);

(b) Foods that required acidification to assure food safety (for example, ready-to-drink tea and barbecue sauce) (see WAC 314-55-077);

(c) Foods that must be retorted or pasteurized to assure food safety (see WAC 314-55-077);

(d) Dairy products of any kind such as butter, cheese, ice cream, or milk (see WAC 314-55-077);

(e) Fruit or vegetable juices, except shelf stable concentrates (see WAC 314-55-077);

(f) Oils and vegetable butters (see WAC 314-55-077);

(g) Pies containing egg such as pumpkin or custard (see WAC 314-55-077);

(h) Dried or cured meats (see WAC 314-55-077);

(i) Jams, jellies, and related products with sugar to fruit ratio less than provided by 21 C.F.R. Part 150.

NEW SECTION

WAC 16-131-080 MIE processing. (1) All MIE processing must take place in the MIE processing facility. An MIE intended for retail sale must leave the MIE processing facility in sealed consumer packaging.

(2) Processing plans for each MIE and operation of the MIE processing facility must comply with all laws applicable to food processing under chapter 69.07 RCW.

(3) All ingredients must be from approved sources, meaning the food ingredients are from a source that a regulatory authority routinely and regularly inspects. Whole raw agricultural commodities are exempt from approved source requirements.

NEW SECTION

WAC 16-131-090 MIE processing facilities. (1) Facilities plans. MIE processors must maintain current, to scale, and legible floor plans of the MIE processing facility. At a minimum, the plans must include:

(a) A plan showing the entire facility subject to the marijuana processor license and indicating the MIE processing facility. An applicant may use plans submitted for the marijuana processor license to meet this requirement provided the plans clearly identify the MIE processing facility.

(b) A detailed floor plan, which may be a hand drawn diagram if to scale and legible, showing room dimensions, fixtures (sinks, counters, etc.), equipment (refrigeration units, range/stove, oven, stand-alone processing equipment, etc.), storage shelves/racks (for edible ingredients, utensils, packaging supplies, cleaning supplies), and floor drain, if required. Applicant must identify the finished surfaces of the ceiling, walls, and floor on the floor plan/diagram or in a separate document.

(2) MIE facility requirements. MIE processing facilities must comply with all laws applicable to food processing under chapter 69.07 RCW and the following:

(a) The MIE processing facility must be entirely enclosed (walls, ceiling, and doors) and separate from other parts of the facility subject to the marijuana processor license;

(b) Toilet room doors must not open directly into the MIE processing facility or adjacent air space. This requirement may be met with double doors or with an air management system;

(c) Hand sinks and equipment sinks required of all processors must be located inside the MIE processing facility.

(3) MIE processors must notify the department of any proposed significant changes to the required floor plans.

NEW SECTION

WAC 16-131-100 Inspections. (1) MIE processors must allow access to the department for inspections and to collect samples as required under RCW 69.07.080 and as otherwise authorized by law. The department must have access to the MIE facility and the entire facility subject to the marijuana processors license, including exterior of the building and grounds, to the extent that these may affect the safety of MIEs produced in the MIE facility.

(2) The department will use the same inspection procedures and protocols used for inspections of all food processors licensed under chapter 69.07 RCW. This includes unscheduled and unannounced inspections.

NEW SECTION

WAC 16-131-110 Suspension, revocation, and denial of endorsement and penalties. (1) The department may suspend, revoke, or deny an MIE endorsement in accordance with RCW 69.07.060.

(2) The department may impose penalties on any person who processes, advertises, or distributes MIEs without an MIE endorsement. Each of the following is a distinct and separate violation:

- (a) Processing MIEs without a valid MIE endorsement;
- (b) Advertising or distributing MIEs processed without a valid MIE endorsement;
- (c) Processing, advertising, or distributing an MIE that has not received department approval under WAC 16-131-050.

(3) For violations under an endorsement, the department may impose civil penalties in conformance with the penalty assignment schedules in this section and chapter 16-139 WAC, excluding WAC 16-139-020, 16-139-030, and 16-139-040.

(4) MIE penalty assignment schedules:

Table 1. MIE Penalties for Processing, Advertising, or Distributing Without a Valid MIE Endorsement

PENALTY	
\$1,000 per day per violation	

Table 2. MIE Penalties for Number of Critical Violations in a 3-Year Period

VIOLATION	PENALTY	
	Risk of Adulteration	
	Potential	Probable
First	\$1,000 and 4-day suspension	\$5,000 and 14-day suspension
Second	\$2,000 and 8-day suspension	\$5,000 and 30-day suspension
Third	\$4,000 and 16-day suspension	\$5,000 and revocation

Table 3. MIE Penalties for Number of Significant Violations in a 3-Year Period

VIOLATION	PENALTY	
	Risk of Adulteration	
	Potential	Probable
First	\$500 and 2-day suspension	\$1,000 and 4-day suspension
Second	\$1,000 and 4-day suspension	\$2,000 and 8-day suspension

VIOLATION	PENALTY	
	Risk of Adulteration	
	Potential	Probable
Third	\$2,000 and 8-day suspension	\$4,000 and 16-day suspension

Table 4. MIE Penalties for Number of Economic or Other Violations in a 3-Year Period

VIOLATION	PENALTY	
	Unknowing	Knowing
First	\$500 and 2-day suspension	\$1,000 and 4-day suspension
Second	\$1,000 and 4-day suspension	\$2,000 and 6-day suspension
Third	\$1,500 and 6-day suspension	\$5,000 and 20-day suspension

WSR 18-01-110
PROPOSED RULES
DEPARTMENT OF HEALTH
 (Occupational Therapy Practice Board)
 [Filed December 19, 2017, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-20-072.

Title of Rule and Other Identifying Information: Chapter 246-847 WAC, Occupational therapy, the occupational therapy practice board (board) is revising sections of the occupational therapy chapter in order to clarify, streamline and modernize rules. The chapter is also being updated as part of a five-year review consistent with RCW 43.70.041.

Hearing Location(s): On January 26, 2018, at 9:10 a.m., at the Department of Health, Creekside Two at CenterPoint, 20425 72nd Avenue South, Suite 310, Room 309, Kent, WA 98032.

Date of Intended Adoption: January 26, 2018.

Submit Written Comments to: Kathy Weed, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by January 24, 2018.

Assistance for Persons with Disabilities: Contact Kathy Weed, phone 360-246-4883, TTY 360-833-6388 or 711, email kathy.weed@doh.wa.gov, by January 16, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules update requirements for continuing education, expired or inactive credentials, activating a license after an extended period of time, telemedicine, and sexual misconduct. New rule language is clearer and will assist the board in quickly evaluating individual portfolios and expedite the application process. The proposed rules also clarify, streamline, and modernize rule language because this chapter has had minimal updates since 2007.

Reasons Supporting Proposal: A comprehensive review of this chapter has not been done since 2007. A five-year review of the chapter is required under RCW 43.70.041. The proposed rule amendments are based on input from stakeholders, specifically occupational therapy practitioners and state and national associations. Additionally, amending the rules will make them more consistent with current law and occupational therapy practice.

Statutory Authority for Adoption: RCW 18.59.130.

Statute Being Implemented: RCW 18.59.130 and 43.70.-041.

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

Name of Proponent: Department of health, occupational therapy practice board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kathy Weed, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4883.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kathy Weed, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4883, fax 360-236-2901, TTY 360-833-6388 or 711, email kathy.weed@doh.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of exemptions: The following sections are exempt under RCW 34.05.310 (4)(c): WAC 246-847-030, 246-847-100, and 246-847-210.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. With the exception of those sections that are exempt, the remaining sections of rule were analyzed, and it was determined that the proposed rule would not impose more than minor costs on businesses in an industry.

December 19, 2017
Beth Rollinger, OT
Board Chair

AMENDATORY SECTION (Amending WSR 14-05-016, filed 2/10/14, effective 2/15/14)

WAC 246-847-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adapting environments for individuals with disabilities" includes assessing needs, identifying strategies, implementing and training in the use of strategies, and evaluating outcomes. Occupational therapy focuses on the interaction of an individual's skills and abilities, the features of the environment, and the demands and purposes of activities.

(2) "Board" means the ~~((board of))~~ occupational therapy practice board.

(3) "Clients" includes ~~((patients, students, and))~~ those to whom occupational therapy services are delivered.

(4) "Client-related tasks" are routine tasks during which ~~((the))~~ an occupational therapy aide may interact with the client but does not act as a primary service provider of occupational therapy services. The following factors must be present when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the aide:

(a) The outcome anticipated for the delegated task is predictable;

(b) The ~~((situation))~~ status of the client and the environment is stable and will not require that the aide make judgments, interpretations, or adaptations ~~((be made by the aide))~~;

(c) The client has demonstrated some previous performance ability in executing the task; and

(d) The task routine and process have been clearly established.

(5) "Commonly accepted standards for the profession" in RCW 18.59.040 (5)(b) and 18.59.070 shall mean having passed the National Board for Certification in Occupational Therapy or its successor/predecessor organization, not having engaged in unprofessional conduct or gross incompetency as established by the board in WAC 246-847-160 for conduct occurring prior to June 11, 1986, and as established in RCW 18.130.180 for conduct occurring on or after June 11, 1986.

~~((("Consultation" means that practitioners are expected to function as consultants within the scope of practice appropriate to their level of competence.~~

~~((("Developing prevoecational skills and play and avocational capabilities" also involves the scientifically based use of purposeful activity.~~

~~((("Direct supervision" as described in RCW 18.59.040 (7) means daily, in-person contact at the site where services are provided by an occupational therapist licensed in the state of Washington.~~

~~((("Department" means the department of health.~~

~~((("Evaluation" ~~((is))~~ means the process of obtaining and interpreting data necessary for treatment~~((;))~~ which includes, but is not limited to, planning for and documenting the evaluation process and results. The evaluation data may be gathered through record review, specific observation, interview, and the administration of data collection procedures~~((;))~~ which include, but are not limited to, the use of standardized tests, performance checklists, and activities and tasks designed to evaluate specific performance abilities.~~

~~((("In association" as described in RCW 18.59.040 (7) means practicing in a setting in which an occupational therapist licensed in the state of Washington is available on the premises for supervision, consultation, and assistance as needed to provide protection for the client's health, safety and welfare.~~

~~((11))~~ (8) "Occupational therapy aide" means a person who is trained by an occupational therapist or occupational therapy assistant to perform client and nonclient related tasks. Occupational therapy aides are not primary service providers of occupational therapy in any practice setting. Occupational therapy aides do not provide skilled occupational therapy services.

~~((12))~~ (9) "Professional supervision" of an occupational therapy aide as described in RCW 18.59.020(5) means in-person contact at the treatment site by an occupational therapist or occupational therapy assistant licensed in the state of Washington. When client-related tasks are provided by an occupational therapy aide more than once a week, professional supervision must occur at least weekly. When client-related tasks are provided by an occupational therapy aide once a week or less, professional supervision must occur at least once every two weeks.

~~((13))~~ (10) "Regular consultation(~~" as described in RCW 18.59.020(4) means in person contact~~) with an occupational therapy assistant" means at least monthly ((by an)) contact with the supervising occupational therapist licensed in the state of Washington, with further supervision available as needed ((by other methods which include but are not limited to phone and email)).

~~((14))~~ (11) "Scientifically based use of purposeful activity" ~~((is))~~ means the treatment of individuals using established methodology based upon the behavioral and biological sciences and includes the therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. "Occupations" are activities having unique meaning and purpose in an individual's life.

~~((15))~~ (12) "Teaching daily living skills" ~~((is))~~ means the instruction in daily living skills by an occupational therapist or occupational therapy assistant based upon the evaluation of all the components of the individual's disability and the adaptation or treatment based on the evaluation.

~~((16))~~ "Working days" in RCW 18.59.040(5) shall mean consecutive calendar days.

~~((17))~~ "Work site" in RCW 18.59.080 means the primary work location.

NEW SECTION

WAC 246-847-051 Military equivalence. Graduates of a United States military occupational therapy assistant course that is determined to meet the substantial equivalency requirements may apply for licensure in this state when the following additional requirements have been submitted:

(1) Proof of completion of the military's residency program included in their education program in lieu of the field work required under WAC 246-847-150;

(2) Proof of successfully passing the national certification examination as specified in WAC 246-847-080;

(3) Proof of completion of the online jurisprudence examination for occupational therapy with a passing score of one hundred percent; and

(4) An attestation to the completion of seven hours of HIV/AIDS awareness training as specified in chapter 246-12 WAC, Part 8.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-847-055 Initial application for individuals who have ~~((not))~~ never practiced ~~((within the past four years))~~ occupational therapy. (1) Any initial applicant ~~((who has not been actively engaged in the practice of occupational therapy within the past four years shall provide, in addition to))~~ must comply with the requirements for licensure as specified in ((RCW 18.59.050 and WAC 246-847-190)) chapters 18.59 RCW and 246-847 WAC.

(2) Initial applicants who graduated more than three years but less than five years from date of application and never practiced must comply with the requirements for licensure as specified in chapters 18.59 RCW and 246-847 WAC and submit proof of:

(a) ~~((Evidence of having successfully completed an approved occupational therapy or occupational therapy assistant program within the past four years and documentation))~~ Completion of thirty hours of continued competency as described in WAC 246-847-065 for the previous two-year period; ~~((or))~~ and

(b) ~~((Evidence of having passed the examination as defined in WAC 246-847-080 within the previous two-year period and documentation of thirty hours of continued competency as described in WAC 246-847-065 for the previous two-year period; or~~

~~(c) Evidence of having successfully completed a board approved educational program specifically designed for occupational therapists or occupational therapy assistants preparing for reentry into the field of occupational therapy.~~

~~((2))~~ Completion of a board-approved reentry program.

(c) Completion of additional requirements as may be required by the board.

(3) Initial applicants who graduated five or more years ago and never practiced must comply with the requirements for licensure as specified in chapters 18.59 RCW and 246-847 WAC and submit proof of:

(a) Completion of thirty hours of continued competency as described in WAC 246-847-065 for the previous two-year period; and

(b) Completion of a board-approved reentry program;

(c) In addition to these requirements, the applicant has the choice of:

(i) Completion of extended course work preapproved by the board; or

(ii) Successfully retaking and passing the examinations specified in WAC 246-847-080.

(d) Completion of additional requirements as may be required by the board.

(4) The applicant may be required to appear before the board for oral interview.

AMENDATORY SECTION (Amending WSR 14-05-016, filed 2/10/14, effective 2/15/14)

WAC 246-847-065 Continued competency. Licensed occupational therapists and licensed occupational therapy assistants must complete thirty hours of continued competency every two years in the form of continuing education and professional development. Licensee must submit documentation upon request as required by chapter 246-12 WAC.

(1) ~~((A minimum of twenty hours must be directly related to the practice of occupational therapy as defined in RCW 18.59.020 and WAC 246-847-010.~~

~~(2) Any remaining hours may be in professional development activities that enhance the practice of the licensed occupational therapist or licensed occupational therapy assistant.~~

~~(3)) Beginning January 1, 2014, as part of their continued competency, occupational therapists and occupational therapy assistants are required to obtain at least three hours of training every six years in suicide assessment as specified in WAC 246-847-066. Licensee must keep documentation for six years.~~

(a) Except as provided in (b) of this subsection, an occupational therapist or occupational therapy assistant must complete the first training required by this section during the first full continued competency reporting period after January 1, 2014, or the first full continued competency reporting period after initial licensure, whichever occurs later.

(b) An occupational therapist or occupational therapy assistant applying for initial licensure on or after January 1, 2014, may delay completion of the first training required by this section for six years after initial licensure if:

(i) He or she can demonstrate successful completion of a three-hour training program in suicide assessment that was completed no more than six years prior to the application for initial licensure; and

(ii) The training meets the qualifications listed in WAC 246-847-066.

~~((4)) (2) The thirty ((continued competency)) hours of continuing education and professional development must be obtained through two or more of the activities listed in this subsection. A minimum of twenty hours must directly relate to the practice of occupational therapy as defined in RCW 18.59.020 and WAC 246-847-010. Any remaining hours may be in professional development activities that enhance the practice of the licensed occupational therapist or licensed occupational therapy assistant. Documentation for all activities must include licensee's name, date of activity, and number of hours. Additional specific documentation is defined below:~~

(a) Continuing education course work. The required documentation for this activity is a certificate or documentation of attendance.

(b) Employer sponsored in-service training or professional study groups. The required documentation for this activity is a certificate or documentation of attendance. A maximum of fifteen hours is allowed per reporting period for this category.

(c) Attendance at a professional conference or workshop presented by a professional organization. The required docu-

mentation for this activity is a certificate or documentation of attendance.

(d) Course work offered by an accredited college or university, provided that the course work is taken after the licensee has obtained a degree in occupational therapy, and the course work provides skills and knowledge beyond entry-level skills or knowledge. The required documentation for this activity is a transcript. One course credit is equal to five hours. A maximum of fifteen hours is allowed per reporting period for this category.

(e) Interactive online courses and webinars. The required documentation for this activity is a certificate or documentation of completion.

~~((e) Publications. The required documentation for this activity is a copy of the publication.))~~

(f) Presentation(s) to professionals, including poster presentations. One hour of preparation time may be counted per hour of presentation time. The required documentation for this activity is a copy of the presentation or program listing. Any particular presentation may be reported only once per reporting period. A maximum of ten hours is allowed per reporting period for this category.

~~(g) ((Interactive online courses. The required documentation for this activity is a certificate or documentation of completion.~~

~~(h)) Guest lecturing on an occupational therapy-related topic in an academic setting. The occupational therapist or occupational therapy assistant must not be primarily employed in academia to submit credit for this activity. The required documentation for this activity is a letter or other documentation from the course instructor. A maximum of ten hours is allowed per reporting period for this category. One hour of preparation time may be counted per hour of lecture time.~~

(h) Authoring a publication. The required documentation for this activity is a copy of the publication. For a peer reviewed journal article or chapter in a textbook a maximum of ten hours is allowed per reporting period for this category. For nonpeer reviewed professional publication a maximum of five hours is allowed per reporting period for this category.

(i) Development of instructional materials incorporating alternative media such as: Video, audio and/or software programs to advance professional skills of others. The required documentation for this activity is a program description. The media/software materials must be available if requested during audit process. A maximum of ten hours is allowed per reporting period for this category.

~~((i)) (j) Professional manuscript review. The required documentation for this activity is a letter from the publishing organization verifying review of manuscript. One hour of continuing education may be counted per hour of review time. A maximum of ten hours is allowed per reporting period for this category.~~

~~((j) Guest lecturer for occupational therapy related academic course work (academia not primary role). The required documentation for this activity is a letter or other documentation from instructor.))~~

(k) ((Serving)) Service on a professional board, committee, disciplinary panel, or association. The required documentation for this activity is a letter or other documentation

from the organization. A maximum of ten hours is allowed per reporting period for this category.

(l) ~~Self-study of ((cassette, tape, video tape, or other multimedia device, or book)) peer reviewed, role-related professional journal articles, textbooks or chapters, or professionally developed multimedia and digital media educational materials.~~ The required documentation for this activity is a ~~((two)) typed, one-page synopsis of each item ((written))~~ authored by the licensee or a certificate from OT practice continuing education article. A maximum of ten hours is allowed per reporting period for this category. Time spent writing synopsis is not reportable.

(m) ~~((Level II fieldwork))~~ Direct supervision of an occupational therapy student or occupational therapy assistant student ~~((by site designated supervisor(s)))~~. The required documentation for this activity is a name of student(s), letter of verification from school, and dates of fieldwork. Forty hours of supervision per student is equal to one hour of continued competency. A maximum of ~~((ten))~~ twelve hours per supervisor is allowed per reporting period for this category.

(n) Mentoring. Mentoring in this section means a relationship in which a more experienced or more knowledgeable person helps to guide a less experienced or knowledgeable person for the informal transmission of knowledge and support relevant to professional development. The required documentation for this activity is a written report of goals, objectives and analysis of mentee performance signed by both mentor and mentee. Mentoring credits do not count towards the requirement of twenty hours directly related to the practice of occupational therapy. A maximum of five hours is allowed per reporting period for this category.

(o) Attending a Washington occupational therapy practice board meeting. A maximum of two credits per renewal period is allowed.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-847-068 Expired license. (1) If the license has expired for three years or less, the practitioner must meet the requirements of chapter 246-12 WAC, Part 2.

(2) If the license has expired for over three years but no more than five years at the time of application, ~~((and))~~ the practitioner ~~((has been in))~~ may return to active ~~((practice in another United States jurisdiction, the practitioner must))~~ status by submitting proof of:

(a) ~~((Submit verification of active practice from any other United States jurisdiction;~~

~~((b) Meet))~~ Having met the requirements of chapter 246-12 WAC, Part 2; and

(b) Within the two-year period immediately preceding the date of application for reissuance:

(i) Completion of thirty hours of continued competency as required in WAC 246-847-065; and

(ii) Passing the Washington occupational therapy jurisprudence examination as offered by the department.

(3) If the license has expired for over ~~((three))~~ five years at the time of application, ~~((and))~~ the practitioner ~~((has not been in))~~ may return to active ~~((practice in another United~~

~~States jurisdiction, the practitioner must))~~ status by submitting proof of:

(a) ~~((Either provide evidence of having passed the examination as defined in WAC 246-847-080 within the previous two-year period or provide evidence of successfully completing a board-approved educational program specifically designed for occupational therapists or occupational therapy assistants preparing for reentry into the field of occupational therapy;~~

~~((b) Meet))~~ Having met the requirements ~~((of chapter 246-12 WAC, Part 2))~~ in subsection (2) of this section;

(b) Completion of a board-approved reentry program; and

(c) In addition to these requirements, the applicant has the choice of:

(i) Completion of extended course work preapproved by the board; or

(ii) Successfully retaking and passing the examinations as required by WAC 246-847-080.

(4) For a practitioner who holds an expired credential in Washington but is currently licensed and in active practice in another United States jurisdiction, the practitioner may return to active practice by submitting proof of:

(a) Having met the requirements described in subsection (2) of this section; and

(b) Verification of an active license from the United States jurisdiction.

(5) Completion of additional requirements may be required by the board.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-847-070 Inactive credential. (1) A practitioner may obtain an inactive credential. Refer to the requirements of chapter 246-12 WAC, Part 4.

(2) If the license has been inactive for three years or less at the time of application, refer to the requirements of WAC 246-12-110.

(3) If the license has been inactive for over three years but no more than five years at the time of application, the practitioner may return to active status by submitting proof of:

(a) Having met the requirements of WAC 246-12-110; and

(b) Within the two-year period immediately preceding the date of application for reissuance:

(i) Completion of thirty hours of continuing education as required in WAC 246-847-065; and

(ii) Pass the Washington occupational therapy jurisprudence examination as offered by the department.

(4) If the license has been inactive for over five years at the time of application, the practitioner may return to active status by submitting proof of:

(a) Having met the requirements in subsection (3) of this section;

(b) Completion of board-approved reentry program; and

(c) In addition to these requirements, the applicant has the choice of:

(i) Completion of extended course work preapproved by the board; or

(ii) Successfully retaking and passing the examination as required by WAC 246-847-080.

(5) For a practitioner who holds an inactive credential in Washington, but is currently licensed and in active practice in another United States jurisdiction, the practitioner may return to active status by submitting proof of:

(a) Having met the requirements described in subsection (3) of this section; and

(b) Verification of active practice from the United States jurisdiction.

(6) Completion of additional requirements may be required by the board.

AMENDATORY SECTION (Amending WSR 93-18-093, filed 9/1/93, effective 10/2/93)

WAC 246-847-125 Applicants currently licensed in other states or territories. (1) ~~((Before licensure may be extended to any individual))~~ Any initial applicant currently licensed to practice as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or a territory of the United States as provided in RCW 18.59.070(2), ~~((the following conditions must be met:~~

~~(a) Evidence of having met the requirements for licensure as provided in RCW 18.59.050; and~~

~~(b) Verification of))~~ may be licensed by endorsement. Applicants must comply with the requirements for licensure as specified in chapters 18.59 RCW and 246-847 WAC and submit proof of:

~~(a) Current licensure from ((any state, the District of Columbia, or a territory of the))~~ another United States ((on forms provided by the secretary; and

~~(e) Verification of))~~ jurisdiction;

~~(b) Having passed the examinations as defined in WAC 246-847-080; and~~

~~((d) Evidence of having been actively engaged in the practice of occupational therapy within the preceding four-year period.~~

~~(2) If the applicant has not been actively engaged in the practice of occupational therapy within the past four years, the following conditions must be met:~~

~~(a) Evidence of having taken and passed the examination as defined in WAC 246-847-080 within the previous two-year period and documentation of thirty hours of continued competency as described in WAC 246-847-065 for the previous two-year period; or~~

~~(b) Evidence of having successfully completed a board approved educational program specifically designed for occupational therapists or occupational therapy assistants preparing for reentry into the field of occupational therapy.~~

~~(3) The applicant may be required to appear before the board for oral interview.))~~ (c) Completion of thirty hours of continued competency within the two-year period immediately preceding the application.

AMENDATORY SECTION (Amending WSR 91-05-027, filed 2/12/91, effective 3/15/91)

WAC 246-847-140 Supervised fieldwork experience—Occupational therapists. "Supervised fieldwork experience" in RCW 18.59.050 (1)(c)(i) shall mean a minimum six months (twenty-four weeks) of full-time equivalency of Level II fieldwork conducted in settings approved by the applicant's academic program. Level II fieldwork is to provide an in-depth experience in delivering occupational therapy services to clients and to provide opportunities for supervised practice of occupational therapist entry-level roles. The minimum six months (twenty-four weeks) of full-time equivalency supervised fieldwork experience required by RCW 18.59.050 (1)(c)(i) shall not include Level I fieldwork experience as defined by the ((American Occupational Therapy Association.

~~The supervised fieldwork experience shall consist of a minimum of six months sustained fieldwork on a full-time basis. "Full time basis" is as required by the fieldwork setting)) accreditation council for occupational therapy education.~~

AMENDATORY SECTION (Amending WSR 05-24-104, filed 12/7/05, effective 1/7/06)

WAC 246-847-170 Code of ethics and standards of professional conduct. (1) It is the professional responsibility of occupational therapists and occupational therapy assistants to provide services for clients without regard to race, creed, national origin, gender, handicap or religious affiliation.

(2) Treatment objectives and the therapeutic process must be formulated to ensure professional accountability.

(3) Services shall be goal-directed in accordance with the overall educational, habilitation or rehabilitation plan and shall include a system to ensure professional accountability.

(4) Occupational therapists and occupational therapy assistants shall recommend termination of services when established goals have been met or when further skilled services ((would not produce improved client performance)) are no longer beneficial.

(5) Occupational therapists and occupational therapy assistants shall accurately represent their competence, education, training and experience.

(6) Occupational therapists and occupational therapy assistants shall only provide services and use techniques for which they are qualified by education, training, and experience.

(7) Occupational therapists and occupational therapy assistants shall accurately record information and report information as required by facility standards and state and federal laws.

(8) All data recorded in permanent files or records shall be supported by the occupational therapist or the occupational therapy assistant's observations or by objective measures of data collection.

(9) Client's records shall only be divulged as authorized by law or with the client's consent for release of information.

(10) Occupational therapists and occupational therapy assistants shall not delegate to other personnel those client-related services where the clinical skills and expertise of an

occupational therapist or occupational therapy assistant are required.

(11) If, after evaluating the client, the case is a medical case, the occupational therapist shall refer the case to a physician for appropriate medical direction if such direction is lacking.

(a) Appropriate medical direction shall be sought on at least an annual basis.

(b) A case is not a medical case if the following is present:

(i) There is an absence of pathology; or

(ii) If a pathology exists, the pathology has stabilized; and

(iii) The occupational therapist is only treating the client's functional deficits.

(12) Occupational therapists shall establish, review, or revise the client's treatment objectives at sufficient intervals to meet the client's needs. The occupational therapy assistant shall collaborate with the occupational therapist in this review of the client's treatment objectives.

(13) Occupational therapists and occupational therapy assistants shall have sufficient command of the English language to read and write effectively in medical charts and to communicate clearly with service recipients and team members.

NEW SECTION

WAC 246-847-176 Telehealth. (1) "Telehealth" means providing occupational therapy via electronic communication where the occupational therapist or occupational therapy assistant and the patient are not at the same physical location.

(2) An occupational therapist or occupational therapy assistant using telehealth to provide therapy to patients in Washington must be licensed to provide occupational therapy in Washington.

(3) Licensed occupational therapists and occupational therapy assistants may provide occupational therapy via telehealth following all requirements for supervision and standard of care, including those defined in chapters 18.59 RCW and 246-847 WAC.

(4) The occupational therapist or occupational therapy assistant must identify in the clinical record that the occupational therapy occurred via telehealth.

AMENDATORY SECTION (Amending WSR 05-24-106, filed 12/7/05, effective 1/7/06)

WAC 246-847-210 Unprofessional conduct—Sexual misconduct. (1) The occupational therapist and occupational therapy assistant shall never engage in sexual contact or sexual activity with current clients or a key party.

(2) "Key party" in this section 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 of the patient or client.

~~((2))~~ (3) Sexual contact or sexual activity is prohibited with a former client or key party for two years after cessation or termination of professional services.

~~((3))~~ (4) The occupational therapist and occupational therapy assistant shall never engage in sexual contact or sexual activity with former clients or a key party if such contact or activity involves the abuse of the occupational therapy practitioner-client-key party relationship. Factors which the board may consider in evaluating if the occupational therapy practitioner-client-key party relationship has been abusive includes, but is not limited to:

(a) The amount of time that has passed since therapy terminated;

(b) The nature and duration of the therapy;

(c) The circumstances of cessation or termination;

(d) The former client's or key party's personal history;

(e) The former client's or key party's current mental status;

(f) The likelihood of adverse impact on the former client, key party and others; and

(g) Any statements or actions made by the occupational therapist or occupational therapy assistant during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the former client or key party.

(5) Sexual misconduct includes, but is not limited to, activities listed in WAC 246-16-100.

~~((4))~~ (6) These rules do not prohibit:

(a) The provision of occupational therapy services on an urgent, unforeseen basis where circumstances will not allow an occupational therapist or occupational therapy assistant to obtain reassignment or make an appropriate referral;

(b) The provision of occupational therapy services to a spouse or any other person who is in a preexisting, established relationship with the occupational therapist or occupational therapy assistant where no evidence of abuse of the occupational therapy practitioner-client relationship exists.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-847-030 Occupational therapists acting in a consulting capacity.

WAC 246-847-100 Examination dates for applicants under RCW 18.59.070(3).

WSR 18-01-114
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed December 19, 2017, 11:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-22-112.

Title of Rule and Other Identifying Information: Chapter 296-14 WAC, Industrial insurance—Pension tables, pension discount rate and mortality tables; and amending WAC 296-14-8810.

Hearing Location(s): On January 23, 2018, at 1:30 p.m., at the Department of Labor and Industries, 7273 Linderson Way S.W., Room S118, Tumwater, WA 98501.

Date of Intended Adoption: February 20, 2018.

Submit Written Comments to: Suzy Campbell, P.O. Box 44250, Olympia, WA 98504-4250, email suzanne.campbell@lni.wa.gov, fax 360-902-6817, by 5 p.m., on January 24, 2018.

Assistance for Persons with Disabilities: Contact Veronica Berets, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email Veronica.Berets@lni.wa.gov, by January 16, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The pension discount rate is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. Currently, WAC 296-14-8810 sets the pension discount rate at 6.2 percent. The department has worked with the workers' compensation advisory committee (WCAC) to develop a plan for reducing the pension discount rate annually, through 2022, until it reaches 4.5 percent. The purpose of this rule making is to reduce the current pension discount rate to 6.1 percent in 2018.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), 51.44.080.

Statute Being Implemented: RCW 51.44.070.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Sandi Haerling, Tumwater, Washington, 360-902-5006; and Enforcement: Vickie Kennedy, Tumwater, Washington, 360-902-4997.

A cost-benefit analysis is not required under RCW 34.05.328. The department of labor and industries is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(vi) since the purpose of this rule making is to set or adjust fees pursuant to legislative standards.

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

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

December 19, 2017

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 17-05-096, filed 2/14/17, effective 4/1/17)

WAC 296-14-8810 Pension tables, pension discount rate and mortality tables. (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

- (i) Mortality tables from nationally recognized sources;
- (ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients; and
- (iii) A pension discount rate of ~~((6.2))~~ 6.1 percent.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

WSR 18-01-116
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed December 19, 2017, 11:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-21-107

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-145-1325 What is required to apply for a group care facility license?, 388-145-1805 Are there special requirements for serving milk?, and 388-148-1320 When will the department grant me a foster family license?, and to create new WAC 388-148-1321 May I request a provisional expedited foster family license?

The department is proposing new language to the WAC sections listed above to provide licensing instructions regarding fingerprinting group care staff, background checks for household members under the age of sixteen, provisional expedited foster care licenses, and food requirements.

The department will require an in-state background check for sixteen and seventeen year olds, as was the previous practice of the department prior to October 19, 2017. Also related to background checks, the new legislation allows for the department to conduct an in-state background check on those under sixteen years of age residing in a foster home, when it is warranted to ensure child safety. This is a new practice, and has been included in this proposed WAC revision.

The proposed language for WAC 388-148-1321 was also amended to require an in-state background check rather than a finger-print based background [check] for sixteen and seventeen year olds in homes applying for provisional expedited foster family license.

Hearing Location(s): On January 23, 2018, at 10:00 a.m., Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than January 24, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., on January 23, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by January 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-145-1325 to align the division of licensed resources (DLR) WAC with legislation that went into effect on January 1, 2016, that requires fingerprints of group care agency employees that care for the division [developmental] disabilities administration (DDA) children. Since any DLR facility could potentially take placement of a DDA child, it was decided to fingerprint all DLR licensed group care facility staff.

The proposed changes to WAC 388-145-1805 were based on recommendations from the children's administration regional medical consultants. The revised WAC will clarify that neither formula nor breast milk can be warmed in a microwave oven. These changes are to ensure child safety.

The department is proposing to amend licensing regulations in WAC 388-148-1320 and to create WAC 388-148-1321 in order to meet the new legislative requirements from the 2017 session. The proposed changes to WAC 388-148-1320 allow the department to complete an in-state background check on household members under the age of sixteen when warranted to ensure child safety. The intent of creating WAC 388-148-1321 was to describe the criteria and process for a prior foster parent to obtain a provisional expedited foster care license.

Reasons Supporting Proposal: The proposed revision to WAC 388-148-1320 and the creation of WAC 388-148-1321 are to implement the new 2017 legislative requirements. The proposed language changes to WAC 388-148-1320 are to increase child safety by allowing for the department to complete an in-state background check on youth under the age of sixteen years when warranted to ensure child safety.

WAC 388-148-1321 will allow foster parents that were licensed in the previous five years and who meet the other eligibility requirements to be issued a provisional expedited license, much earlier than the current practice of obtaining a full foster care license. This will increase placement resources by allowing foster placements to be made in homes with an expedited license, while those homes continue to complete the full foster care license.

The proposed revision to WAC 388-145-1325 is to align the DLR WAC with legislation that went into effect on January 1, 2016, that requires group care agency employees to complete a fingerprint based background check when caring

for DDA youth. Again, because any DLR licensed agency could take placement of a DDA youth, the decision was made to fingerprint all employees at all DLR licensed group care facilities.

The proposed revision to WAC 388-145-1805 is to provide an additional safety requirement by clarifying that neither formula nor breast milk can be warmed in the microwave oven. This WAC change is specific to infant and child safety.

Statutory Authority for Adoption: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832, and section 4, chapter 20, Laws of 2017, which will create a new section in chapter 74.15 RCW.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristina Wright, 1115 Washington S.E., Olympia, WA 98504, 360-902-8349.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kristina Wright, P.O. Box 45710, Olympia, WA 98504, fax 360-902-7588, email wrighks@dshs.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. All two hundred forty-three DLR licensed group care and child placing agencies were emailed specifically asking whether or not there would be a cost to the agency related to the proposed WAC revisions. Fifteen agencies responded, and all of those fifteen agencies reported that there would be no financial impact on the agency.

A copy of the detailed cost calculations may be obtained by contacting Kristina Wright, P.O. Box 45710, Olympia, WA 98504, phone 360-902-8349, fax 360-902-7588, email wrighks@dshs.wa.gov.

December 14, 2017
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-06-041, filed 2/24/16, effective 3/26/16)

WAC 388-145-1325 What is required to apply for a group care facility license? (1) You, the person responsible for the license, must submit a completed application which is available from the division of licensed resources, children's administration.

(2) You must submit ~~((the following))~~ a completed background authorization form for your executive director, agency staff, consultants, interns, volunteers, and anyone who may have unsupervised access to children per chapter 388-06A WAC~~((:))~~.

~~((a) Completed background authorization form; and)~~
(3) You must ensure that an agency employee who may have unsupervised access to children complete a FBI fingerprint check.

~~((b))~~ (4) You must ensure that agency volunteers or interns that have lived outside of Washington state during

~~any portion of the previous three years complete a FBI fingerprint check ((if the individual over eighteen years of age has lived out of state during any portion of the previous three years)).~~

~~((3)) (5) You must ensure that no employee, volunteer or subcontractor has unsupervised access to children until ((a full and satisfactory)) you are notified by children's administration that a background check ((is)) was completed ((and returned to you, qualifying the individual for)) that qualifies the individual to have unsupervised access. If ((your employee requires FBI fingerprints, they are allowed to work while awaiting fingerprint results, under the provisions of WAC 388-06-0500 through 388-06-0540)) you have both a license issued by DLR and a contract with the department you must adhere to the most stringent background check requirement.~~

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

WAC 388-145-1805 Are there special requirements for serving milk? (1) The milk or milk products you serve must be pasteurized and follow these recommended guidelines:

(a) Children under the age of twelve months must receive formula or breast milk unless written authorization from the child's ((physician)) licensed health care provider requires a different liquid intake; and

(b) Children between the age of twelve and twenty-four months must receive whole milk unless you have written authorization from a ((physician)) licensed health care provider not to serve whole milk.

(2) Before serving a child breast milk you must have approval of the child's DSHS worker, ((physician)) licensed health care provider, parent or guardian. If breast milk is provided by anyone other than a baby's biological mother, it must be obtained through a licensed breast milk bank.

(3) When you are using bottles to feed infants you must sterilize and use them according to product standards and commonly acceptable practices. You must refrigerate filled bottles if you do not use them immediately, and you must empty the bottle if not used within twenty-four hours. If more than one child is bottle-fed, the child's name and date the bottle is prepared must be on each bottle.

(4) You must hold infants, under the age of six months, for all bottle feedings. Infants who are six months of age or over who are developmentally able may hold their own bottles as long as an adult remains in the room and within sight. You must take bottles from the child when the child finishes feeding, when the bottle is empty, or when the child falls asleep. You must not prop bottles when feeding infants.

(5) To prevent burns, formula or breast milk must not be warmed in a microwave oven ((in the bottle that will be used for feeding the infant)).

AMENDATORY SECTION (Amending WSR 16-01-121, filed 12/18/15, effective 1/18/16)

WAC 388-148-1320 When will the department grant me a foster family license? (1) We issue you a license when you and everyone in your household meet the licensing

requirements contained in this chapter, and all required documents are in the licensing file.

(2) You and other caregivers over the age of eighteen must:

(a) Complete first aid training and age-appropriate adult and/or infant CPR (cardiopulmonary resuscitation). Training must be department approved and accredited with nationally recognized standards; and

(b) Complete HIV/AIDS and bloodborne pathogens training including infection control standards consistent with educational materials published by the department of health, office on HIV/AIDS.

(3) You, your household members and anyone else having unsupervised contact with your foster child(ren) must pass the following background check requirements per chapter 388-06A WAC (This includes people living on any part of your property):

(a) Anyone ((over the age of)) sixteen years old or older must pass a ((criminal history)) background check((-):

(b) Anyone ((over the age of eighteen)) younger than sixteen years old must pass ((an FBI fingerprint)) a background check((-) where the department determines it is warranted to ensure the safety of a child;

(c) Anyone eighteen years old or older must pass an FBI fingerprint check; and

(d) Anyone ((over the age of)) eighteen years old or older must complete a child abuse and neglect registry check from each state they have lived in over the past five years indicating:

(i) No license denials or revocations from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's health, safety, well-being and long-term stability; and

(ii) No finding or substantiation of abuse or neglect of a child or a vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(4) You, and your household members over the age of eighteen must submit a negative tuberculosis test or an X-ray, unless you can demonstrate a medical reason prohibiting the TB test, or have had a negative TB test in the previous twelve months. If there is a positive TB test, then the individual must submit a physician's statement identifying that there is no active TB or risk of contagion to children in care.

(5) You must have proof of current immunizations for any children living on your premises, not in out-of-home care. We may, in consultation with a licensed health care provider, grant exception to this requirement if you have a statement from a licensed health care provider (MD, DO, ND, PA and ARNP).

(6) We recommend that you have pertussis and influenza immunizations. The department will not license you to serve foster children under the age of two, without proof of pertussis and influenza immunizations for all people living in your home. The department may license you to serve children under the age of two even though you or someone in your home is unable to obtain an influenza vaccination for medical reasons. In this case, a licensed health care provider's statement is required noting that the influenza vaccination would result in severe medical consequences to the person and that

there is no other form of the influenza vaccine that would not cause severe medical consequences. All other persons in the home must still be vaccinated.

(7) Before granting or renewing a license, your licensor will assess your ability to provide a safe home and to provide the quality of care needed by children placed in your home. Your licensor will also determine that you meet training requirements.

(8) Foster children under the care and authority of the department living in your home do not need to obtain a criminal history check, FBI fingerprint check or TB test.

NEW SECTION

WAC 388-148-1321 May I request a provisional expedited foster family license? (1) You may request a provisional expedited foster family license if you meet all of the following requirements:

(a) You have been licensed to provide foster care within the previous five years;

(b) You have not had your foster care license closed due to a denial, revocation, or an agreement to relinquish;

(c) You reside in the same home in which you previously held a foster care license and no additional individuals have moved into your home;

(d) You are applying for an expedited license that will be supervised by the same agency that previously licensed or certified you and the agency agrees to supervise your home; and

(e) You and all household members age sixteen years old and older have passed ~~((a fingerprint-based))~~ the required background check for this provisional expedited foster family license.

(2) To initiate a provisional expedited license, you must submit a completed expedited license application and completed background check authorization forms for all household members who are sixteen years old and older to DLR or a licensed child-placing agency.

(3) In order for your full license to be processed you must submit your licensing application packet within fourteen days. Application packets are available from DLR and licensed child-placing agencies.

(4) You will be issued a provisional expedited foster family license if you have submitted the policy agreements and all of the required household members in your home have passed the required background check. The provisional expedited foster family license will be issued for ninety days and will close after ninety days.

(5) Your licensing or certifying agency will continue to work with you and make every effort to ensure that individuals qualified for and seeking a provisional expedited foster family license may become fully foster care licensed within forty days of the department's receipt of a complete application for a provisional expedited foster family license.

(6) You do not have the right to appeal the department's decision that you do not meet the criteria for a provisional expedited foster family license.

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

WSR 18-01-118
PROPOSED RULES
SECRETARY OF STATE

[Filed December 19, 2017, 12:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-22-046.

Title of Rule and Other Identifying Information: Washington state archives local records grant program, the provisions of this program are being updated to include grants made under HB 1594, chapter 303, Laws of 2017.

Hearing Location(s): On January 30, 2018, at 1:30 p.m., at the Washington State Archives Building, Conference Room, 1129 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: February 6, 2018.

Submit Written Comments to: Mark Vessey, P.O. [Box] 40238, Olympia, WA 98504-0238, email recordsmanagement@sos.wa.gov, fax 360-664-8814, by January 29, 2018.

Assistance for Persons with Disabilities: Contact Mark Vessey, phone 360-586-7810, fax 360-664-8814, email recordsmanagement@sos.wa.gov, by January 29, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To simplify language, update to include modern records functions, and include provisions from chapter 303, Laws of 2017. This bill expanded the grant program to include the use of hardware and software technology, to improve the disclosure of public records.

Reasons Supporting Proposal: Rules are necessary to establish a grant application and awarding process.

Statutory Authority for Adoption: RCW 40.14.020(6), 36.22.175(1), and chapter 40.14 RCW as amended by chapter 303, Laws of 2017.

Statute Being Implemented: RCW 40.14.020(6), 36.22.-175(1), and chapter 40.14 RCW as amended by chapter 303, Laws of 2017.

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

Name of Proponent: Office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Terence S. Badger, Olympia, 360-586-1602.

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

A cost-benefit analysis is not required under RCW 34.05.328. The office of secretary of state is not included in the list of required agencies, and subsection (5)(b)(i).

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-

wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

December 18, 2017
Mark Neary
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-010 Washington state archives local records grant program. The ~~((Washington state archives))~~ local records grant program, administered ~~((by))~~ in the office of the secretary of state by the Washington state archives, provides financial assistance to local governments ~~((officials))~~ to support records management and preservation efforts, ~~((particularly for records of permanent retention. This grants in aid program is a significant effort in the overall mission of the program to enhance the quality of archival preservation and public access to records of enduring value. This))~~ to improve records retention compliance, and to provide technology information systems that improve public records disclosure.

Local records grant program funds are provided for one-time investments and are not an ongoing source of revenue for operation or management costs. A grantee may not supplant local funding with local records grant program funding. The local records grant program is governed by this chapter and by RCW 36.22.175 and chapter 40.14 RCW.

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-020 Eligible and ineligible activities.

(1) The following activities~~((;))~~ including, but not limited to, are eligible for support through the local records grant((s)) program administered pursuant to this chapter:

- ~~((a))~~ ~~((Planning;))~~
- ~~((b))~~ ~~((Records management;))~~
- ~~((c))~~ ~~((Preservation;))~~
- ~~((d))~~ ~~((Conservation;))~~
- ~~((e))~~ ~~((Professional consultants;))~~
- ~~((f))~~ ~~((Essential))~~ (e) Technology hardware and/or equipment;
- ~~((g))~~ ~~((Reference tools, and;))~~
- ~~((h))~~ ~~((Education;))~~
- ~~((i))~~ ~~((Temporary personnel;))~~ (f) Software to manage public records and requests;
- (g) Reference tools;
- (h) Training needs;
- (i) Temporary personnel;
- (j) Indexing; and
- (k) Planning for the activities above.

(2) The following activities, including but not limited to, are ineligible for support through the local records grant((s)) program administered pursuant to this chapter:

- (a) Projects already completed;
- (b) Expenses incurred prior to the grant period;
- (c) Existing/permanent staff positions;
- (d) Equipment nonessential to the project;
- (e) Capital improvements to buildings;
- (f) Payments to lobbyists;
- ~~((h))~~ (g) Hospitality expenses; and
- ~~((i))~~ (h) Prizes/awards(;
- ~~((j))~~ ~~((Benefit activities (social, fund raisers, etc.);))~~
- ~~((k))~~ ~~((Educational outreach not available to the public;))~~
- ~~((l))~~ ~~((Tuition reimbursement for academic credit;))~~
- ~~((m))~~ ~~((Activities having a religious purpose;))~~
- ~~((n))~~ ~~((Inventories/guides not available to the public and;))~~
- ~~((o))~~ ~~((Purchase of manuscripts/records)).~~

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-030 Eligibility. Local government ~~((entities, including))~~ agencies, include every county, city, town, municipal corporation, quasi-municipal corporation, special purpose district((s)), or any office, department, division, bureau, board, commission, or agency thereof, are eligible to apply for local records grant((s)) program grants under this chapter.

Preference will be given to smaller local government agencies based upon applicant agency's need and to information technology demonstration projects designed to improve public records retention, records management, and public disclosure. Entities other than local governments, such as individuals, state agencies, federal agencies, and private organizations are ineligible~~((, but local public records housed by state agencies may be included in a grant application that is submitted and administered by the local official who has statutory authority over the records)).~~

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-040 Evaluation of proposals. (1)

Washington state archives staff will review ~~((grant))~~ applications for completeness, conformity to application requirements, soundness of budget, ~~((and))~~ relevancy to the objectives of the ~~((Washington state archives))~~ local records grant program~~((, (Staff may also consider, in addition to the factors specified above the)), and potential for widespread citizen use, research value and value for ongoing governmental operations of the proposed project including improvements to existing operations.((;))~~ The proposal may be returned to the applicant institution for further development or clarification, prior to application deadline.

(2) ~~((A summary))~~ An analysis will be prepared by the Washington state archives for each complete application and forwarded to the archives oversight committee established by RCW 40.14.027. The committee will review the applications ~~((at its annual))~~ in an open public meeting and make funding recommendations to the secretary of state.

(3) The office of the secretary of state will notify the applicant in writing as to whether the proposal has been funded or rejected.

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-050 Local records grant program application requirements. In order to be complete, an application must include:

- (1) Identification of the local government entity ~~((and))~~;
- (2) Project personnel;
- ~~((2-A))~~ (3) Description of the ~~((activity proposed for funding including:~~
 - ~~(a) Statement of purpose and goals;~~
 - ~~(b) Project summary;~~
 - ~~(c) Detailed))~~ project (goals, objectives, and final results);
 - (4) An analysis of the project plan~~((discussion of techniques and a timetable;~~
 - ~~(d) Project objectives; and~~
 - ~~(e) Specific end results or products.~~
 - ~~(3))~~;
 - (5) Documentary evidence for the need of the project ~~((photos, testimonies, etc.) if applicable;~~
 - (6) A timetable;
 - (7) A funding description~~((including))~~ that includes:
 - (a) A budget layout and explanation;
 - ~~((Budget explanation;~~
 - ~~(c) Need for outside funding;~~
 - ~~(d) Funding of future management and preservation projects; and~~
 - ~~(e) Local entity's accounting methods and audit procedures.~~
 - (4) Relevant information, including:
 - ~~(a))~~ The need for outside funding; and
 - (c) Availability of sustaining funds.
 - (8) Evaluation of results ~~((how will the success or failure be measured);~~
 - ~~(b) Statement of any previous actions; and~~
 - ~~(c) Description of importance of the project in terms of an overall, long-range record management program~~
 - (5) Authorization, including:
 - (a) Being signed and dated by proper official; and
 - (b) Identification of preparer of the application.
 - (6) Support material, including:
 - (a) Letter of commitment from the applicant's funding authority;
 - (b) Resumes of));
 - (a) How will the project be measured a success or failure; and
 - (b) How will the project improve records management, retention practices, and the ability to respond to public disclosure requests.
 - (9) Authorization, including:
 - (a) Being signed and dated by a proper official;
 - (b) Identification of the application preparer.
 - (10) Support material, including:

- (a) Brief biography and description of the grant-related duties for grant project personnel, consultants, volunteers, etc.~~((and descriptions of their grant-funded duties~~
 - ~~(e) Required forms);~~
 - ~~((d))~~ (b) Identification of necessary services, equipment, supplies, etc.; and
 - ~~((e))~~ (c) Other relevant information.

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-060 Local records grant calendar. (1) ~~((The grant period begins on the date of the award issued by the Office of the Secretary of State. Grant projects must be completed in the awarded biennium.~~

~~(2) The grant payment and reporting schedule will be approved and published by the oversight committee for each grant cycle. All unused grant funds and interest in possession of the grantee must be returned to the Washington state archives local records grant program within sixty days of completion.)~~ Local records grant program grants will be awarded annually on the state fiscal year cycle (July - June) and must be completed in the awarded biennium, or fiscal year if awarded for the second half of the biennium.

(2) The local records grant program application and reporting schedule will be approved and published by the archives oversight committee for each grant cycle.

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-080 ~~((Auditing))~~ Other requirements. ~~((Grantees must comply with the audit requirements set forth in Washington statutes for local government units. The grantee is responsible for ensuring that the Washington state archives receives copies of the audit report for any audit performed during the grant period or for the following three years. Specific accounting requirements for the Washington state archives local records grant program are:~~

~~(1) Grant money must be deposited in an auditable, interest-bearing account. Interest received must be applied to the project.~~

~~(2) Grant work must be monitored in progress. The Washington state archives staff may visit the work site for review at any time during the project.~~

~~(3) Changes in the approved grant, including changes of personnel, must be requested in writing to the Washington state archives, local records grant program.~~

~~(4) In the case of default by the grantee, the grant will be revoked and all unused funds must be returned to the Washington state archives local records grant program. The Washington state archives will notify the grantee of default in writing.~~

~~(5) The grantee shall submit a final grant report by June 30.~~

~~(6) Grantees must submit copies of all invoices with the final report, and~~

~~(7) Grantees must adhere to local and state bid requirements and submit documentation with the final grant report.)~~ Specific requirements for the Washington state archives local records grant program are:

(1) Archives staff may visit the worksite for review at any time during the project.

(2) Unless otherwise approved, grants will be cost-reimbursement grants.

(3) Proposed changes in the approved grant must be submitted in writing to the Washington state archives, local records grant program.

(4) The archives must be notified of any changes in personnel impacting the approved grant.

(5) In the case of default by the grantee, the local records grant program grant will be revoked and all unused funds may be distributed for use by other grantees. The Washington state archives will notify the grantee of default in writing.

(6) The grantee shall submit a final report and participate in a survey.

AMENDATORY SECTION (Amending WSR 03-06-069, filed 3/3/03, effective 4/3/03)

WAC 434-670-090 Conflicts of interest. (1) The Washington state archives oversight committee will not consider a proposal where a committee member (~~((or a member of the secretary of state's staff derives compensation from the proposed))~~) derives compensation from the proposed local records grant program grant.

(2) A (~~(board))~~ committee member shall abstain from reviewing or voting on proposals if she/he is directly or indirectly connected with a proposed project through employment at the same (~~(institution, (directly or) indirectly supervises the project, or serves as an unpaid consultant to the project))~~ government agency.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
434-670-080	434-670-075
434-670-090	434-670-085

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-670-070 Accounting.

WSR 18-01-120
WITHDRAWL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed December 19, 2017, 1:12 p.m.]

WAC 388-112A-0360, proposed by the department of social and health services in WSR 17-11-023, appearing in issue 17-12 of the Washington State Register, which was distributed on June 21, 2017, is withdrawn by the office of the code

reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 18-01-131
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed December 20, 2017, 7:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-19-102.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-101-3000 Definitions, to strike the definition of the term "willful" from the definitions list as a result of an order by the Division III Court of Appeals in the *Crosswhite v. Department of Social and Health Services* invalidating the current definition of "willful." The removal of the current term is necessary to comply with the court's order. The department is also amending the definition of "financial exploitation" to change an incorrect reference to RCW 74.34.020(6).

Hearing Location(s): On January 23, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than January 24, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., on January 23, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by January 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-101-3000 to strike the definition of the term "willful" from the definitions list and to amend the definition of "financial exploitation" to change an incorrect reference to RCW 74.34.020(6).

Reasons Supporting Proposal: The Division III Court of Appeals invalidated the current definition of "willful" in WAC 388-101-3000. The removal of the term is necessary to comply with the court's order. Also, the definition for "financial exploitation" in WAC 388-101-3000 contains an incorrect reference to RCW 74.34.020(6).

Statutory Authority for Adoption: Chapters 71A.12 and 74.34 RCW.

Rule is necessary because of state court decision, *Verda Lee Crosswhite v. Washington State Department of Social*

and Health Services Yakima County Superior Court No. 142024800.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Claudia Baetge, P.O. Box 45600, Olympia, WA 98504, 360-725-2589; Implementation: Candace Goehring, P.O. Box 45600, Olympia, WA 98504, 360-725-2401; and Enforcement: Bett Schlemmer, P.O. Box 45600, Olympia, WA 98504, 360-725-2404.

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

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(iii), a cost-benefit analysis is not required for rules adopting or incorporating by reference, without material change, Washington state statutes or federal statutes or regulations.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.030.

Explanation of exemptions: The department has analyzed the proposed rule and concluded that no new costs will be imposed on small businesses affected by them. The preparation of a comprehensive small business economic impact statement is not required under RCW 19.85.030.

December 14, 2017
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-18-040, filed 8/30/16, effective 9/30/16)

WAC 388-101-3000 Definitions. "Abandonment" means action or inaction by a person or entity 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 of a vulnerable adult.

In instances of abuse of a vulnerable adult 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 personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(1) **"Sexual abuse"** means any form of nonconsensual sexual conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving ser-

vice from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(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, or prodding.

(3) **"Mental abuse"** means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

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

(5) **"Improper use of restraint"** means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(a) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(b) Is not medically authorized; or

(c) Otherwise constitutes abuse under this section.

"Associated with the applicant" means any person listed on the application as a partner, officer, director, or majority owner of the applying entity, or who is the spouse or domestic partner of the applicant.

"Case manager" means the division of developmental disabilities case resource manager or social worker assigned to a client.

"Certification" means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.

"Chaperone agreement" means a plan or agreement that describes who will supervise a community protection program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and individuals who support the client, including the client's legal representative and family.

"Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(4) and (~~who also~~) has been determined eligible to receive services by the division of developmental disabilities under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

"Client services" means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.

"Consent" means express written consent granted after the vulnerable adult or ~~((his or her))~~ their legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

"Crisis diversion" means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the division of developmental disabilities.

"Crisis diversion bed services" means crisis diversion that is provided in a residence maintained by the service provider.

"Crisis diversion support services" means crisis diversion that is provided in the client's own home.

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

"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 the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW ~~((74.34.020 (6)))~~ 74.34.020.

"Functional assessment" means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.

"Group home" means a residence that is licensed as either an assisted living facility or an adult family home by the department under chapter~~((s))~~ 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

"Group training home" means a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

"Immediate" or **"immediately"** means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.

"Immediate risk", **"immediate threat~~(("))~~"**, or **"imminent danger"** means serious physical harm to or death of a client or serious threat to a client's life, health, or safety.

"Individual financial plan" means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

"Individual instruction and support plan" means a plan developed by the service provider and the client. The individual instruction and support plan:

- (1) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;
- (2) Includes client goals for instruction and support that will be formally documented during the year; and
- (3) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met ~~((e.g.))~~ such as, individual financial plan, positive behavior support plan, cross system crisis plan, individual support plan, individual written plan, client-specific instructions).

"Individual support plan" means a document that authorizes and identifies the division of developmental disabilities paid services to meet a client's assessed needs.

"Instruction" means goal oriented teaching that is designed for acquiring and enhancing skills.

"Instruction and support services staff" means long-term care workers of the service provider whose primary job function is the provision of instruction and support services to clients. Instruction and support services staff must also include employees of the service provider whose primary job function is the supervision of instruction and support services staff. In addition, both applicants, prior to initial certification, and administrators, prior to assuming duties, who may provide instruction and support services to clients must be considered instruction and support services staff for the purposes of the applicable training requirements.

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

"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 providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, 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.

"Managing client funds" means that the service provider:

- (1) Has signing authority for the client;
- (2) Disperses the client's funds; or
- (3) Limits the client's access to funds by not allowing funds to be spent.

"Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that ~~((he or she))~~ they cannot easily remove that restricts freedom of movement or normal access to ~~((his or her))~~ their body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are medically authorized and used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

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

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a client receiving certified community residential services and supports in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

"Medication service" means any service provided by a certified community residential services and support provider

related to medication administration or medication assistance provided through nurse delegation and medication assistance.

"Minimal" means a violation that results in little or no negative outcome or little or no potential harm for a client.

"Moderate" means a violation that results in negative outcome or actual or potential harm for a client.

"Negative outcome" includes any negative effect on the client's physical, mental, or psychosocial well-being, including but limited to the client's safety, quality of life, or quality of care.

"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 vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; 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 vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Physical intervention" means the use of a manual technique intended to interrupt or stop a behavior from occurring. This includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

"Physical restraint" means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force ~~((on))~~ a vulnerable adult in order to calm or comfort ~~((him or her))~~ them, or holding a vulnerable adult's hand to safely escort ~~((him or her))~~ them from one area to another.

"Psychoactive" means possessing the ability to alter mood, anxiety level, behavior, cognitive processes, or mental tension, usually applied to pharmacological agents.

"Psychoactive medications" means medications prescribed to improve or stabilize mood, mental status or behavior. Psychoactive medications include anti((-)psychotics/neuroleptics, atypical antipsychotics, antidepressants, stimulants, sedatives/hypnotics, and antimania and antianxiety drugs.

"Qualified professional" means a person with at least three years' experience working with individuals with developmental disabilities and as required by RCW 71A.12.220 (12).

"Recurring" or **"repeated"** means that the department has cited the service provider for a violation of licensing laws or rules and one or more of the following is present:

(1) The department previously imposed an enforcement remedy for a violation of the same law, rule, or for substantially the same problem within the preceding twenty-four months; or

(2) The department cited a violation of the same law, rule, or for substantially the same problem on two occasions within the preceding twenty-four months.

"Restrictive procedure" means any procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something ~~((which~~

~~he/she does))~~ they do not want to do, or removes something the client owns or has earned.

"Risk assessment" means an assessment done by a qualified professional and as required by RCW 71A.12.230.

"Serious" means a violation that results in one or more negative outcomes and significant actual harm to a client that does not constitute imminent danger. It also means there is reasonable predictability of recurring actions, practices, situations, or incidents with potential for causing significant harm to a client.

"Severity" means the seriousness of a violation as determined by the actual or potential negative outcomes for clients and subsequent actual or potential for harm. Negative outcomes include any negative effect on the client's physical, mental, or psychosocial well-being ~~((i.e.))~~ such as, safety, quality of life, quality of care).

"Service provider" means a person or entity certified by the department who delivers services and supports to meet a client's identified needs. The term includes the state operated living alternative (SOLA) program.

"Support" means assistance a service provider gives a client based on needs identified in the individual support plan.

"Supported living" means instruction, supports, and services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

"Treatment team" means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case manager, therapist, ~~((the))~~ service provider, employment/day program provider, and the person's legal representative ~~((and/or))~~ or family, provided the person consents to the family member's involvement.

"Uncorrected deficiency" means the department has cited a violation of WAC or RCW following any type of certification evaluation or complaint investigation and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"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))~~ themselves; ~~((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; ~~((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.

~~((**"Willful"** means the deliberate, or nonaccidental, action or inaction by an individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain, or anguish.))~~

WSR 18-01-135
PROPOSED RULES
WESTERN WASHINGTON UNIVERSITY
 [Filed December 20, 2017, 8:27 a.m.]

December 20, 2017
 Jennifer L. Sloan
 Rules Coordinator

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-21-004.

Title of Rule and Other Identifying Information: Chapter 516-12 WAC, Parking and traffic regulations.

Hearing Location(s): On January 31, 2018, at 12:00 p.m., at Western Washington University, Main Campus, Board Room, Old Main 340, 516 High Street, Bellingham, WA 98225.

Date of Intended Adoption: February 5, 2018.

Submit Written Comments to: Jennifer L. Sloan, Rules Coordinator, Western Washington University, 516 High Street, Bellingham, WA 98225-9015, email Jennifer.Sloan@wwu.edu, fax 360-650-6197, by January 30, 2018.

Assistance for Persons with Disabilities: Contact Jennifer Sloan, phone 360-650-3117, fax 360-650-6197, email Jennifer.Sloan@wwu.edu, by January 19, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Western Washington University has implemented license enabled permitting and transferred authority of parking services to another unit. Existing rules must be updated to conform to current processes and reporting structure. The university also reviewed the complete chapter and made other revisions. The amended rule includes: Revised language that allows for joint responsibility between public safety and the student business office and clarification of roles; new section to differentiate between fines and fees; and general housekeeping changes to update or remove outdated language or practice, remove redundant information, and reorganize subsections for clarity.

Reasons Supporting Proposal: Existing rules must be updated to conform to current processes and reporting structure.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

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

Name of Proponent: Western Washington University, public.

Name of Agency Personnel Responsible for Drafting: Teresa Hart, Director, Financial Services, Old Main, 402, 360-650-2508; Implementation and Enforcement: Bob Putich, Assistant Director, Student Business Office, Old Main, 111, 360-650-2866.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes would not impose a disproportionate impact on small business.

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

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

AMENDATORY SECTION (Amending WSR 10-15-021, filed 7/9/10, effective 8/9/10)

WAC 516-12-400 Definitions. As used in this chapter, the following words and phrases mean:

~~(1) ("All lot permit assignment." A parking lot assignment that allows the driver access to campus from a majority of all university parking lots with exceptions. Exceptions are identified on the guidelines issued and are subject to change annually, unless impact to the lot or the campus warrants an earlier change.~~

~~(2) (")~~ **Accessible parking space.** A parking space identified with a sign bearing the international symbol of accessibility that is restricted at all hours for use by vehicles associated with a valid university parking permit and displaying a valid state disability placard.

~~(2)~~ **All lot permit (AL).** A parking permit used in conjunction with a valid university parking permit that allows the vehicle access to specific lots on campus. The specific lots are identified on the application.

~~(3) Appeals board. ("The board))~~ The committee that hears citation and notice of infraction appeals for parking, impoundment, bicycle, and skateboard violations.

~~((3) "Area designator." A tag affixed to a permit indicating a parking lot assignment for a vehicle.))~~

~~(4) (((")~~ **Authorized valid payment.** Any payment accepted by parking services, including the online mobile application and pay stations.

~~(5) Assistant director of the student business office and parking services.~~ The person appointed assistant director of the university's student business office and parking services.

~~(6) Automobile. (((")~~ Any licensed motorized vehicle typically having ~~((four))~~ three or more wheels not classified as a motorcycle.

~~((5) ")~~ ~~(7) Board. (((")~~ The board of trustees of Western Washington University.

~~((6) ")~~ ~~(8) Business day.~~ Any day, Monday through Friday (excluding holidays), during which university offices are open or any day until 9:00 p.m. through parking services' web site.

~~(9) Campus. (((")~~ All state owned or leased lands ~~((devoted to the educational or research activities of))~~ utilized by the university.

~~((7) "Disability space." A parking space identified with a sign bearing the international disability symbol that is restricted at all hours to use by vehicles displaying both a valid WWU parking permit and WWU disability parking permit.~~

~~(8) "Electric personal assistive mobility device (EPAMD)." A self-balancing device with two wheels not in tandem, designed to transport only one person by an electric propulsion system with an average power of seven hundred fifty watts (one horsepower) having a maximum speed on a paved level surface, when powered solely by such a propulsion system while ridden by an operator weighing one hun-~~

dred seventy pounds, of less than twenty miles per hour. This term is intended to include other similar devices as defined in RCW 46.04.304 as now or hereafter amended.

~~((9))~~) (10) Citation. Formal written notice of a parking violation.

(11) Department of public safety. The office consisting of university police.

(12) Employee.~~((12))~~ Any individual appointed to the faculty, staff, or administration of the university.

~~((10))~~) (13) Fee. Charge for permits and impoundment.

(14) Fine. Monetary penalty for a parking violation.

(15) Guest. Individual invited to the university and hosted by a department or university official.

(16) Habitual offender.~~((The))~~ A driver ~~((of a))~~ associated with vehicle license numbers or permit numbers accruing eight or more paid or unpaid parking citations within a twelve-month period.

~~((11))~~) (17) Holiday~~((17))~~ or ~~((17))~~ university holiday.~~((17))~~ A day designated by the university as a holiday or university holiday. Intersession or quarter breaks are not considered holidays. See definition of intersession.

~~((12))~~) (18) Impoundment.~~((18))~~ The status of a vehicle that has been seized and kept in legal custody by either being immobilized with a wheel lock device or towed from campus.

~~((13))~~) (19) Intersession.~~((19))~~ A period of time in which classes or final exams are not in session. University business offices are open during this time, except during holidays.

~~((14))~~) (20) License plate recognition (LPR). Technology that uses optical character recognition to automatically read license plate characters.

(21) Loading zone.~~((21))~~ A space in which parking is allowed for a specific time period and which is identified by signage as a loading zone.

~~((15))~~ "Meter feeding." Purchase of additional time beyond the time limit posted on the parking meters. This practice is prohibited since use of meters is intended to serve short-term parking needs.

~~((16))~~ "Metered parking." A parking space where drivers pay to park for a specified time period. Drivers pay to park in the space for a length of time by purchasing time at a meter or pay box.

~~((17))~~) (22) Motor vehicle~~((22))~~ or ~~((22))~~ vehicle.~~((22))~~ Every vehicle that is self-propelled; for example cars, trucks, and motorcycles. Motor vehicle includes a neighborhood electric vehicle as defined in RCW 46.04.357. Motor vehicle also includes a medium-speed electric vehicle as defined in RCW 46.04.295. Electric personal assistive mobility devices (EPAMD) defined in RCW 46.04.1695 and power wheelchairs are not considered motor vehicles.

~~((18))~~) (23) Motorcycle.~~((23))~~ A motor vehicle designed to travel on not more than three wheels in contact with the ground on which the driver rides astride the motor unit or power train and is designed to be steered with a handle bar, but excluding a farm tractor, a power wheelchair, an electric personal assistive mobility device (EPAMD) defined in RCW 46.04.1695, and a moped. Refer to chapter 516-13 WAC for further information.

~~((19))~~) (24) Parking services.~~((24))~~ A unit of the ~~((public safety department))~~ student business office responsible for the university parking ~~((on-campus property))~~ system.

~~((20))~~ "Pass." An event parking pass issued by the university, a university bus pass issued by Whatcom transportation authority and distributed by the university, or other valid parking pass issued by parking services.

(21) Pay station. An automatic kiosk that issues parking permits from a free-standing, unattended machine.

~~((22))~~) (25) Parking space. An area specifically marked as a parking space, designated by a sign, wheel stop, painted lines, and/or traffic buttons.

(26) Pay station. A parking services deployed and managed machine that issues virtual permits for designated lots.

(27) Pedestrian.~~((27))~~ Any person who is afoot or who is using a wheelchair, a powered wheelchair, or ~~((a powered seater))~~ other mobility device for persons with disabilities.

~~((23))~~ "Permit." An unexpired parking permit) (28) Permit. An authorization to park issued by parking services and ~~((properly displayed on a vehicle))~~ associated with a vehicle's license plate number.

~~((24))~~) (29) President.~~((29))~~ The president of Western Washington University.

~~((25))~~) (30) Prohibited areas.~~((30))~~ Areas other than those designated for parking or a roadway.

~~((26))~~ "Public safety department." The office consisting of parking services, university police, lockshop, and sustainable transportation.

~~((27))~~) (31) Public safety director.~~((31))~~ The person appointed ~~((public safety director of the university by the president or designee.~~

~~((28))~~) director of the university's department of public safety.

(32) Registered volunteer.~~((32))~~ An individual who is registered with the university's human resources department to perform assigned or authorized volunteer duties as determined by a department of the university.

~~((29))~~) (33) Short-term parking space. Parking spaces that are restricted to hourly or daily limits.

(34) Student.~~((34))~~ Any person enrolled in the university as a student.

~~((30))~~) (35) Student business office. The university's centralized office for financial billing and payments, including parking services.

(36) University.~~((36))~~ Western Washington University.

~~((31))~~) (37) University business ~~((assignment))~~ permit (UB).~~((37))~~ A parking ~~((assignment))~~ permit used in conjunction with a valid university parking permit that allows the ~~((driver))~~ vehicle access to specific lots on campus. The specific lots are identified on the ~~((guidelines issued and are subject to change annually, unless impact to the lot warrants a change))~~ application.

~~((32))~~ "Visitors." People physically) (38) Visitor. Individual present on campus who ~~((are))~~ is not an employee(s), guest, registered volunteer(s), or student(s).

~~((33))~~) (39) Walk zone.~~((39))~~ Any area designated by signs or symbols as a place where bicycles, skateboards, and other regulated devices cannot be ridden during specified periods.

~~((34) "Wheelstop." A cement or metal)~~ (40) Wheel stop. A barrier used to ~~((define))~~ ensure a vehicle stops at a proper location in a parking space.

AMENDATORY SECTION (Amending WSR 10-15-021, filed 7/9/10, effective 8/9/10)

WAC 516-12-425 Administrative responsibility. The administration of parking regulations and moving violations is the joint responsibility of the public safety director and the assistant director of the student business office and parking services.

(1) The ~~((public safety director))~~ assistant director of the student business office and parking services is authorized to:

(a) Issue and sell parking permits to employees, students, guests, visitors, and others when necessary, and to provide ~~((special))~~ parking for individuals with disabilities.

~~(b) ((Impose or suspend traffic and parking regulations and restrictions when appropriate to the mission of the university, such as commencement.~~

~~(c) Erect signs, barricades, and other structures to designate the various parking or no parking areas on campus; and to paint markers and other directions for the regulation of traffic and parking.~~

~~((d))~~ Establish procedures to govern the purchase and ~~((distribution))~~ allocation of annual, academic year, quarterly permits and other permits, and to assign parking spaces.

~~((e) Change or close, either temporarily or permanently, any campus parking area. Notice of change will be provided whenever practical.~~

~~((2))~~ (c) Maintain records of all permit holders and transactions.

(d) Determine parking lot and space assignments.

(2) The public safety director is authorized to:

(a) Impose or suspend traffic and parking regulations, and restrictions when appropriate to the mission of the university, such as commencement.

(b) Change or close, either temporarily or permanently, any campus parking area.

(3) The public safety director and the assistant director of the student business office and parking services are jointly authorized to erect signs, barricades, and other structures to designate the various parking or no parking areas on campus; and to paint markers and other directions for the regulation of traffic and parking.

(4) The authority of the public safety director and the assistant director of the student business office and parking services under this chapter may be delegated to other personnel ((within the public safety department)).

AMENDATORY SECTION (Amending WSR 10-15-021, filed 7/9/10, effective 8/9/10)

WAC 516-12-430 General regulations. (1) All regulations in this chapter and all motor vehicle and other traffic laws of the state of Washington apply on the campus.

(2) The traffic code of the city of Bellingham applies on city streets which cross the campus.

(3) All vehicles, attended or unattended, must ~~((display))~~ be associated with a valid ~~((Western Washington))~~ university

parking permit ~~((or pass))~~ when parked on the campus, unless the vehicle is:

(a) Parked in a ~~((metered))~~ short-term parking space with ~~((meter))~~ authorized valid payment;

(b) Parked in a loading zone in compliance with posted limits; ~~((or))~~

(c) Parked in a lot that does not require a permit during specified times as posted; or

(d) An emergency vehicle.

(4) The person who obtains a permit and the registered owner of the vehicle are responsible for assuring that the vehicle, regardless of who drives it, is parked in conformance with these regulations.

(5) If a parking permit holder cannot locate a parking space in the assigned lot, the holder may park in the next nearest parking lot and then must call parking services for reassignment.

(6) Motorcycle permit holders must park in areas designated for motorcycles.

(7) The ~~((university))~~ student business office reserves the right to ~~((refuse))~~ deny or revoke parking privileges to anyone who has:

(a) Had a permit revoked.

(b) Falsified a parking application or registration.

~~((c) ((Counterfeited or altered an area designator or permit.~~

~~((d))~~ Failed to pay outstanding citations.

~~((e))~~ (d) Been identified as a habitual offender.

~~((f) Been found to be in possession of or using a lost or stolen permit.~~

~~((g))~~ (e) Removed a wheel lock without authorization ((of parking services)).

~~((h))~~ (f) Been trespassed from campus.

~~((i))~~ (g) Failed to comply with parking services directions.

~~((j))~~ (h) Damaged university property while driving or parking on campus.

~~((k))~~ (i) Verbally abused or assaulted staff.

(8) The speed limit on campus is ten miles per hour or as posted. Drivers must operate vehicles in a careful and prudent manner at all times and must comply with established speed limits.

(9) Drivers of vehicles must obey all regulatory signs and comply with directions given by parking services and public safety staff and their designees.

(10) Drivers of vehicles must yield the right of way to pedestrians within the campus. This includes, but is not limited to, pedestrians crossing streets, roadways, and parking areas within the campus. Operators must also yield to pedestrians at intersections, clearly marked crosswalks, or city streets which cross the campus.

(11) ~~((Government-owned))~~ Nonuniversity owned government vehicles ~~((bearing government license plates))~~ may be parked in nonreserved spaces for a maximum of ~~((four))~~ eight hours while the driver is on university business. Long-term parking is not permitted, nor is any parking allowed in reserved spaces except when a space is designated for that specific vehicle. ~~((Such vehicles may be parked in metered spaces provided that meter regulations are observed.))~~ Violations incurred ~~((will be))~~ are the responsibility of the driver.

~~((All operators of these or other government-owned vehicles will abide by all traffic and parking regulations.))~~

(12) No person may utilize any vehicle parked on campus as a living unit without specific approval from the public safety director. Violators will be cited or towed.

(13) Vehicles are to be maintained in operating condition at all times on university property, except those in a garage, research facility, or automotive shop designated for parking such vehicles by the public safety director. Vehicle repairs or maintenance will not be made on campus unless authorization has been received in advance from the public safety director or designee.

(14) A vehicle which appears to be abandoned, with or without a current parking permit~~((, pass;))~~ or license plates, may be impounded after an attempt is made to locate and notify the owner of the impending action.

(15) ~~((The university rents space to individuals who wish to park on campus and who are issued a parking permit or pass.))~~ The university assumes no responsibility or liability under any circumstances for vehicles or bicycles parked on campus nor does it assume any ~~((personal))~~ liability in connection with its parking program. No bailment of any sort is created by the issuance of a permit ~~((or pass)).~~

AMENDATORY SECTION (Amending WSR 10-15-021, filed 7/9/10, effective 8/9/10)

WAC 516-12-440 Parking areas. (1) Parking is prohibited in any area not specifically marked as a parking space, designated by a sign, wheelstop, whitepainted lines, and/or white traffic buttons.

(2) Vehicles may ~~((not be parked in any parking area without a parking permit or pass for that area))~~ park only where assigned by permit except as provided in WAC 516-12-430 (3) or (11)~~((Each parking area is posted to indicate the type of permit required and the times they are required.))~~

~~((3) Parking in loading zones is limited to the time posted.~~

~~((4) Visitors may park only where assigned by permit, pass, or in metered areas with meter payment.~~

~~((5) Vehicles displaying valid permits or passes may park in metered spaces with meter payment.~~

~~((6) Meters are available to serve short term parking needs. "Feeding" meters is prohibited. That is, additional time cannot be purchased beyond the time limit posted on the meter.))~~

~~((7))~~ (3) Spaces designated for specific use are restricted for that designated purpose.

~~((a) Parking in loading zones is limited to the time posted.~~

~~((b) Motorcycles must only be parked in designated "M" lots or at ((metered)) short-term spaces with payment. Motorcycles may not use space assigned to automobiles or bicycles, unless parked at a ((meter)) short-term space with authorized valid payment.~~

~~((8))~~ (c) Automobiles ((must not be parked)) are prohibited from parking in areas assigned to motorcycles.

~~((9))~~ (d) Bicycles must only be parked as provided in chapter 516-13 WAC, Bicycles, mopeds, and other powered devices.

~~((10) Personal notes or business cards left on vehicles describing reasons for parking without a valid permit or for parking in an unauthorized manner will not be accepted.~~

~~((11) Spaces designated for specific use are restricted for that designated purpose or to assigned vehicles.~~

~~((12))~~ (e) Resident student "R" lots are restricted to permit holders as assigned ((24)) twenty-four hours per day unless otherwise posted.

~~((13) Vehicles must not use more than one space when parking.~~

~~((14) The violation of any parking regulation by other vehicles does not constitute a valid excuse for violating these regulations.))~~

AMENDATORY SECTION (Amending WSR 10-15-021, filed 7/9/10, effective 8/9/10)

WAC 516-12-450 Permits. (1) ~~((Except as otherwise provided in this chapter, permits may be issued only to students, employees, and other members of the university community.))~~ Persons wishing to obtain parking permits are required to complete a registration ~~((form provided))~~ process established by parking services and pay the corresponding fee. ~~((Ownership of the parking permit remains with the university. Individuals are not allowed to transfer ownership.~~

~~((2) The loss or theft of a parking permit should be reported to parking services immediately. Upon recovery, all permits reported lost or stolen should be returned immediately to parking services. Possession or use of a lost, stolen, or forged permit will result in a fine, the vehicle being wheel locked or towed, and loss of parking privileges.~~

~~((3) A stolen permit will be replaced the first time at no cost, provided a theft report has been filed with parking services. A fee will be charged for the replacement of subsequent stolen or lost permits.~~

~~((4) A valid permit means an unexpired parking permit issued by parking services and properly displayed on a vehicle. Parking permits are to be displayed according to instructions provided by parking services.~~

~~((5) Motorcycle permits must be affixed and easily visible from the rear fender.~~

~~((6))~~ Annual permits are valid for twelve months, academic permits are valid for nine months, and quarterly permits are valid from the first day of the quarter for which issued, except for fall quarter which may coincide with the contracted faculty start date, to the first day of the following quarter. Quarterly permits may be renewed on or before the first day of the winter, spring, and/or summer quarters.

~~((2) A license plate must be associated with a valid permit. Vehicle license plates must be exposed to the lane of travel and be clearly visible, unobstructed, and able to be read by license plate recognition (LPR).~~

~~((3) To enhance the business and operation of the university, all lots (AL) or university business (UB) permits may be issued and renewed by the ((public safety director)) assistant director of the student business office and parking services. Initial requests for ((all lots)) AL and ((university business)) UB permits require a completed application and the signature of the dean, director, or chairperson of the department with whom the person is associated. The approved arrangement~~

may be renewed until the employee's job position or duties change. Issuance requires purchase of a ~~((WWU))~~ university parking permit. ~~((All lots))~~ AL and ~~((university business))~~ UB permits are valid for brief periods of time only when on university business and are ~~((not))~~ valid only in ~~((metered lots, reserved spaces, or small capacity))~~ lots as assigned on the AL or UB permit application.

~~((7))~~ (4) Persons with a temporary or permanent physical disability who require ~~((special))~~ parking consideration must obtain a state disability parking ~~((permit))~~ placard, as well as a valid ~~((WWU))~~ university disability parking permit.

~~((8))~~ (5) Permits ~~((are the property of the university and))~~ may be ~~((recalled))~~ revoked by the ~~((public safety director))~~ assistant director of the student business office and parking services under the following circumstances:

(a) When the purpose for which they were issued changes or ceases to exist.

(b) Falsification of an application or registration for parking.

(c) Violations of the regulations in this chapter.

(d) ~~((Counterfeiting or altering a permit.~~

~~((e))~~ Failure to comply with a judgment of the appeals board.

~~((f))~~ (e) Failure to pay outstanding citations.

~~((g))~~ ~~((Removed))~~ (f) Removal of a wheel lock without authorization of parking services.

~~((h))~~ (g) For an unauthorized permit transfer.

~~((9))~~ ~~The public safety director determines parking lot and space assignments.~~

~~((a))~~ Annual permits are valid for twelve months.

~~((b))~~ Academic permits are valid for nine months.

~~((c))~~ Quarterly permits are valid from the first day of the quarter for which issued. Permits must be renewed on or before the first day of the quarter.

~~((d))~~ Those persons seeking to consecutively renew a quarterly permit for winter, spring, and summer quarters to the same parking lot as assigned for fall quarter may do so during the two weeks prior to finals week. Permits may not be renewed for fall quarter.

~~((10))~~ Special permits may include, but are not limited to, guests, services, vendors, temporary assignments, visitors, and loading permits authorized by the public safety director.

~~((11))~~ (6) University departments that sponsor functions such as athletic events, conferences, seminars, and dinners may arrange parking for their guests on a space available basis. Departments have the option of paying for guest parking; otherwise, their guests will be responsible for the parking fee. ~~((Departments may also collect parking fees to facilitate prepaid parking with the prior approval of parking services.~~

~~((12))~~ Faculty, staff, or students who have purchased a parking permit but forget to place it on the vehicle they are driving to campus must obtain a temporary permit from parking services. Those who have not purchased a permit must obtain a temporary permit from parking services. Temporary permits are issued for the lot assigned or, if no permit has been purchased, for available spaces.

~~((13))~~ Emergency temporary permits may be issued for staff to park temporarily in locations where emergency call out requires attendance. ~~((Parking services))~~

~~((7))~~ The director of public safety may suspend enforcement during emergencies as declared by the president ~~((vice president of business and financial affairs,))~~ or designee.

~~((14))~~ (8) Faculty, staff, or students who purchase an annual, academic, or quarterly parking permit may use the permit on any vehicle they drive but may not transfer ownership of the permit. The individual to whom a permit is issued is jointly responsible with the registered owner for parking violations by any vehicle bearing the permit.

AMENDATORY SECTION (Amending WSR 10-15-021, filed 7/9/10, effective 8/9/10)

WAC 516-12-460 Permit fee(s). (1) Permit fee ~~((and citation))~~ schedules will be approved by the president or ~~((his/her))~~ designee and ~~((will))~~ be posted ~~((in a public area of parking services and available))~~ on ~~((its))~~ parking services' web site.

(2) Cost of permits will be prorated throughout the year according to type and date purchased.

(3) Refunds will be made based on the valid time remaining according to the parking services refund schedule. ~~((Refunds may be made if unpaid fines and fees have been paid-))~~ The balance of any fees and fines owed will be deducted from any refund due.

~~((a))~~ ~~((The permit holder must return the permit to parking services before a refund will be authorized or a payroll deduction be terminated.~~

~~((b))~~ No refund will be made for a permit after the first thirty calendar days of any quarter. Unused quarters may be refunded in whole at respective rates.

~~((c))~~ (b) Refunds will not be made upon permit revocation by the ~~((public safety director))~~ assistant director of the student business office and parking services.

~~((4))~~ ~~((A service charge will be assessed for:~~

~~((a))~~ Change of permit when a lot transfer is requested by the permit holder and approved by the public safety director.

~~((b))~~ Any permit returned for a refund.

~~((c))~~ Change in hours issued on a part-time permit.

~~((5))~~ Salaried employees have the option of paying for parking through payroll deduction.

~~((6))~~ (5) The proper fee must be paid for all vehicles parked in ~~((metered))~~ short-term lots unless otherwise authorized.

~~((7))~~ For fees regarding lost or stolen permits, see WAC 516-12-450(3).))

AMENDATORY SECTION (Amending WSR 10-15-021, filed 7/9/10, effective 8/9/10)

WAC 516-12-470 Enforcement. ~~((1))~~ General:

(a) A vehicle which is parked in a manner which endangers or potentially endangers members of the university community or their property, state property, and prevents a person having a valid permit from parking in their designated parking area, will be impounded on the first violation.

(b) Upon receiving two unpaid parking citations outstanding for more than seventy-two hours, a vehicle is subject to impound.

~~(c) A student with unpaid parking citations may not receive his or her class registration and/or transcript until citations are paid.~~

~~(d) Parking permits will not be issued until all outstanding citations and fees are paid.~~

~~(e) After identifying the registered owner of any vehicle without a parking permit or a permit number which has one or more unpaid citations, parking services will contact the owner in writing that payment is required. If payment for outstanding citations is not made by the date required, the matter will be referred to the appropriate collection agent and/or civil court for resolution.~~

~~(f) The permit holder and registered owner(s) of a vehicle which is involved in a violation of the university's parking regulations are jointly and severally responsible for the violation.~~

~~(g) Enforcement measures are cumulative; using one or more enforcement measures will not prohibit the use of additional measures.~~

~~(2) When regulations are in effect.~~

~~(a) Except as stated in (b) and (c) of this subsection, parking regulations are subject to enforcement throughout the calendar year but will not be enforced on official university holidays unless otherwise posted. For purposes of this section, intersession is not considered a university holiday.~~

~~(b) A vehicle which is parked in a manner which endangers or potentially endangers members of the university or their property or state property will be impounded on the first violation regardless of when the violation occurs.~~

~~(c) Intersession regulations will be determined and published by the public safety director as required.~~

~~(d) All lots have restrictions, which are posted on regulatory signs at lot entrances.~~

~~(e) Should there be a conflict between these regulations, parking maps, and on-site posted signs regarding parking information and instructions, the on-site sign takes precedence.~~

~~(3) Citations. A vehicle which is in violation of the university's parking regulations will be issued a citation.~~

~~(4)) (1) Parking regulations are subject to enforcement throughout the calendar year unless otherwise posted.~~

~~(a) All parking lots have restrictions, which are posted on regulatory signs at lot entrances and within the lots. When there is a conflict, parking services' authorized on-site signs take precedence over other regulations, parking maps, or verbal or written instruction regarding parking information.~~

~~(b) Intersession regulations will be determined and published by the assistant director of the student business office and parking services as required.~~

~~(c) Enforcement measures are cumulative; using one or more enforcement measures will not prohibit the use of additional measures.~~

~~(d) The violation of any parking regulation by other vehicles does not constitute a valid excuse for violating these regulations.~~

~~(2) Citations. It is prohibited to park and citations may be issued to vehicles:~~

~~(a) Without a valid permit;~~

~~(b) Double parked;~~

~~(c) Parked in more than one parking space;~~

~~(d) In a reserved space without a proper permit;~~

~~(e) In a no parking area;~~

~~(f) In an accessible parking space without a proper permit and state issued placard;~~

~~(g) In fire lanes, service roads, fire exits or within fifteen feet of a fire hydrant;~~

~~(h) In service entrances, construction sites, spaces reserved for maintenance vehicles, disability access areas, dumpster access;~~

~~(i) On lawns, sidewalks, walk zones, crosswalks, parking lot driveways, straddling painted lines or buttons, or angle parking where prohibited;~~

~~(j) Exceeding time in loading zones or short-term spaces;~~

~~(k) In areas where a permit is not valid;~~

~~(l) Against the flow of traffic;~~

~~(m) In areas or spaces closed by barricades or other control devices;~~

~~(n) With a license plate that is not exposed to the lane of travel, is not clearly visible, or is obstructed.~~

~~(3) Continued violations. A vehicle which remains in violation of any regulation may receive additional citations for every four hours of the violation.~~

~~((5)) (4) Impoundment by towing or wheel lock:~~

~~(a) All violators are subject to having their vehicles impounded through the use of towing or the wheel lock device at their own risk and expense.~~

~~(b) Any vehicle may be towed away if the vehicle:~~

~~(i) Has been immobilized by wheel lock for more than twenty-four hours; ((ø))~~

~~(ii) Is parked in such a manner as to endanger or potentially endanger the university community or their property or state property; ((ø))~~

~~(iii) Is parked in a fire lane blocking traffic or other posted tow-away zone; ((ø))~~

~~(iv) Is parked so as to deprive a permit holder of space in ((his/her)) their assigned lot, reserved space, or ((disability)) accessible parking space without a proper permit; ((ø))~~

~~(v) Is left under circumstances which indicate it has been abandoned; ((ø))~~

~~(vi) Is found displaying a forged, reported lost or stolen permit; or~~

~~((vii)) (vi) Cannot be ((impounded)) immobilized with the wheel lock device; ((ø))~~

~~((viii))~~

~~(vii) When a university police officer has probable cause to believe the vehicle is stolen; ((ø))~~

~~((ix))~~

~~(viii) When a university police officer has probable cause to believe that the vehicle contains or constitutes evidence of a crime, and in the police officer's judgment impoundment is necessary to obtain or preserve such evidence; ((ø))~~

~~((x))~~

~~(ix) When a driver is arrested and/or deprived of the right to leave with the driver's vehicle, and the university police are responsible for the "safekeeping" of the vehicle; or~~

~~((xi)) (x) Is parked at any time on campus when parking privileges have been revoked.~~

~~(c) Any vehicle may be immobilized by use of a wheel lock device if the vehicle:~~

(i) Has an accumulation of two or more unpaid parking tickets, regardless of appeal status, (the second of which has been outstanding for more than seventy-two hours); or

(ii) ~~((Is parked at any time on campus when))~~ Has parking privileges ~~((have been))~~ revoked.

(d) ~~((The operator/owner of the impounded vehicle must pay all outstanding citations at parking services (or university public safety department when parking services is closed) and complete the required paperwork before a vehicle release is authorized.~~

(e) ~~A fee will be assessed on vehicles immobilized by the wheel lock device.~~

(f) ~~Any vehicle which remains immobilized by wheel lock for more than twenty-four hours in an area where towing is not practical or possible will be assessed a fee for each day or portion thereof over the twenty-four hours.~~

(g) ~~An impound fee is charged if the driver of the tow truck or the wheel lock operator has performed any labor prior to the vehicle operator/owner returning to the vehicle before the impoundment is completed.~~

(h) ~~An impounded vehicle shall be released to the operator/owner of the vehicle when:~~

(i) ~~Positive identification and proof of ownership of the vehicle is provided;~~

(ii) ~~All unpaid fines against the impounded vehicle or any other vehicle registered to the violator are paid at parking services (or university public safety department when parking services is closed);~~

(iii) ~~A wheel lock fee is paid; and/or~~

(iv) ~~All towing and storage fees are paid.~~

(i) ~~The operator/owner of the towed vehicle must present an authorized release form to the towing company and pay all towing charges including any storage fees incurred.~~

(j)) ~~The university assumes no responsibility or liability for damages which may result from use of the wheel lock device, towing, storage, or attempts to move a vehicle with a wheel lock device installed.~~

~~((k) A person wishing to challenge the validity of the impound or any fines or fees imposed under these rules may appeal through the process provided in this chapter. However, in order to secure release of the vehicle, the driver or owner must pay the amount of fines and/or fees as a bond which will be refunded to the extent the appeal is approved.~~

(6) ~~It is prohibited to park and citations may be issued to vehicles:~~

(a) ~~Without a valid permit;~~

(b) ~~Double parked;~~

(c) ~~In reserved spaces without a proper permit;~~

(d) ~~In no parking areas;~~

(e) ~~In a disability space without a proper permit;~~

(f) ~~In fire lanes, service roads, fire exits or within fifteen feet of a fire hydrant;~~

(g) ~~In loading zones exceeding the time limit;~~

(h) ~~In service entrances, construction sites, spaces reserved for maintenance vehicles, disability access areas, dumpster access;~~

(i) ~~On lawns, sidewalks, walk zones, crosswalks, parking lot driveways, straddling painted lines or buttons, or angle parking where prohibited;~~

(j) ~~Exceeding time in loading zones or metered spaces;~~

~~(k) In areas where a permit is not valid;~~

~~(l) Over or adjacent to yellow lines or curbs;~~

~~(m) Against the flow of traffic;~~

~~(n) In areas or spaces closed by barricades or other control devices.~~

~~(7) Payment of fine is due upon receipt of citation.))~~

NEW SECTION

WAC 516-12-472 Payment of parking fine and impoundment fee. (1) Parking fine. Fine schedules will be approved by the president or designee and posted on parking services' web site.

(a) Payment of fine is due upon receipt of citation.

(b) If any citation has neither been paid nor appealed after fourteen days beginning with and including the date of the citation, the university shall impose additional fines and may:

(i) Withhold the violator's degree, transcript, or grades until all fines are paid.

(ii) Delay registration for future terms.

(iii) Withhold parking privileges.

(c) After identifying the registered owner of any vehicle which has unpaid fines, parking services will contact the registered owner in writing that payment is required. If payment for outstanding fines is not made by the date required, the matter will be referred to the appropriate collection agency.

(d) The permit holder and registered owner(s) of a vehicle which is involved in a violation of the university's parking regulations are jointly and severally responsible for the violation.

(2) Impoundment fee. Fee schedules will be approved by the president or designee and posted on parking services' web site.

(a) The operator/owner of the impounded vehicle must pay all outstanding fines and fees online through parking services' payment portal or at the student business office.

(b) A fee will be assessed on vehicles immobilized by the wheel lock device.

(c) Any vehicle which remains immobilized by wheel lock for more than twenty-four hours in an area where towing is not practical or possible will be assessed a fee for each day or portion thereof over the twenty-four hours.

(d) An impound fee is charged if the driver of the tow truck or the wheel lock operator has performed any labor prior to the vehicle operator/owner returning to the vehicle before the impoundment is completed.

(e) An impounded vehicle shall be released to the operator/owner of the vehicle when all of the following are satisfied:

(i) Positive identification and proof of ownership of the vehicle is provided;

(ii) All unpaid fines against the impounded vehicle or any other vehicle associated with the violator are paid;

(iii) A wheel lock fee is paid;

(iv) All towing and storage fees are paid; and

(v) All associated documentation is completed.

(3) A person wishing to challenge the validity of the impound or any fines or fees imposed under these rules may appeal through the process provided in this chapter.

AMENDATORY SECTION (Amending WSR 10-15-021, filed 7/9/10, effective 8/9/10)

WAC 516-12-480 Appeals and appeals board. Any person who wishes to appeal a citation must, within seven days from the date of the citation, complete an appeal ~~((form))~~ at the ~~((parking services))~~ student business office or ~~((appeal))~~ online ~~((at www.ps.wvu.edu))~~ through parking services' web site. The person who appeals will be referred to as the appellant.

(1) Payment of a parking fine will not constitute a waiver of the right to an appeal with regard to the underlying violation. The right to ~~((a hearing))~~ an appeal is forfeited seven days from the date of the citation.

(2) The appeal ~~((form))~~ must ~~((include a full))~~ provide the complete explanation of the basis for the appeal. The only ~~((proper))~~ valid basis for an appeal is a contention that the cited regulations were not violated.

(3) The ~~((public safety director))~~ assistant director of the student business office and parking services or designee will review the appeal and issue a decision to the appellant within fourteen days of review. The ~~((public safety director))~~ assistant director of the student business office and parking services or designee may deny the appeal or grant the appeal in whole or in part by dismissing or reducing the citation.

(4) ~~((If dismissal or reduction is not granted, appellant may request the appeal be sent to the appeals board for review upon payment of the fine and the completion of an appeals board review request form. The public safety director has the authority to waive completion of the appeals board review request form and authorize delay of payment of the fine, pending review.~~

~~((5) Requests for an appeals board review must be made in writing within fourteen calendar days of the decision made by the public safety director or designee.~~

~~((6) The citation(s) must be paid in full before an appeals board review request form may be filled out as a form of appeals bond and can only be delayed by written authority of the public safety director.~~

~~((7) Payment of a parking fine will not constitute a waiver of the right to a hearing with regard to the underlying violation.~~

~~((8) An))~~ Any appellant who wishes to appeal the decision of the assistant director of the student business office and parking services or designee must pay the full amount of the fine and complete the appeals board review request at the student business office or online through parking services' web site. Appeals must be received within fourteen calendar days of the date the decision was issued.

~~((5) The appeals board ((has been established composed of one administrator, one faculty member, one staff member, and four students. Representation must be by the administrators)) is composed of five members. Appointments will be made by professional staff organization (one member), faculty union (one member), staff unions (one member), and associated students (two members). Each member ((may be reappointed)) is appointed for a term of one year and may be reappointed for one additional term. The appeals board will choose its own chairperson from its members.~~

~~((9))~~ (6) The appeals board will meet throughout the academic year dependent upon the volume of appeals. If an

appeals board member has been notified of a meeting at least three days in advance and does not appear ~~((to participate))~~, the other appeals board members may proceed with their duties in reviewing appeals. At least three appeals board members are required to conduct a review.

~~((10))~~ (7) The appeals board has jurisdiction to hear and decide only those cases involving alleged violations of Western Washington University's regulations, chapters 516-12, 516-13, 516-15 WAC.

~~((11) Moving violations, violations of the motor vehicle and other traffic laws of the state of Washington, and traffic code of the city of Bellingham are referred to the appropriate court.~~

~~((12))~~ (8) The appeals board will consider appeals as follows:

(a) Should a personal appearance before the appeals board be desired it should be indicated on the appeals board review request form, otherwise the citation will be adjudicated on the basis of the written submission only.

(b) If a personal appearance is requested, and the appellant cannot appear on the date scheduled, the appellant must notify parking services in writing at least ~~((twenty-four hours))~~ one business day before the scheduled time and request a new date. Only one such rescheduling is permitted. If the appellant does not appear at a scheduled hearing without notification, the appeal will be reviewed on the basis of the written appeal only.

(c) The appeals board operates according to the rights of due process of law. If desired, the appellant has the right to be represented by another person, the right to cross-examine witnesses, and the right to an open and impartial hearing.

(d) Parking services has the right to be represented at hearings and to cross-examine witnesses.

(e) The appeals board may examine witnesses for either side.

(f) At the conclusion of a hearing, and in an open session, the appeals board will specify the charge(s) against the appellant, declare judgment for each charge, and include a reason for each judgment. The appeals board has the authority to deny the appeal, waive, void or refund charge(s) in part or in full, according to the judgment.

(g) The decision of the appeals board will be ~~((in writing))~~ final. Formal notification will be sent ((immediately)) to the appellant and parking services ~~((, and will be final))~~ within three business days.

~~((h) ((Failure to comply with a decision of the appeals board constitutes a ground for revocation of campus parking privileges. Any unpaid fine will be deducted from any refund due as a result of revocation of parking privileges or a judgment of the appeals board.~~

~~((i))~~ A written record of the judgment, reason, and fine imposed, if any, shall be furnished to parking services by the appeals board chairperson. These records will then be maintained by parking services.

~~((j))~~ (i) The appellant may appeal the appeals board decision to parking services as delegated by the public safety director within ten days after the final decision has been issued. Parking services shall immediately forward documents to the district court which has jurisdiction to hear the appeal de novo. The appellant is responsible for all associated

fees. No appeal may be taken unless the citation has been contested as provided in these rules.

~~((13))~~ (9) The appeals board chairperson may submit written recommendations about the parking system to the vice president for business and financial affairs by May 31st of each year.