

WSR 20-20-039
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed September 30, 2020, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-12-037.

Title of Rule and Other Identifying Information: Chapter 314-38 WAC, Permits, the Washington state liquor and cannabis board (WSLCB) proposes amendments and revisions to current permit rules by updating, modernizing, and clarifying existing language. WSLCB also proposes amendments and revisions to WAC 314-38-060 to align existing rules with and implement the law as established by EHB 1563 (chapter 112, Laws of 2019), concerning special permits for alcohol tastings by students at least eighteen years of age enrolled in certain degree-related programs at community or technical colleges, regional universities, or state universities.

Hearing Location(s): On November 18, 2020, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the WebEx application. The public may provide verbal comments during the specified public comment and rules hearing segments. For more information about board meetings, please visit https://lcb.wa.gov/boardmeetings/board_meetings.

Date of Intended Adoption: On or after December 9, 2020.

Submit Written Comments to: Audrey Vasek, 1025 Union Avenue, Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-664-9689, by November 18, 2020.

Assistance for Persons with Disabilities: Claris Nhanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nhanabu@lcb.wa.gov, by November 11, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule revisions amend, reorganize, clarify, and modernize the existing requirements related to permits. Specifically, the proposal consolidates and reorganizes existing sections related to the same permit types (e.g., by repealing WAC 314-38-010 and adding the repealed language to WAC 314-38-050); modernizes and clarifies language (e.g. by removing references to "class" titles); and adds references to authorizing statutes as appropriate. The proposal also revises WAC 314-38-060 to align existing rules with and implement the law as established by EHB 1563 concerning special permits for alcohol tastings by students at least eighteen years of age enrolled in certain degree-related programs at community or technical colleges, regional universities, or state universities. These proposed revisions more clearly describe existing processes, and are anticipated to result in increased access to and use of licensing resources by permit applicants, as well as

consistent rule application, interpretation, and guidance to support permit applicant success.

Reasons Supporting Proposal: The proposed rules are needed to support WSLCB permit applicants by confirming existing standards through language clarification and modernization. The proposed rules are also needed to align existing rules with and implement the law as established by EHB 1563 concerning special permits for alcohol tastings by students at least eighteen years of age enrolled in certain degree-related programs at community or technical colleges, regional universities, or state universities. Revisions also include additional technical and clarifying updates.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.20.010, 66.20.400; EHB 1563 (chapter 112, Laws of 2019).

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Audrey Vasek, policy and rules coordinator, 1025 Union Avenue, Olympia, WA 98501, 360-664-1758; **Implementation:** Becky Smith, director of licensing, 1025 Union Avenue, Olympia, WA 98501, 360-664-1753; and **Enforcement:** Justin Nordhorn, chief of enforcement, 1025 Union Avenue, Olympia, WA 98501, 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. A cost-benefit analysis is not required because the subject of proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5). The proposed rules clarify existing rule language without changing the effect of the rule consistent with RCW 34.05.328 (5)(b)(iv); amend existing rule language to include references to existing statutory language where necessary and appropriate consistent with RCW 34.05.328 (5)(b)(iii); and align existing rules with the law as established and dictated by EHB 1563 consistent with RCW 34.05.328 (5)(b)(v).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act (RFA) 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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(3) by way of RCW 34.05.310 (4)(c), (d), and (e).

Explanation of exemptions: The revisions made to WAC 314-38-010, 314-38-020, 314-38-030, 314-38-040, 314-38-050, 314-38-060, 314-38-070, 314-38-080, 314-38-090, 314-38-095, 314-38-100, and 314-38-110 are exempt from RFA's small business economic impact statement requirement under RCW 34.05.310 (4)(c), (d), and (e). The proposed rules incorporate by reference or explicitly restate statute where appropriate consistent with RCW 34.05.310 (4)(c). The proposed rules also provide corrections and clarifying language designed to modernize the chapter and increase ease of use consistent with RCW 34.05.310 (4)(d). The proposed amendments to WAC 314-38-060 align existing rule language with the law as established and dictated by EHB 1563 consistent with RCW 34.05.310 (4)(e).

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. WSLCB estimates that these rules will not result in any new or additional costs of compliance or regulatory burden for permit applicants. There are no costs associated with this rule. No new

permit fees or requirements are created, and existing permit fees and requirements remain unchanged. Consistent with RCW 66.20.010(12), there is no fee for the student tastings permit in WAC 314-38-060 that allows alcohol tastings by students at least eighteen years of age enrolled in certain degree-related programs at community or technical colleges, regional universities, or state universities.

Student Tastings Permit: WSLCB applied a nominal default cost of compliance of \$100 when analyzing whether the rules impose "more than minor costs" under RCW 19.85-030 on community or technical colleges, regional universities, or state universities that could potentially apply for a special permit under WAC 314-38-060, the portion of the rule proposal that aligns existing rule language with the law as established by EHB 1563. The calculations for minor cost thresholds for junior colleges; colleges, universities, and professional schools; and technical and trade schools are provided in the table below. The nominal default cost of compliance (\$100) does not exceed the minor cost threshold for any of these business types.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1% Pay, 0.3% Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
611210	\$100.00	Junior Colleges	Junior Colleges	\$2,900.91	Redacted 2018 Dataset pulled from ESD	\$2,900.91 2018 Dataset pulled from DOR
611310	\$100.00	Colleges, Universities, and Professional Schools	Colleges, Universities, and Professional Schools	\$27,046.82	\$27,046.82 2018 Dataset pulled from ESD	\$20,391.41 2018 Dataset pulled from DOR
61151	\$100.00	Technical and Trade Schools	Technical and Trade Schools	\$5,110.51	\$5,110.51 2018 Dataset pulled from USBLS	\$2,170.80 2018 Dataset pulled from DOR

Other Permits: WSLCB also applied a nominal default cost of compliance of \$100 when analyzing whether the rules impose "more than minor costs" under RCW 19.85.030 on business types that could potentially apply for permits (other than the student tastings permit) under chapter 314-38 WAC. A wide range of businesses can potentially apply for permits under chapter 314-38 WAC, including physicians, dentists, and hospitals (RCW 66.20.010(1)); mechanical or manufacturing businesses (RCW 66.20.010(2)); wineries, distilleries, and breweries (WAC 314-38-080, 314-28-090, and 314-38-

095; RCW 66.20.010 (5), (13), (14), and (15)); pharmacies and drug stores (RCW 66.20.010(6)); military installations (RCW 66.20.010(7)); manufacturers, importers, or distributors (RCW 66.24.010 (9) and (10)); bed and breakfast lodging facilities (RCW 66.20.010(11)); and day spas (WAC 314-38-070; RCW 66.20.400). The calculations for minor cost thresholds for these business types are provided in the table below. The nominal default cost of compliance (\$100) does not exceed the minor cost threshold for any of the potentially impacted business types.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate -Max of 1% Pay, 0.3% Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
6211	\$100.00	Physicians	Offices of Physicians	\$18,623.43	\$18,623.43 2018 Dataset pulled from USBLS	\$8,086.29 2018 Dataset pulled from DOR
6212	\$100.00	Dentists	Offices of Dentists	\$3,731.56	\$3,731.56 2018 Dataset pulled from USBLS	\$3,345.21 2018 Dataset pulled from DOR
622	\$100.00	Hospitals	Hospitals	\$537,245.40	\$537,245.40 2018 Dataset pulled from USBLS	\$421,749.92 2018 Dataset pulled from DOR
623	\$100.00	Nursing and Residential Care Facilities	Nursing and Residential Care Facilities	\$9,098.53	\$9,098.53 2018 Dataset pulled from USBLS	\$8,884.73 2018 Dataset pulled from DOR

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate -Max of 1% Pay, 0.3% Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
311	\$100.00	Food Manufacturing	Food Manufacturing	\$36,296.95	\$18,754.62 2018 Dataset pulled from USBLS	\$36,296.95 2018 Dataset pulled from DOR
5417	\$100.00	Scientific Research and Development Services	Scientific Research and Development Services	\$37,855.76	\$37,855.76 2018 Dataset pulled from USBLS	\$13,901.28 2018 Dataset pulled from DOR
238	\$100.00	Specialty Trade Contractors	Specialty Trade Contractors	\$4,930.85	\$4,930.85 2018 Dataset pulled from USBLS	\$3,087.58 2018 Dataset pulled from DOR
446110	\$100.00	Pharmacies and Drug Stores	Pharmacies and Drug Stores	\$52,827.53	\$5,677.04 2018 Dataset pulled from USBLS	\$52,827.53 2018 Dataset pulled from DOR
312140	\$100.00	Distilleries	Distilleries	\$2,049.47	\$2,049.47 2018 Dataset pulled from USBLS	\$1,083.10 2018 Dataset pulled from DOR
312120	\$100.00	Breweries	Breweries	\$3,239.02	\$3,239.02 2018 Dataset pulled from USBLS	\$3,082.90 2018 Dataset pulled from DOR
312130	\$100.00	Wineries	Wineries	\$3,522.66	\$3,522.66 2018 Dataset pulled from USBLS	\$3,381.76 2018 Dataset pulled from DOR
928110	\$100.00	Military Installation	National Security	\$178,311.07	\$178,311.07 2018 Dataset pulled from USBLS	\$15,621.16 2018 Dataset pulled from DOR
312140	\$100.00	Distilleries	Distilleries	\$2,049.47	\$2,049.47 2018 Dataset pulled from USBLS	\$1,083.10 2018 Dataset pulled from DOR
312120	\$100.00	Breweries	Breweries	\$3,239.02	\$3,239.02 2018 Dataset pulled from USBLS	\$3,082.90 2018 Dataset pulled from DOR
4248	\$100.00	Beer, Wine, and Spirits Merchant Wholesalers	Beer, Wine, and Distilled Alcoholic Beverage Merchant Wholesalers	\$16,091.49	\$14,670.84 2018 Dataset pulled from USBLS	\$16,091.49 2018 Dataset pulled from DOR
721191	\$100.00	Bed and Breakfast Inns	Bed-and-Breakfast Inns	\$885.37	\$885.37 2018 Dataset pulled from USBLS	\$591.14 2018 Dataset pulled from DOR
81211	\$100.00	Hair, Nail, and Skin Care Services	Hair; Nail; and Skin Care Services	\$1,577.00	\$1,577.00 2018 Dataset pulled from USBLS	\$314.28 2018 Dataset pulled from DOR

September 20, 2020

Jane Rushford

Chair

AMENDATORY SECTION (Amending WSR 18-04-116, filed 2/7/18, effective 3/10/18)

WAC 314-38-020 Permits—Fees established. The fees for permits authorized under RCW 66.20.010 and 66.20.400 are ~~((hereby))~~ established as follows:

(1) ~~((A))~~ The fee ~~((of five dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(1) is five dollars.

(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))~~ The fee for a banquet permit~~((as))~~ authorized by RCW 66.20.010(3)~~((s))~~ is established in WAC 314-18-040.

(4) The fee for a special business permit~~((as))~~ authorized by RCW 66.20.010(4)~~((s))~~ is established in WAC ~~((314-38-010(2)))~~ 314-38-050.

(5) The fee ~~((of ten dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(5) is ten dollars.

(6) ~~((A))~~ The fee ~~((of five dollars is established))~~ for a special permit ~~((as))~~ authorized by RCW 66.20.010(6) is five dollars.

(7) ~~There is no fee for 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) is twenty-five dollars.~~

(9) ~~The fee ((of twenty-five dollars is established)) for a special permit ((as)) authorized by RCW 66.20.010(9) is twenty-five dollars.~~

(10) ~~The fee ((of thirty dollars is established)) for a special permit ((as)) authorized by RCW 66.20.010(10) is thirty dollars.~~

(11) ~~The fee ((of seventy-five dollars is established)) for a special permit ((as)) authorized by RCW 66.20.010(11) is seventy-five dollars.~~

(12) ~~There is no fee for a special permit authorized by RCW 66.20.010(12).~~

(13) ~~The fee ((of ten dollars is established)) for a special permit ((as)) authorized by RCW 66.20.010(13) is ten dollars.~~

~~((13))~~ (14) ~~The fee ((of ten dollars is established)) for a special permit ((as)) authorized by RCW 66.20.010(14) is ten dollars.~~

~~((14))~~ (15) ~~The fee ((of ten dollars is established)) for a special permit ((as)) authorized by RCW 66.20.010(15) is ten dollars.~~

~~((15))~~ (16) ~~The fee ((of twenty-five dollars is established)) for a special permit ((as)) authorized by RCW 66.20.010(16) is twenty-five dollars.~~

~~((16))~~ (17) ~~The fee ((of twenty-five dollars is established)) for a special permit ((as)) authorized by RCW 66.20.010(17) is twenty-five dollars for each winery selling wine at the auction.~~

(18) ~~The fee for a day spa permit authorized by RCW 66.20.400 is established in WAC 314-38-070.~~

AMENDATORY SECTION (Amending WSR 83-23-123, filed 11/23/83)

WAC 314-38-030 Fee for replacement of a lost or destroyed license or permit. (1) ~~((A))~~ ~~The fee ((of five dollars is established)) for replacement by the board of a lost or destroyed ((agent's)) representative's license issued pursuant to RCW 66.24.310 is five dollars.~~

(2) ~~The fee ((of five dollars is established)) for replacement by the board of a lost or destroyed retail or wholesale liquor license of any class is five dollars.~~

AMENDATORY SECTION (Amending WSR 92-01-079, filed 12/16/91, effective 1/16/92)

WAC 314-38-040 ((Beverage)) Alcohol raffle permit—Fee. (1) Any organization authorized to conduct a raffle under RCW 9.46.0315 may raffle ((beverage)) alcohol upon obtaining a raffle permit from the board. The fee for a raffle permit ((shall be)) is ten dollars for a one-time raffle permit or twenty-five dollars for an annual permit.

(2) An application for a raffle permit ((shall be on a form prescribed by the board and filed with the board at the headquarters office in Olympia)) must be submitted at least thirty days in advance of ((the commencement of)) ticket sales.

(3) An application for a raffle permit must contain the following information:

(a) The full name of the bona fide charitable or bona fide nonprofit organization with verification of qualification as ((prescribed)) referenced in RCW 9.46.0209;

(b) The name, address, and phone number of the ((organization)) organization's officer in charge of the raffle;

(c) The date the raffle ticket sales will ((commence)) begin;

(d) The date, time, and exact location of the drawing;

(e) A description of the ((beverage)) alcohol being raffled including its estimated value; and

(f) ((And)) The source of the alcohol to be raffled (purchased at retail or donated by a private citizen).

(4) An ((organization)) organization's officer must certify that:

(a) Only organization members may purchase tickets or be awarded prizes;

(b) The organization meets the qualifications of a bona fide charitable or bona fide nonprofit organization ((as provided in)) under RCW 9.46.0209;

(c) The organization will not sell more than (((\$5,000)) five thousand dollars ((worth)) of raffle tickets in a calendar year; and

(d) The organization will not sell raffle tickets to anyone under twenty-one years of age when alcohol is awarded as a prize.

(5) Alcohol to be raffled must have all applicable Washington State taxes paid and may only be:

(a) Purchased at retail; or

(b) Donated by a private citizen.

(6) ((Upon application being filed and fee paid the board may issue a raffle permit.)) The issued raffle permit will ((state the)) include:

(a) The organization name((;

~~((b)))~~ and address((;

~~((c)))~~;

(b) The date and time of the drawing((;

~~((d)))~~;

(c) The effective dates of the raffle permit((;

~~((e)))~~; and

(d) A description of the alcohol to be raffled.

(7) The raffle permit ((shall)) must be posted at the location of the drawing prior to and during the drawing. The organization or person in charge of the raffle ((shall; when requested by)) must allow any representative ((or agent)) of either the board ((and/or)) or any law enforcement officer((; exhibit to such person the raffle permit and shall allow such person)), or both, to inspect the raffle permit and raffle items at any time.

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-38-050 Special permit to serve employees and guests ((permit))—Purpose—Use—Fee. (1) ((The purpose of a serve employees and guests permit as)) Businesses that are not licensed under Title 66 RCW may apply for a special permit authorized by RCW 66.20.010(4) ((is to:

(a) Allow for the consumption of liquor products in private businesses; and

(b) Not to compete with liquor licensed establishments.

(2) All liquor served by holders of a serve employees and guests permit must be purchased at retail from the board or a retail liquor licensee.

(3) Liquor may not be sold by holders of a serve employees and guests permit, but may be provided at no charge for consumption on the premises of the permit holder.

(4) The holder of a serve employees and guests permit) to serve alcohol free of charge to employees and invited guests of the business.

(2) The annual fee for each permit is five hundred dollars.

(3) A separate permit is required for each business premises at which alcohol will be served or consumed.

(4) A permit is not transferable to another business or organization.

(5) A permit is valid for twelve months from the first day of the month in which it is issued.

(6) Permits may only be issued to businesses at which the service and consumption of alcohol is incidental to, and is not part of, the service of the business.

(7) The permit may not be used to stimulate or increase business from the general public.

(8) All alcohol served by permit holders must be purchased at retail from a Washington state retail liquor licensee.

(9) Alcohol service and consumption must be limited to either hospitality rooms or dining rooms, or both, on the premises of the permit holder's business.

(10) The general public may not enter an area of the business where alcohol is being served or consumed.

(11) Permit holders may not charge for admission to an area where alcohol is being served.

(12) Permit holders may not advertise the service of alcohol.

(13) Alcohol may not be sold by permit holders, including by scrip, donation, contribution, or other means.

(14) Permit holders may serve (~~liquor~~) alcohol for no more than twenty-four hours during any weekly ~~((168))~~ one hundred sixty-eight hour) period.

~~((5) While the serve employees and guests permit holder may advertise their business services, no liquor service shall be advertised.))~~ (15) Consistent with RCW 66.20.070, failure to comply with applicable laws and rules may result in the suspension or cancellation of the permit.

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-38-060 Special permit for ~~((technical or))~~ community or technical colleges, regional ~~((university))~~ universities, or state ~~((university as authorized by RCW 66.20.010(12))~~ shall be called a class 15 permit) universities. (1) ~~((The class 15 permit allows tasting of alcohol by persons between eighteen and twenty years old. The requirements for a class 15 permit are as follows:~~

(a) The permit applicant is a technical or community college, regional university, or state university;

~~(b) The permit allows tasting, not consuming of alcohol))~~ Community or technical colleges, regional universities, or state universities may apply for a special permit authorized by RCW 66.20.010(12) to allow tasting of alcohol by persons at least eighteen years of age who are enrolled as students in a required or elective class that is part of a culinary, sommelier, wine business, enology, viticulture, wine technology, beer technology or spirituous technology-related degree program.

(2) Students at least eighteen but under twenty-one years of age may not consume or purchase alcohol, but may taste alcohol for the purposes of educational training as part of the class curriculum with approval of the educational provider(;

(e) The student must be enrolled in a required or elective class at the college premises as part of a culinary, sommelier, wine business, enology, viticulture, beer technology, wine technology, or spirituous technology-related degree program;

(d) The alcohol served to any person in the program under twenty-one years of age is tasted but not consumed for the purpose of educational training as part of the class curriculum with the approval of the educational provider;

(e) Faculty or staff of the educational provider must be at least twenty-one years of age, supervise the service and tasting, and hold a class 12 or class 13 alcohol server permit; and

(f) Students may not purchase the alcoholic beverages)).

(3) Tastings may occur on the premises of the college or university at which the student is enrolled or while on a field trip to a grape-growing area or production facility.

(4) All tastings must be done under the supervision of a faculty or staff member of the college or university who is at least twenty-one years of age and possesses a class twelve or thirteen alcohol server permit under the provisions of RCW 66.20.310.

~~((2))~~ (5) There is no ~~((annual))~~ fee for this permit.

AMENDATORY SECTION (Amending WSR 14-20-046, filed 9/24/14, effective 10/25/14)

WAC 314-38-070 ~~((Class 16))~~ Day spa permit—Fee.

(1) The annual fee for a day spa permit authorized by RCW 66.20.400 is one hundred twenty-five dollars.

(2) "Day spa" is defined as a business that offers at least three of the following four service categories:

(a) Hair care (haircut, hair color, perms, etc.);

(b) Skin care (facials, makeup application);

(c) Nail care (manicure, pedicure); and

(d) Body care (massage, wraps, waxing).

~~((2))~~ (3) The holder of a ~~((Class 16))~~ day spa permit may offer complimentary wine or beer by the individual glass under the following conditions:

(a) Customers must be at least twenty-one years of age;

(b) Spa services must last more than one hour;

(c) A customer may consume no more than one six ounce glass of wine or one twelve ounce glass of beer per day;

(d) Employees involved in the service of wine or beer must complete a board-approved limited alcohol server training program;

(e) Permit holders may not advertise the service of complimentary wine or beer;

(f) Wine and beer must be purchased from a Washington state licensed retailer;

(g) The permit must be posted in a conspicuous area at the point of sale; and

(h) At least three of the service area categories must be in separate areas of the spa.

~~((3))~~ (4) The board has the right to inspect the premises and business records at any time.

~~((4) The annual fee for this permit is one hundred twenty-five dollars.)~~

(5) ~~((Where the holder of any permit issued under this title violates any provision of this title or of the regulations, or is an interdicted person, or is otherwise disqualified from holding a permit, the board, upon proof to its satisfaction of the fact or existence of such violation, interdiction, or disqualification, and in its discretion, may with or without any hearing, suspend the permit and all rights of the holder thereunder for such period as the board sees fit, or may cancel the permit.))~~ Consistent with RCW 66.20.070, failure to comply with applicable laws and rules may result in the suspension or cancellation of the permit.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-38-080 ((Class 18)) Special winery permit.

(1) ~~((The special winery permit is for))~~ Domestic wineries may apply for a special permit authorized by RCW 66.20.-010(14).

(2) ~~((A special winery))~~ The permit allows a manufacturer of wine to be present at a private event not open to the general public at a specific place and date for the purpose of tasting wine and selling wine of its own production for on-premises and off-premises consumption.

(3) ~~((The winery must obtain the special permit by submitting an application for a class 18 special winery permit to the board with a ten-dollar permit fee.~~

~~((a))~~ The application and fee must be submitted to the board at least ten days prior to ~~((the))~~ each event.

~~((b))~~ (4) The special permit must be posted at the event.

~~((4))~~ (5) The winery is limited to twelve events per calendar year.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-38-090 ((Class 19)) Special distillery permit. (1) ~~((A special distillery/craft distillery permit is for))~~ Washington ~~((distillers only))~~ distilleries or craft distilleries may apply for a special permit authorized by RCW 66.20.-010(13).

(2) ~~((A special distillery/craft distillery))~~ The permit allows a manufacturer of spirits to be present at a private event not open to the general public at a specific place and date for the purpose of tasting spirits and selling spirits of its own production for on-premises and off-premises consumption.

(3) The activities at the event are limited to the activities allowed on the distillery~~((s))~~ or craft distillery premises.

(4) ~~((The distillery or craft distillery must obtain the special permit by submitting an application for a class 19 special~~

~~distillery/craft distillery permit to the board with a ten-dollar permit fee.~~

~~((a))~~ The application and fee must be submitted to the board at least ten days prior to ~~((the))~~ each event.

~~((b))~~ (5) The special permit must be posted at the event.

~~((5))~~ (6) The licensee is limited to twelve events per calendar year.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-38-095 ((Class 20)) Special brewery permit. (1) ~~((A special brewery/microbrewery permit is for Washington brewers only))~~ Domestic breweries and microbreweries may apply for a special permit authorized by RCW 66.20.010(15).

(2) ~~((A special brewery/microbrewery))~~ The permit allows a manufacturer of beer to be present at a private event not open to the general public at a specific place and date for the purpose of tasting beer and selling beer of its own production for on-premises and off-premises consumption.

(3) ~~((The brewery or microbrewery must obtain the special permit by submitting an application for a class 20 special brewery/microbrewery permit to the board with a ten-dollar permit fee.~~

~~((a))~~ The application and fee must be submitted to the board at least ten days prior to ~~((the))~~ each event.

~~((b))~~ (4) The special permit must be posted at the event.

~~((4))~~ (5) The licensee is limited to twelve events per calendar year.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-38-100 Accommodation sale permit. (1) An accommodation sale permit ~~((is for))~~ authorized by RCW 66.20.010(16) allows an individual or business to sell a private collection of wine or spirits to another individual or business.

(2) The seller must ~~((complete))~~ submit an application ~~((for accommodation sale permit and submit with a fee of twenty-five dollars))~~ and twenty-five dollar fee to the ~~((WSLCB))~~ board.

(3) Once the ~~((WSLCB))~~ board verifies the information on the application, a permit for the sale will be issued to the seller.

(4) The seller must wait at least five business days after receiving the permit to release either the wine ~~((and/or))~~ or spirits, or both, to the buyer.

(5) Within twenty calendar days of the sale, the seller must complete an accommodation sale inventory report and submit it to the ~~((WSLCB))~~ board.

(6) The following are definitions for the purposes of this section:

(a) "Accommodation sale" means the sale of a private collection of wine or spirits to an individual or business. Both the seller and the buyer must be located in Washington state.

(b) "Buyer" means the individual or business buying a private collection of wine or spirits. A buyer may be a liquor licensee.

(c) "Private collection" means a privately owned collection of wine or spirits. There is no minimum or maximum quantity to be considered a collection.

(d) "Seller" means the individual or business selling a private collection of wine or spirits. The seller cannot be a liquor licensee.

AMENDATORY SECTION (Amending WSR 18-04-116, filed 2/7/18, effective 3/10/18)

WAC 314-38-110 Nonprofit private wine auction permit. (1) A nonprofit private wine auction permit ~~((is for))~~ authorized under RCW 66.20.010(17) allows 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))~~ an application and fee to the ~~((WSLCB))~~ board.

(a) The date and location of the auction must be specified on the application.

(b) Consistent with RCW 66.20.010(17), 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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-38-010 Serve employees and guests permit under Title 66 RCW.

WSR 20-20-040
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed September 30, 2020, 11:25 a.m.]

Supplemental Notice to WSR 20-12-026.

Preproposal statement of inquiry was filed as WSR 18-17-041.

Title of Rule and Other Identifying Information: WAC 314-55-101 Quality assurance sampling protocols (Effective until July 31, 2021), new 314-55-1011 (Effective August 1, 2021), 314-55-102 Quality assurance testing (effective until July 31, 2021), new 314-55-1021 Quality assurance and quality control (Effective August 1, 2021, until January 31, 2022), new 314-55-1022 Quality assurance and quality con-

trol (Effective February 1, 2022), and 314-55-1025 Proficiency testing. The Washington state liquor and cannabis board (WSLCB) proposes amendments and new sections to current marijuana product testing standards that would require the addition of pesticide and heavy metal testing for all marijuana products produced, processed, and sold in Washington state.

Hearing Location(s): On November 18, 2020, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the WebEx application. The public may provide verbal comments during the specified public comment and rules hearing segments. For more information about board meetings, please visit https://lcb.wa.gov/boardmeetings/board_meetings.

Date of Intended Adoption: January 6, 2021.

Submit Written Comments to: Katherine Hoffman, 1025 Union Avenue, Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-664-9689, by November 18, 2020.

Assistance for Persons with Disabilities: Claris Nhanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nhanabu@lcb.wa.gov, by November 11, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments revise and update current marijuana quality assurance sampling protocols described in WAC 314-55-101, and marijuana proficiency testing described in WAC 314-55-1025.

This proposal provides that as of August 2021, sample collection for flower lots would increase from five pounds to ten pounds. It also provides that in addition to the currently required suite of tests, all marijuana products produced, processed, and sold in Washington state be tested for pesticides as of August 2021, and heavy metals as of February 2022. If adopted, these revisions would be accomplished by revising and updating existing WAC 314-55-101 and 314-55-102 by way of a phase-in plan, as follows:

- On August 1, 2021, WAC 314-55-101 would be repealed, and WAC 314-55-1011 would become effective, replacing the five pound lot size with a ten pound lot size.
- On August 1, 2021, WAC 314-55-102 would be repealed, and WAC 314-55-1021 would become effective until January 31, 2022, adding pesticide testing to the current suite of required product testing for all marijuana products produced and sold in Washington state.
- Finally, on January 31, 2022, WAC 314-55-1021 would be repealed, and effective February 1, 2022, WAC 314-55-1022 would become effective, requiring both pesticides *and* heavy metals to the current suite of required product testing for all marijuana products produced and sold in Washington state.

As a technical matter, this proposal renames and more appropriately refers to marijuana *quality control* sampling protocols and marijuana *quality control* and assurance testing standards. While quality control is a set of activities designed to evaluate a product, quality assurance pertains to activities that are designed to ensure that a *process* is adequate and the system meets its objectives. In contrast, quality control focuses on finding defects or anomalies in a product or deliverable, and checks whether defined requirements are the right requirements. Testing is one example of a quality control activity, but there are many more such activities that make up quality control. For these reasons, this proposal renames these sections.

Other proposed revisions include streamlined, clarified language; section reorganization to increase readability, along with reduction and removal of passive language where appropriate.

Reasons Supporting Proposal: Current testing requirements for recreational marijuana are intended to ensure that products for sale are safe and have accurate potency levels. However, Washington state recreational marijuana products are not required to be tested for pesticides and heavy metals, and although not precluded from doing so, many producers and processors do not test for either. Based on a number of elements, including consumer concern and national best practices, it has become evident that standardized testing for *all* marijuana products produced, processed, and sold in Washington state is necessary. Washington state is the only state with both recreational and medical programs that does not require such testing for all products.

There is no guidance available to WSLCB or any other state agency regulating marijuana from federal agencies who set standards for agriculture, food, and other products because marijuana remains classified as a Schedule I drug, and federally illegal. This presents regulatory challenges to WSLCB, regulators throughout the country, and the industry since there is limited funding to support research on how marijuana tainted with potential toxins affects humans. However, while the possible health impact of consuming marijuana products with unapproved pesticides is an emerging area of research, the overarching goal of WSLCB is to protect public health and safety, and to assure that all products sold within the I-502 market are safe for *all* consumers.

A public hearing on the initial rule proposal for this project was held on July 8, 2020, consistent with WSR 20-12-026. After review of comments received, WSLCB made substantive revisions to the proposal that require an additional public hearing.

Statutory Authority for Adoption: RCW 69.50.345 and 69.50.348.

Statute Being Implemented: RCW 69.50.345 and 69.50.348.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Hoffman, Policy and Rules Manager, 1025 Union Avenue, Olympia, WA 98501, 360-664-1622; Implementation: Kendra Hodgson, Marijuana Examiners Unit Manager, 1025 Union Avenue, Olympia, WA 98501, 360-664-4555; and Enforcement: Justin Nordhorn, Chief of Enforcement, 1025 Union Avenue, Olympia, WA, 98501, 360-664-1726.

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, 1025 Union Avenue, Olympia, WA 98502 [98501], phone 360-664-1622, fax 360-664-9689, email rules@lcb.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4): WAC 314-55-1025.

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

Small Business Economic Impact Statement (SBEIS)

What is the scope of the rule package? Compliance with the proposed, specific requirements described WAC 314-55-1011, 314-55-102, 314-55-1021, and 314-55-1022 will likely result in additional compliance costs. This includes the incremental, phased-in requirement to test all marijuana products for pesticides and heavy metals. The remainder of the rule revisions are exempt.

Which businesses are impacted by the proposed rule package? What was their North American Industry Classification (NAICS) code or codes? What are their minor cost thresholds? The NAICS code, business description, and minor cost thresholds are described and calculated below in two tables, representing *monthly* and *annual* costs, since these result in two outcomes: Table 1 indicates that the monthly cost of compliance does not exceed minor cost thresholds, and Table 2 indicates that the annual cost of compliance exceeds minor cost thresholds:

Table 1:

2017 Industry NAICS Code	Estimated Monthly Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1% Pay, 0.3% Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
111 ¹	\$3,450	Marijuana Producers	Crop Production	\$4,082.13	\$4,082.13 2018 Dataset pulled from ESD	\$2,993.38 2018 Dataset pulled from DOR

2017 Industry NAICS Code	Estimated Monthly Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1% Pay, 0.3% Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
312 ²	\$3,450	Marijuana Processors	Beverage and Tobacco Product Manufacturing	\$5,766.61	\$5,342.91 2018 Dataset pulled from ESD	\$5,766.6 2018 Dataset pulled from DOR

- 111 Crop Production:** Industries in the crop production subsector grow crops mainly for food and fiber. The subsector comprises establishments, such as farms, orchards, groves, greenhouses, and nurseries, primarily engaged in growing crops, plants, vines, or trees and their seeds.
- 312 Beverage and Tobacco Product Manufacturing:** Industries in the beverage and tobacco product manufacturing subsector manufacture beverages and tobacco products. The tobacco manufacturing industry group includes two types of establishments: (1) Those engaged in redrying and stemming tobacco; and (2) those that manufacture tobacco products, such as cigarettes and cigars.

Table 2:

2017 Industry NAICS Code	Estimated Annual Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate - Max of 1% Pay, 0.3% Rev, and \$100	1% of Avg Annual Payroll (0.01*AvgPay)	0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
111	\$41,400	Marijuana Producers	Crop Production	\$4,082.13	\$4,082.13 2018 Dataset pulled from ESD	\$2,993.38 2018 Dataset pulled from DOR
312	\$41,400	Marijuana Processors	Beverage and Tobacco Product Manufacturing	\$5,766.61	\$5,342.91 2018 Dataset pulled from ESD	\$5,766.61 2018 Dataset pulled from DOR

Does the rule have a disproportionate impact on small businesses? In particular, in order to calculate annual costs, we require information on a per entity basis describing the number of samples being tested per year. While we have some limited anecdotal information on the numbers of samples tested per year by individual producer/processors, we lack information on the myriad business models that could lead to a wide range in the number of samples tested per year, and thus a wide range of per entity compliance costs per year. Developing reliable estimates would require a comprehensive survey with a *reasonable* response rate, and even then, given the wide variability of business models and documented inconsistency in responses from licensees, per entity costs is difficult to determine.

Did the agency make an effort to reduce the impact of the rule? The proposed rule changes include provisions that are intended to reduce the compliance costs for small businesses. These include:

- An increase in lot size from five pounds to ten pounds;
- An incremental phase-in period that contemplates full compliance by February 1, 2022; and
- Allowing labs to subcontract pesticide and heavy metals testing for a period of time.

It is difficult to accurately assess if small businesses will be disproportionately impacted by this rule proposal when there is both significant overlap and variance between the groups evaluated. As noted above, and throughout this SBEIS, most of the businesses impacted are small as defined by RCW 19.85.030.

Did the agency involve small businesses in the rule development process? Throughout the rule development process, WSLCB has engaged with businesses likely to be affected by the rule, and who volunteered to participate in the process. To support development of the SBEIS, a subset of six producer/processors spanning a range of both tiers and

types of producers was contacted; interviews were conducted with two producers, one processor, and one producer/processor. In addition, interviews were conducted with three testing laboratories. Additional opportunity for public comment will be available when the proposed rule is published. Indoor and outdoor farmers, including sun growers, were included in the interviews.

During the rule development process, WSLCB hosted two "Listen and Learn" sessions, one in April 2019 and the second in August 2019, inviting industry discussion and feedback on the proposed rules, and [to] discuss potential mitigation strategies. WSLCB's stakeholder process encouraged interested parties and industry partners to:

- Identify burdensome areas of existing and proposed rules;
- Proposed initial or draft rule changes; and
- Refine those changes.

Although WSLCB broadly messaged these sessions (messaging went directly to *all* licensees, as well as over ten thousand GovDelivery subscribers), few processors and producers attended the sessions. This rule project was the first employing the "Listen and Learn" model, and attendees were initially unfamiliar with not only the model, but the process, although detailed agendas were provided well in advance of each meeting.

These heavily facilitated sessions followed two thought streams: the first asked attendees to review draft conceptual rules offered well in advance of the meeting and provide feedback or specific rule language, specifically indicating what they liked, didn't like, and what they proposed in the way of a solution. No rule language revisions were offered by attendees at either session. Solutions ranged from suggesting that figures and language be more concise in general without offering example, to unsupported assertions that adding pes-

ticides and heavy metals to the suite of required tests would put certain producers out of business.

All comments received during these sessions were curated to the extent possible, although developing themes from sessions was difficult based on the broad range of comments. The proposed rules went through several stages of edits, review, discussion, and then further refinement before arriving at the initial proposal. The end results of this process are proposed rules that are offered as a framework and guidance for testing marijuana products that support the overarching WSLCB goal of public health and safety.

A summary of the description of issues related to the proposed rule set and how the agency collaborated with stakeholders and industry partners to mitigate potential burden associated with rule compliance is more fully described in the significant analysis prepared consistent with RCW 34.05.328, including a phase-in plan, and offered as part of this initial rule proposal.

Will businesses have to hire or fire employees because of the requirements in the rule? While the impacts to individual producer/processors may depend on their ability to pass on increased testing costs (in the form of higher prices to retailers), the proposed rule is not expected to affect the amount of marijuana produced. Thus, the proposed rule is unlikely to affect the overall number of employees of producer/processors or retailers. For example, if increased testing costs lead some smaller entities to cease production, other entities may produce larger volumes. While it would be an indirect effect, the proposed rule may result in some limited additional employment in the labs conducting testing. In order to conduct the testing, a lab adding this testing capability may need to hire one or two additional scientists or technicians to operate equipment and conduct tests. The extent of potential employment gains are uncertain, but given the small number of labs in the industry (currently thirteen certified labs) any employment gains would likely be limited.

A copy of the statement may be obtained by contacting Katherine Hoffman, 1025 Union Avenue, Olympia, WA 98501, phone 360-664-1622, fax 360-664-9689, email rules@lcb.wa.gov.

September 30, 2020

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

WAC 314-55-101 Quality ((~~assurance sampling protocols~~)) control sampling.

(Effective until July 31, 2021)

~~(1) ((To ensure quality assurance samples submitted to certified third party laboratories (certified labs) are representative from the lot or batch from which they were sampled as required in RCW 69.50.348, licensed producers, licensed processors, certified labs, and their employees must adhere to the minimum sampling protocols as provided in this section.~~

~~(2) **Sampling protocols for all marijuana product lots and batches:**~~

~~(a) Samples must be deducted in a way that is most representative of the lot or batch and maintains the structure of the marijuana sample. Licensees, certified labs, and their employees may not adulterate or change in any way the representative sample from a lot or batch before submitting the sample to certified labs. This includes adulterating or changing the sample in any way as to inflate the level of potency, or to hide any microbiological contaminants from the required microbiological screening such as, but not limited to:~~

~~(i) Adulterating the sample with kief, concentrates, or other extracts;~~

~~(ii) Treating a sample with solvents to hide the microbial count of the lot or batch from which it was deducted. This subsection does not prohibit the treatment of failed lots or batches with methods approved by the WSLCB; or~~

~~(iii) Pregrinding a flower lot sample.~~

~~(b) All samples must be taken in a sanitary environment using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.~~

~~(c) Persons collecting samples must wash their hands prior to collecting a sample from a lot or batch, wear appropriate gloves while preparing or deducting the lot or batch for sample collection, and must use sanitary utensils and storage devices when collecting samples.~~

~~(d) Samples must be placed in a sanitary plastic or glass container, and stored in a location that prevents the propagation of pathogens and other contaminants, such as a secure, low light, cool and dry location.~~

~~(e) The licensee must maintain the lot or batch from which the sample was deducted in a secure, low light, cool, and dry location to prevent the marijuana from becoming contaminated or losing its efficacy.~~

~~(f) Each quality assurance sample must be clearly marked "quality assurance sample" and be labeled with the following information:~~

~~(i) The sixteen digit) All licensed marijuana processors, producers, certified labs, and certified lab employees must comply with the sampling procedures described in this section, consistent with RCW 69.50.348. Noncompliance may result in enforcement action as described in this chapter and applicable law.~~

~~(2) **Sample collection.** All samples of marijuana, usable marijuana, or marijuana-infused products submitted to an accredited lab for testing consistent with this chapter must be collected or deducted in a way that is most representative of the lot or batch, and maintains the structure of the marijuana sample.~~

~~(a) Facilities must be constructed and maintained consistent with applicable rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.~~

~~(b) To ensure the sample integrity, samples must be placed in a sanitary plastic or glass container, and stored in a location that prevents contamination and degradation, such as a secure, low-light, cool and dry location.~~

~~(c) The licensee must maintain the lot or batch from which the sample was deducted in a secure, low-light, cool,~~

and dry location to prevent the marijuana from becoming contaminated or losing its efficacy.

(d) Each quality control sample must be clearly marked "quality control sample" and labeled with the following information:

- (i) The identification number generated by the traceability system;
- (ii) The license number and name of the certified lab receiving the sample;
- (iii) The license number and trade name of the licensee sending the sample;
- (iv) The date the sample was collected; and
- (v) The weight of the sample.

(3) ~~((Additional sampling protocols))~~ **Sample collection for flower lots:**

(a) Licensees or certified labs must collect a minimum of four separate ~~((samples))~~ subsamples from each marijuana flower lot up to five pounds. Licensees or certified labs may collect more samples or subsamples than this minimum, but must not collect less. The ~~((samples))~~ subsamples must be of roughly equal weight not less than one gram each.

(b) The four separate ~~((samples))~~ subsamples must be taken from different quadrants of the flower lot. A quadrant is the division of a lot into four equal parts. Dividing a lot into quadrants prior to collecting samples must be done in a manner that ensures the ~~((samples))~~ subsamples are collected from four evenly distributed areas of the flower lot and may be done visually or physically.

(c) The ~~((four samples))~~ subsamples may be placed together in one container conforming to the packaging and labeling requirements in subsection (2) of this section for storage and transfer to a certified lab.

(4) **Sample retrieval and transportation.** Certified labs may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab. Certified labs may also return or destroy any unused portion of the samples.

(5) **Adulterated or altered samples.** All licensees, certified labs, or agents of a licensee or certified labs will not adulterate or alter, or attempt to adulterate or alter any marijuana samples for the purpose of circumventing contaminant testing detection limits or potency testing requirements such as, but not limited to:

(a) Adulterating the sample with kief, concentrates, or other extracts;

(b) Treating a sample with solvents to hide the microbial count of the lot or batch from which it was deducted. This subsection does not prohibit the treatment of failed lots or batches with methods approved by the board; or

(c) Pregrinding a flower lot sample.

(6) **Sample rejection or failure.** Certified labs ~~((may))~~ must reject or fail a sample if the lab ~~((has reason to))~~ believes the sample was not collected in the manner required by this section, adulterated ~~((in any way))~~, contaminated with known or unknown solvents, or manipulated in a manner that violates the sampling protocols, limit tests, or action levels.

~~((6))~~ The WSLCB or its designee will take immediate disciplinary action against any licensee or certified lab that fails to comply with the provisions of this section or falsifies records related to this section including, without limitation,

~~revoking the license the licensed producer or processor, or certification of the certified lab.))~~

NEW SECTION

WAC 314-55-1011 Quality control sampling.

(Effective August 1, 2021)

(1) All licensed marijuana processors, producers, certified labs, and certified lab employees must comply with the sampling procedures described in this section, consistent with RCW 69.50.348. Noncompliance may result in enforcement action as described in this chapter and applicable law.

(2) **Sample collection.** All samples of marijuana, usable marijuana, or marijuana-infused products submitted to an accredited lab for testing consistent with this chapter must be collected or deducted in a way that is most representative of the lot or batch, and maintains the structure of the marijuana sample.

(a) Facilities must be constructed and maintained consistent with applicable rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(b) To ensure the sample integrity, samples must be placed in a sanitary plastic or glass container, and stored in a location that prevents contamination and degradation, such as a secure, low-light, cool, and dry location.

(c) The licensee must maintain the lot or batch from which the sample was deducted in a secure, low-light, cool, and dry location to prevent the marijuana from becoming contaminated or losing its efficacy.

(d) Each quality control sample must be clearly marked "quality control sample" and labeled with the following information:

- (i) The identification number generated by the traceability system;
- (ii) The license number and name of the certified lab receiving the sample;
- (iii) The license number and trade name of the licensee sending the sample;
- (iv) The date the sample was collected; and
- (v) The weight of the sample.

(3) **Sample collection for flower lots.**

(a) Licensees or certified labs must collect a minimum of two separate samples consisting of eight separate subsamples from each marijuana flower lot up to ten pounds. Licensees or certified labs may collect more samples or subsamples than this minimum, but must not collect less. The subsamples must be of roughly equal weight not less than one gram each.

(b) The eight separate subsamples must be taken from different octants of the flower lot. An octant is the division of a lot into eight equal parts. Dividing a lot into octants prior to sample collection must ensure the subsamples are collected from eight evenly distributed areas of the flower lot. This division may be done visually or physically.

(c) The eight subsamples may be placed together in one container conforming to the packaging and labeling requirements in subsection (2) of this section for storage and transfer to a certified lab.

(d) Two samples of no less than eight grams each must be selected as described in (a) through (c) of this subsection for a total of no less than sixteen grams.

(4) **Sample retrieval and transportation.** Certified labs may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab. Certified labs may also return or destroy any unused portion of the samples.

(5) **Adulterated or altered samples.** All licensees, certified labs, or agents of a licensee or certified labs will not adulterate or alter, or attempt to adulterate or alter any marijuana samples for the purpose of circumventing contaminant testing detection limits or potency testing requirements such as, but not limited to:

(a) Adulterating the sample with kief, concentrates, or other extracts;

(b) Treating a sample with solvents to hide the microbial count of the lot or batch from which it was deducted. This subsection does not prohibit the treatment of failed lots or batches with methods approved by the board; or

(c) Pregrinding a flower lot sample.

(6) **Sample rejection or failure.** Certified labs must reject or fail a sample if the lab believes the sample was not collected in the manner required by this section, adulterated, contaminated with known or unknown solvents, or manipulated in a manner that violates the sampling protocols, limit tests, or action levels.

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

WAC 314-55-102 Quality assurance ((testing)) and quality control.

(Effective until July 31, 2021)

(1) Lab certification and accreditation for quality control testing. ~~To become certified, a third-party ((testing)) lab must ((be certified by the WSLCB or the WSLCB's vendor as meeting the WSLCB's accreditation and other requirements prior to)) meet the board's certification and accreditation requirements as described in WAC 314-55-0995 and this chapter before conducting quality ((assurance)) control tests required under this section.~~

~~((1) **Quality assurance fields of testing.** Certified labs must be certified to the following fields of testing by the WSLCB or its designee and must adhere to the guidelines for each quality assurance field of testing listed below, with the exception of mycotoxin, heavy metal, or pesticide residue screening. Certification to perform mycotoxin, heavy metals and pesticides may be obtained but is not required to obtain certification as a testing lab. A lab must become certified in all fields of testing prior to conducting any testing or screening in that field of testing, regardless of whether the test is required under this section.)) (a) Certified labs must be certified to the following fields of testing:~~

~~(i) Moisture analysis;~~

~~(ii) Potency analysis;~~

~~(iii) Foreign matter inspection;~~

~~(iv) Microbiological screening;~~

~~(v) Mycotoxin screening; and~~

~~(vi) Residual solvents.~~

~~(b) Certified labs may be certified for heavy metal, pesticide, or terpene testing. Certified labs must comply with the guidelines for each quality control field of testing described in this chapter if they offer that testing service.~~

~~(c) Certified labs may reference samples for heavy metal, pesticide, or terpene testing by subcontracting for those fields of testing.~~

(2) General quality control testing requirements for certified labs.

~~(a) Certified labs must record an acknowledgment of the receipt of samples from producers or processors in the board seed to sale traceability system. Certified labs must also verify when any unused portion of the sample is destroyed or returned to the licensee after the completion of required testing.~~

~~(b) When applicable, certified labs must report quality control test results directly to the board traceability system when quality control tests for the field of testing are required.~~

~~(c) Product must not be converted, transferred or sold until the required tests are reported to the board and the licensee.~~

~~(d) Certified labs must fail a sample if the results for any limit test are above allowable levels regardless of whether the limit test is required in the testing tables in this chapter.~~

~~(e) Certified labs must test samples on an "as is" or "as received" basis.~~

(3) Quality control fields of testing. The following fields of testing are only required for samples of marijuana flower that have not been previously tested, or that have failed quality control testing.

(a) Potency analysis.

(i) Certified labs must test and report the following cannabinoids to the ((WSLCB)) board when testing for potency:

(A) THCA;

(B) THC;

(C) Total THC;

(D) CBDA;

(E) CBD; and

(F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: M total delta-9 THC = M delta-9 THC + (0.877 x M delta-9 THCA).

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: M total CBD = M CBD + (0.877 x M CBDA).

(iii) Any psychoactive cannabinoids intentionally added to the formula of a product must be tested for potency.

(iv) Regardless of analytical equipment or methodology, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.

(b) Potency analysis for flower lots.

(i) Certified labs must test and report the results for the required flower lot samples as described in WAC 314-55-101 (3) for the following required cannabinoids:

(A) THCA;

(B) THC;

(C) Total THC;

- (D) CBDA;
- (E) CBD; and
- (F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: $M \text{ total delta-9 THC} = M \text{ delta-9 THC} + (0.877 \times M \text{ delta-9 THCA})$.

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: $M \text{ total CBD} = M \text{ CBD} + (0.877 \times M \text{ CBDA})$.

(c) Certified labs (~~may combine in equal parts multiple samples from the same flower lot for the purposes of the following tests after the individual samples described in WAC 314-55-101(3) have been tested for potency analysis.~~) must test each flower lot identified in WAC 314-55-101(3) for the following:

(i) **Moisture analysis.** The sample and related lot or batch fails quality ((~~assurance~~) control) testing for moisture analysis if the results exceed the following limits:

- (A) Water activity rate of more than 0.65 a_w ; (~~and~~) or
- (B) Moisture content more than fifteen percent.

(ii) **Foreign matter screening.** The sample and related lot or batch fail quality ((~~assurance~~) control) testing for foreign matter screening if the results exceed the following limits:

- (A) Five percent of stems 3 mm or more in diameter; (~~and~~) or
- (B) Two percent of seeds or other foreign matter; or
- (C) One insect fragment, one hair, or one mammalian excreta sample.

(iii) **Microbiological screening.** The sample and related lot or batch fail quality ((~~assurance~~) control) testing for microbiological screening if the results exceed the following limits:

	Enterobacteria (bile-tolerant gram-negative bacteria)	<i>E. coli</i> (pathogenic strains) and <i>Salmonella spp.</i>
Unprocessed Plant Material	10 ⁴	Not detected in 1g
Extracted or processed Botanical Product	10 ³	Not detected in 1g

(iv) **Mycotoxin screening.** ((~~The sample and related lot or batch fail quality assurance testing for mycotoxin screening if the results exceed the following limits:~~

- (A) Total of Aflatoxin B1, B2, G1, G2: 20 $\mu\text{g/kg}$ of substance; and
- (B) Ochratoxin A: 20 $\mu\text{g/kg}$ of substance.) For purposes of mycotoxin screening, a sample shall be deemed to have passed if it meets the following standards:

Test	Specification
<u>The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2</u>	<u><20 $\mu\text{g/kg}$ of substance</u>
<u>Ochratoxin A</u>	<u><20 $\mu\text{g/kg}$ of substance</u>

(d) **Residual solvent screening.** Except as otherwise provided in this subsection, a sample and related lot or batch fail quality ((~~assurance~~) control) testing for residual solvents if the results exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for class one solvents as defined in *United States Pharmacopoeia, USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality ((~~assurance~~) control) testing. When residual solvent screening is required, certified labs must test for the solvents listed in the table below at a minimum.

Solvent*	ppm
Acetone	5,000
Benzene	2
Butanes	5,000
Cyclohexane	3,880
Chloroform	2
Dichloromethane	600
Ethyl acetate	5,000
Heptanes	5,000
Hexanes	290
Isopropanol (2-propanol)	5,000
Methanol	3,000
Pentanes	5,000
Propane	5,000
Toluene	890
Xylene**	2,170

*And isomers thereof.

**Usually 60% *m*-xylene, 14% *p*-xylene, 9% *o*-xylene with 17% ethyl benzene.

(e) **Heavy metal screening.** A sample and related lot or batch fail quality ((~~assurance~~) control) testing for heavy metals if the results exceed the limits provided in the table below.

(Metal)	$\mu\text{/daily dose (5 grams)}$
Inorganic arsenic	10.0
Cadmium	4.1
Lead	6.0
Mercury	2.0

(2) **Quality assurance testing required.)**

Metal	$\mu\text{g/g}$
Arsenic	2.0
Cadmium	0.82
Lead	1.2
Mercury	0.40

(f) Pesticide screening. For purposes of the pesticide screening, a sample shall be deemed to have passed if it meets the standards described in WAC 314-55-108 and applicable department of agriculture rules.

(g) Terpenes. Testing for terpene presence and concentration is required if:

(i) The producer or processor states terpene content on any product packaging, labeling, or both; or

(ii) The producer or processor adds terpenes to their product.

(4) Required quality control tests. The following quality ((assurance)) control tests are ((the minimum)) required ((tests)) for each of the ((following)) marijuana products((; respectively)) described below. Licensees and certified labs may ((elect to do multiple)) opt to perform additional quality ((assurance)) control tests on the same lot ((or testing for mycotoxin, pesticides, or heavy metals pursuant to chapter 246-70 WAC)).

~~(a) ((General quality assurance testing requirements for certified labs.~~

~~(i) Certified labs must record an acknowledgment of the receipt of samples from producers or processors in the WSLCB seed to sale traceability system. Certified labs must also verify if any unused portion of the sample was destroyed or returned to the licensee after the completion of required testing.~~

~~(ii) Certified labs must report quality assurance test results directly to the WSLCB traceability system when quality assurance tests for the field of testing are required within twenty-four hours of completion of the test(s).~~

~~(iii) Certified labs must fail a sample if the results for any limit test are above allowable levels regardless of whether the limit test is required in the testing tables in this section.~~

~~(b)) Marijuana flower lots ((and other material lots)). Marijuana flower lots ((or other material lots)) require the following quality ((assurance)) control tests:~~

Product	Test(s) Required
Lots of marijuana flowers ((or other material that will not be extracted))	1. Moisture ((content)) <u>analysis</u> 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening

~~((e)) (b) Intermediate products.~~ Intermediate products must meet the following requirements related to quality ((assurance)) control testing:

~~(i) All intermediate products must be homogenized prior to quality ((assurance)) control testing;~~

~~(ii) For the purposes of this section, a batch is defined as a single run through the extraction or infusion process;~~

~~(iii) A batch of marijuana mix may not exceed five pounds and must be chopped or ground so no particles are greater than 3 mm; and~~

~~(iv) All batches of intermediate products require the following quality ((assurance)) control tests:~~

Product	Test(s) Required Intermediate Products
Marijuana mix	1. Moisture ((content)) <u>analysis</u> 2. Potency analysis 3. Foreign matter inspection((^)) 4. Microbiological screening 5. Mycotoxin screening
Concentrate or extract made with hydrocarbons (solvent based made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity)	1. Potency analysis 2. Mycotoxin screening((^))- <u>Field of testing is only required if using lots of marijuana flower that have not passed QA testing</u> 3. Residual solvent test
Concentrate or extract made with a CO ₂ extractor like hash oil	1. Potency analysis 2. Mycotoxin screening((^))- <u>Field of testing is only required if using lots of marijuana flower that have not passed QA testing</u> 3. Residual solvent test
Concentrate or extract made with ethanol	1. Potency analysis 2. Mycotoxin screening((^))- <u>Field of testing is only required if using lots of marijuana flower that have not passed QA testing</u> 3. Residual solvent test
Concentrate or extract made with approved food grade solvent	1. Potency analysis 2. Microbiological screening((^))- <u>Field of testing is only required if using lots of marijuana flower that have not passed QA testing</u> 3. Mycotoxin screening((^))- <u>Field of testing is only required if using lots of marijuana flower that have not passed QA testing</u> 4. Residual solvent test
Concentrate or extract (nonsolvent) such as kief, hash, rosin, or bubble hash	1. Potency analysis 2. Microbiological screening 3. Mycotoxin screening

Product	Test(s) Required Intermediate Products
Infused cooking oil or fat in solid form	1. Potency analysis 2. Microbiological screening ((*)) - <u>Field of testing is only required if using lots of marijuana flower that have not passed QA testing</u> 3. Mycotoxin screening ((*)) - <u>Field of testing is only required if using lots of marijuana flower that have not passed QA testing</u>

~~((*)~~) Field of testing is only required if using lots of marijuana flower and other plant material that has not passed QA testing.

~~((d))~~) **(c) End products.** All marijuana, marijuana-infused products, marijuana concentrates, marijuana mix packaged, and marijuana mix infused sold from a processor to a retailer require the following quality ~~((assurance))~~ control tests:

Product	Test(s) Required End Products
Infused solid edible	Potency analysis
Infused liquid (like a soda or tonic)	Potency analysis
Infused topical	Potency analysis
Marijuana mix packaged (loose or rolled)	Potency analysis
Marijuana mix infused (loose or rolled)	Potency analysis
Concentrate or marijuana-infused product for inhalation	Potency analysis
Other	<u>Potency analysis</u>

~~((e))~~) **(d)** End products consisting of only one intermediate product that has not been changed in any way are not subject to potency analysis.

~~((3) No lot of)~~) **(5)** Usable flower, batch of marijuana concentrate, or batch of marijuana-infused product may not be sold or transported until the completion and successful passage of required quality ~~((assurance))~~ control testing ~~((as required in this section))~~, except:

(a) Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations ~~((under the same UBI number prior to quality assurance testing))~~; and

(b) Licensees may wholesale and transfer batches or lots of flower and other material that will be extracted and marijuana mix and nonsolvent extracts for the purposes of further extraction prior to completing required quality ~~((assurance))~~ control testing. Licensees may wholesale and transfer failed lots or batches to be extracted pursuant to subsection (5) of this section, unless failed for tests that require immediate destruction.

~~((4) Samples, lots, or batches that fail quality assurance testing-))~~ **(6) Failed test samples.**

(a) Upon approval by the ~~((WSLCB))~~ board, failed lots or batches may be used to create extracts. After processing, the extract must pass all quality ~~((assurance))~~ control tests required in this section before it may be sold, unless failed for tests that require immediate destruction.

(b) **Retesting.** ~~((At the request of the))~~ A producer or processor~~((the WSLCB))~~ must request retesting. The board may authorize ~~((a))~~ the requested retest to validate a failed test result on a case-by-case basis. ~~((All costs of the retest will be borne by))~~ The producer or the processor requesting the retest~~((Potency retesting will generally not be authorized))~~ must pay for the cost of all retesting.

(c) **Remediation.** Remediation is a process or technique applied to marijuana harvests, lots, or batches. Remediation may occur after the first failure of the lot, batch, or both depending on the failure, or if a retest process results in a second failure. Pesticide failures may not be remediated.

(i) Producers and processors may remediate failed ~~((harvests))~~ lots, ~~((or))~~ batches, or both so long as the remediation method does not impart any toxic or ~~((deleterious))~~ harmful substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to:

(A) A licensed processor;

(B) The producer or producer/processor who transfers the marijuana products ~~((to))~~;

(C) A licensed retailer carrying marijuana products derived from the remediated ~~((harvest))~~ lot~~((s))~~ or batch; or

(D) A consumer upon request.

(ii) The entire ~~((harvest))~~ lot~~((s))~~ or batch from which the failed sample(s) were deducted ~~((from))~~ must be remediated ~~((using the same remediation technique))~~.

(iii) No remediated ~~((harvest))~~ lots ~~((or))~~ batches, or both may be sold or transported until ~~((the completion and successful passage of quality assurance testing as required in this section))~~ quality control testing consistent with the requirements of this section is completed.

(iv) If a failed lot or batch is not remediated or reprocessed in any way, it cannot be retested. Any subsequent COAs produced without remediation or reprocessing of the failed batch will not supersede the initial regulatory compliance testing COA.

~~((5))~~) **(7)** A certificate of analysis issued by a certified lab for any marijuana product subject to the requirements of this chapter that has not already been transferred to a retail location expires twelve calendar months after issuance.

(8) Referencing. Certified labs may reference samples for ~~((mycotoxin))~~ terpenes, heavy metals, and pesticides testing to other certified labs by subcontracting for those fields of testing. Labs must record all referencing to other labs on a chain-of-custody manifest that includes, but is not limited to, the following information: Lab name, certification number, transfer date, address, contact information, delivery personnel, sample ID numbers, field of testing, receiving personnel.

~~((6))~~) **(9)** Certified labs are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but a certified lab must have records proving all marijuana and marijuana-infused prod-

ucts in the certified lab's possession are held only for the testing purposes described in this ~~(section)~~ chapter.

~~((7) Upon the request of the WSLCB)) (10) The board or its designee(;) may request that a licensee or a certified lab ((must)) provide an employee of the ((WSLCB)) board or their designee samples of marijuana or marijuana products or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened randomly for pesticides, and chemical residues, unsafe levels of heavy metals, and used for other quality ~~((assurance))~~ control tests deemed necessary by the ~~((WSLCB))~~ board.~~

(11) Quality control tests meeting all requirements of this chapter must be conducted for any additive, solvent, ingredient, or compound used in the production and processing of marijuana products, including marijuana vapor products prohibited by the board under RCW 69.50.342 and this chapter.

NEW SECTION

WAC 314-55-1021 Quality assurance and quality control.

(Effective August 1, 2021, until January 31, 2022)

(1) **Lab certification and accreditation for quality control testing.** To become certified, a third-party lab must meet the board's certification and accreditation requirements as described in WAC 314-55-0995 and this chapter before conducting quality control tests required under this section.

(a) Certified labs must be certified to the following fields of testing:

- (i) Moisture analysis;
- (ii) Potency analysis;
- (iii) Foreign matter inspection;
- (iv) Microbiological screening;
- (v) Mycotoxin screening; and
- (vi) Residual solvents.

(b) Certified labs may be certified for heavy metal, pesticide, or terpene testing. Certified labs must comply with the guidelines for each quality control field of testing described in this section if they offer that testing service.

(c) Certified labs may reference samples for heavy metal, pesticide, or terpene testing by subcontracting for those fields of testing.

(2) General quality control testing requirements for certified labs.

(a) Certified labs must record an acknowledgment of the receipt of samples from producers or processors in the board seed to sale traceability system. Certified labs must also verify when any unused portion of the sample is destroyed or returned to the licensee after the completion of required testing.

(b) When applicable, certified labs must report quality control test results directly to the board traceability system when quality control tests for the field of testing are required.

(c) Product must not be converted, transferred, or sold until the required tests are reported to the board and the licensee.

(d) Certified labs must fail a sample if the results for any limit test are above allowable levels regardless of whether the limit test is required in the testing tables in this chapter.

(e) Certified labs must test samples on an "as is" or "as received" basis.

(3) **Quality control fields of testing.** The following fields of testing are only required for samples of marijuana flower that have not been previously tested, or that have failed quality control testing.

(a) Potency analysis.

(i) Certified labs must test and report the following cannabinoids to the board when testing for potency:

- (A) THCA;
- (B) THC;
- (C) Total THC;
- (D) CBDA;
- (E) CBD; and
- (F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: $M \text{ total delta-9 THC} = M \text{ delta-9 THC} + (0.877 \times M \text{ delta-9 THCA})$.

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: $M \text{ total CBD} = M \text{ CBD} + (0.877 \times M \text{ CBDA})$.

(iii) Any psychoactive cannabinoids intentionally added to the formula of a product must be tested for potency.

(iv) Regardless of analytical equipment or methodology, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.

(b) Potency analysis for flower lots.

(i) Certified labs must test and report the results for the required flower lot samples as described in WAC 314-55-101(3) for the following required cannabinoids:

- (A) THCA;
- (B) THC;
- (C) Total THC;
- (D) CBDA;
- (E) CBD; and
- (F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: $M \text{ total delta-9 THC} = M \text{ delta-9 THC} + (0.877 \times M \text{ delta-9 THCA})$.

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: $M \text{ total CBD} = M \text{ CBD} + (0.877 \times M \text{ CBDA})$.

(c) Certified labs must test each flower lot identified in WAC 314-55-101(3) for the following:

(i) **Moisture analysis.** The sample and related lot or batch fails quality control testing for moisture analysis if the results exceed the following limits:

- (A) Water activity rate of more than 0.65 a_w ; or
- (B) Moisture content more than fifteen percent.

(ii) **Foreign matter screening.** The sample and related lot or batch fail quality control testing for foreign matter screening if the results exceed the following limits:

- (A) Five percent of stems 3 mm or more in diameter; or
- (B) Two percent of seeds or other foreign matter; or
- (C) One insect fragment, one hair, or one mammalian excreta per sample.

(iii) **Microbiological screening.** The sample and related lot or batch fail quality control testing for microbiological screening if the results exceed the following limits:

	Enterobacteria (bile-tolerant gram-negative bacteria)	<i>E. coli</i> (pathogenic strains) and <i>Salmonella spp.</i>
Unprocessed Plant Material	10 ⁴	Not detected in 1g
Extracted or Processed Botanical Product	10 ³	Not detected in 1g

(iv) **Mycotoxin screening.** For purposes of mycotoxin screening, a sample shall be deemed to have passed if it meets the following standards:

Test	Specification
The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2	≤20 µg/kg of substance
Ochratoxin A	≤20 µg/kg of substance

(d) **Residual solvent screening.** Except as otherwise provided in this subsection, a sample and related lot or batch fail quality control testing for residual solvents if the results exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for class one solvents as defined in *United States Pharmacopoeia, USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality control testing. When residual solvent screening is required, certified labs must test for the solvents listed in the table below at a minimum.

Solvent*	ppm
Acetone	5,000
Benzene	2
Butanes	5,000
Cyclohexane	3,880
Chloroform	2
Dichloromethane	600
Ethyl acetate	5,000
Heptanes	5,000
Hexanes	290
Isopropanol (2-propanol)	5,000
Methanol	3,000
Pentanes	5,000
Propane	5,000
Toluene	890
Xylene**	2,170

*And isomers thereof.

**Usually 60% *m*-xylene, 14% *p*-xylene, 9% *o*-xylene with 17% ethyl benzene.

(e) **Heavy metal screening.** A sample and related lot or batch fail quality control testing for heavy metals if the results exceed the limits provided in the table below.

Metal	µg/g
Arsenic	2.0
Cadmium	0.82
Lead	1.2
Mercury	0.40

(f) **Pesticide screening.** For purposes of the pesticide screening, a sample shall be deemed to have passed if it meets the standards described in WAC 314-55-108 and applicable department of agriculture rules.

(g) **Terpenes.** Testing for terpene presence and concentration is required if:

- (i) The producer or processor states terpene content on any product packaging, labeling, or both; or
- (ii) The producer or processor adds terpenes to their product.

(4) **Required quality control tests.** The following quality control tests are required for each of the marijuana products described below. Licensees and certified labs may opt to perform additional quality control tests on the same lot.

(a) **Marijuana flower lots.** Marijuana flower lots require the following quality control tests:

Product	Test(s) Required
Lots of marijuana flowers	1. Moisture analysis 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening 6. Pesticide screening

(b) **Intermediate products.** Intermediate products must meet the following requirements related to quality control testing:

- (i) All intermediate products must be homogenized prior to quality control testing;
- (ii) For the purposes of this section, a batch is defined as a single run through the extraction or infusion process;
- (iii) A batch of marijuana mix may not exceed ten pounds and must be chopped or ground so no particles are greater than 3 mm; and
- (iv) All batches of intermediate products require the following quality control tests:

Product	Test(s) Required Intermediate Products
Marijuana mix	1. Moisture analysis 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening 6. Pesticide screening
Concentrate or extract made with hydrocarbons (solvent based made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity)	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening
Concentrate or extract made with a CO ₂ extractor like hash oil	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening
Concentrate or extract made with ethanol	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening
Concentrate or extract made with approved food grade solvent	1. Potency analysis 2. Microbiological screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 4. Residual solvent test 5. Pesticide screening
Concentrate or extract (nonsolvent) such as kief, hash, rosin, or bubble hash	1. Potency analysis 2. Microbiological screening 3. Mycotoxin screening 4. Pesticide screening

Product	Test(s) Required Intermediate Products
Infused cooking oil or fat in solid form	1. Potency analysis 2. Microbiological screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 4. Pesticide screening

(c) **End products.** All marijuana, marijuana-infused products, marijuana concentrates, marijuana mix packaged, and marijuana mix infused sold from a processor to a retailer require the following quality control tests:

Product	Test(s) Required End Products
Infused solid edible	Potency analysis
Infused liquid (like a soda or tonic)	Potency analysis
Infused topical	Potency analysis
Marijuana mix packaged (loose or rolled)	Potency analysis
Marijuana mix infused (loose or rolled)	Potency analysis
Concentrate or marijuana-infused product for inhalation	Potency analysis
Other	Potency analysis

(d) End products consisting of only one intermediate product that has not been changed in any way are not subject to potency analysis.

(5) Usable flower, batch of marijuana concentrate, or batch of marijuana-infused product may not be sold or transported until the completion and successful passage of required quality control testing, except:

(a) Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations; and

(b) Licensees may wholesale and transfer batches or lots of flower and other material that will be extracted and marijuana mix and nonsolvent extracts for the purposes of further extraction prior to completing required quality control testing. Licensees may wholesale and transfer failed lots or batches to be extracted pursuant to this subsection, unless failed for tests that require immediate destruction.

(6) Failed test samples.

(a) Upon approval by the board, failed lots or batches may be used to create extracts. After processing, the extract must pass all quality control tests required in this section before it may be sold, unless failed for tests that require immediate destruction.

(b) **Retesting.** A producer or processor must request retesting. The board may authorize retest to validate a failed test result on a case-by-case basis. The producer or the processor requesting the retest must pay for the cost of all retesting.

(c) **Remediation.** Remediation is a process or technique applied to marijuana harvests, lots, or batches. Remediation may occur after the first failure of the lot, batch, or both depending on the failure, or if a retest process results in a second failure. Pesticide failures may not be remediated.

(i) Producers and processors may remediate failed lots, batches, or both so long as the remediation method does not impart any toxic or harmful substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to:

(A) A licensed processor;

(B) The producer or producer/processor who transfers the marijuana products;

(C) A licensed retailer carrying marijuana products derived from the remediated lot or batch; or

(D) A consumer upon request.

(ii) The entire lot or batch from which the failed sample(s) were deducted must be remediated.

(iii) No remediated lots, batches, or both may be sold or transported until quality control testing consistent with the requirements of this section is completed.

(iv) If a failed lot or batch is not remediated or reprocessed in any way, it cannot be retested. Any subsequent COAs produced without remediation or reprocessing of the failed batch will not supersede the initial regulatory compliance testing COA.

(7) A certificate of analysis issued by a certified lab for any marijuana product subject to the requirements of this chapter that has not already been transferred to a retail location expires twelve calendar months after issuance.

(8) **Referencing.** Certified labs may reference samples for terpenes, heavy metals, and pesticides testing to other certified labs by subcontracting for those fields of testing. Labs must record all referencing to other labs on a chain-of-custody manifest that includes, but is not limited to, the following information: Lab name, certification number, transfer date, address, contact information, delivery personnel, sample ID numbers, field of testing, receiving personnel.

(9) Certified labs are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but a certified lab must have records proving all marijuana and marijuana-infused products in the certified lab's possession are held only for the testing purposes described in this chapter.

(10) The board or its designee may request that a licensee or a certified lab provide an employee of the board or their designee samples of marijuana or marijuana products or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened randomly for pesticides, chemical residues, unsafe levels of heavy metals, and used for other quality control tests deemed necessary by the board.

(11) Quality control tests meeting all requirements of this chapter must be conducted for any additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products prohibited by the board under RCW 69.50.342 and this chapter.

NEW SECTION

WAC 314-55-1022 Quality assurance and quality control.

(Effective February 1, 2022)

(1) **Lab certification and accreditation for quality control testing.** To become certified, a third-party lab must meet the board's certification and accreditation requirements as described in WAC 314-55-0995 and this chapter before conducting quality control tests required under this section.

(a) Certified labs must be certified to the following fields of testing:

(i) Moisture analysis;

(ii) Potency analysis;

(iii) Foreign matter inspection;

(iv) Microbiological screening;

(v) Mycotoxin screening; and

(vi) Residual solvents.

(b) Certified labs may be certified for heavy metal, pesticide, or terpene testing. Certified labs must comply with the guidelines for each quality control field of testing described in this section if they offer that testing service.

(c) Certified labs may reference samples for heavy metal, pesticide, or terpene testing by subcontracting for those fields of testing.

(2) **General quality control testing requirements for certified labs.**

(a) Certified labs must record an acknowledgment of the receipt of samples from producers or processors in the board seed to sale traceability system. Certified labs must also verify when any unused portion of the sample is destroyed or returned to the licensee after the completion of required testing.

(b) When applicable, certified labs must report quality control test results directly to the board traceability system when quality control tests for the field of testing are required.

(c) Product must not be converted, transferred, or sold until the required tests are reported to the board and the licensee.

(d) Certified labs must fail a sample if the results for any limit test are above allowable levels regardless of whether the limit test is required in the testing tables in this chapter.

(e) Certified labs must test samples on an "as is" or "as received" basis.

(3) **Quality control fields of testing.** The following fields of testing are only required for samples of marijuana flower that have not been previously tested, or that have failed quality control testing.

(a) **Potency analysis.**

(i) Certified labs must test and report the following cannabinoids to the board when testing for potency:

(A) THCA;

(B) THC;

(C) Total THC;

- (D) CBDA;
- (E) CBD; and
- (F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: $M \text{ total delta-9 THC} = M \text{ delta-9 THC} + (0.877 \times M \text{ delta-9 THCA})$.

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: $M \text{ total CBD} = M \text{ CBD} + (0.877 \times M \text{ CBDA})$.

(iii) Any psychoactive cannabinoids intentionally added to the formula of a product must be tested for potency.

(iv) Regardless of analytical equipment or methodology, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.

(b) Potency analysis for flower lots.

(i) Certified labs must test and report the results for the required flower lot samples as described in WAC 314-55-101(3) for the following required cannabinoids:

- (A) THCA;
- (B) THC;
- (C) Total THC;
- (D) CBDA;
- (E) CBD; and
- (F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: $M \text{ total delta-9 THC} = M \text{ delta-9 THC} + (0.877 \times M \text{ delta-9 THCA})$.

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: $M \text{ total CBD} = M \text{ CBD} + (0.877 \times M \text{ CBDA})$.

(c) Certified labs must test each flower lot identified in WAC 314-55-101(3) for the following:

(i) **Moisture analysis.** The sample and related lot or batch fails quality control testing for moisture analysis if the results exceed the following limits:

- (A) Water activity rate of more than 0.65 a_w ; or
- (B) Moisture content more than fifteen percent.

(ii) **Foreign matter screening.** The sample and related lot or batch fail quality control testing for foreign matter screening if the results exceed the following limits:

- (A) Five percent of stems 3 mm or more in diameter; or
- (B) Two percent of seeds or other foreign matter; or
- (C) One insect fragment, one hair, or one mammalian excreta per sample.

(iii) **Microbiological screening.** The sample and related lot or batch fail quality control testing for microbiological screening if the results exceed the following limits:

	Enterobacteria (bile-tolerant gram-negative bacteria)	<i>E. coli</i> (pathogenic strains) and <i>Salmonella spp.</i>
Unprocessed Plant Material	10 ⁴	Not detected in 1g

	Enterobacteria (bile-tolerant gram-negative bacteria)	<i>E. coli</i> (pathogenic strains) and <i>Salmonella spp.</i>
Extracted or Processed Botanical Product	10 ³	Not detected in 1g

(iv) **Mycotoxin screening.** For purposes of mycotoxin screening, a sample shall be deemed to have passed if it meets the following standards:

Test	Specification
The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2	≤20 µg/kg of substance
Ochratoxin A	≤20 µg/kg of substance

(d) **Residual solvent screening.** Except as otherwise provided in this subsection, a sample and related lot or batch fail quality control testing for residual solvents if the results exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for class one solvents as defined in *United States Pharmacopoeia, USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality control testing. When residual solvent screening is required, certified labs must test for the solvents listed in the table below at a minimum.

Solvent*	ppm
Acetone	5,000
Benzene	2
Butanes	5,000
Cyclohexane	3,880
Chloroform	2
Dichloromethane	600
Ethyl acetate	5,000
Heptanes	5,000
Hexanes	290
Isopropanol (2-propanol)	5,000
Methanol	3,000
Pentanes	5,000
Propane	5,000
Toluene	890
Xylene**	2,170

*And isomers thereof.

**Usually 60% *m*-xylene, 14% *p*-xylene, 9% *o*-xylene with 17% ethyl benzene.

(e) **Heavy metal screening.** A sample and related lot or batch fail quality control testing for heavy metals if the results exceed the limits provided in the table below.

Metal	µg/g
Arsenic	2.0
Cadmium	0.82
Lead	1.2
Mercury	0.40

(f) **Pesticide screening.** For purposes of the pesticide screening, a sample shall be deemed to have passed if it meets the standards described in WAC 314-55-108 and applicable department of agriculture rules.

(g) **Terpenes.** Testing for terpene presence and concentration is required if:

(i) The producer or processor states terpene content on any product packaging, labeling, or both; or

(ii) The producer or processor adds terpenes to their product.

(4) **Required quality control tests.** The following quality control tests are required for each of the marijuana products described below. Licensees and certified labs may opt to perform additional quality control tests on the same lot.

(a) **Marijuana flower lots.** Marijuana flower lots require the following quality control tests:

Product	Test(s) Required
Lots of marijuana flowers	1. Moisture analysis 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening 6. Pesticide screening 7. Heavy metals screening

(b) **Intermediate products.** Intermediate products must meet the following requirements related to quality control testing:

(i) All intermediate products must be homogenized prior to quality control testing;

(ii) For the purposes of this section, a batch is defined as a single run through the extraction or infusion process;

(iii) A batch of marijuana mix may not exceed ten pounds and must be chopped or ground so no particles are greater than 3 mm; and

(iv) All batches of intermediate products require the following quality control tests:

Product	Test(s) Required Intermediate Products
Marijuana mix	1. Moisture analysis 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening 6. Pesticide screening 7. Heavy metals screening

Product	Test(s) Required Intermediate Products
Concentrate or extract made with hydrocarbons (solvent based made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity)	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening 5. Heavy metals screening
Concentrate or extract made with a CO ₂ extractor like hash oil	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening 5. Heavy metals screening
Concentrate or extract made with ethanol	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening 5. Heavy metals screening
Concentrate or extract made with approved food grade solvent	1. Potency analysis 2. Microbiological screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 4. Residual solvent test 5. Pesticide screening 6. Heavy metals screening
Concentrate or extract (nonsolvent) such as kief, hash, rosin, or bubble hash	1. Potency analysis 2. Microbiological screening 3. Mycotoxin screening 4. Pesticide screening 5. Heavy metals screening

Product	Test(s) Required Intermediate Products
Infused cooking oil or fat in solid form	1. Potency analysis 2. Microbiological screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 4. Pesticide screening 5. Heavy metals screening

(c) **End products.** All marijuana, marijuana-infused products, marijuana concentrates, marijuana mix packaged, and marijuana mix infused sold from a processor to a retailer require the following quality control tests:

Product	Test(s) Required End Products
Infused solid edible	Potency analysis
Infused liquid (like a soda or tonic)	Potency analysis
Infused topical	Potency analysis
Marijuana mix packaged (loose or rolled)	Potency analysis
Marijuana mix infused (loose or rolled)	Potency analysis
Concentrate or marijuana-infused product for inhalation	Potency analysis
Other	Potency analysis

(d) End products consisting of only one intermediate product that has not been changed in any way are not subject to potency analysis.

(5) Usable flower, batch of marijuana concentrate, or batch of marijuana-infused product may not be sold or transported until the completion and successful passage of required quality control testing, except:

(a) Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations; and

(b) Licensees may wholesale and transfer batches or lots of flower and other material that will be extracted and marijuana mix and nonsolvent extracts for the purposes of further extraction prior to completing required quality control testing. Licensees may wholesale and transfer failed lots or batches to be extracted pursuant to this subsection, unless failed for tests that require immediate destruction.

(6) Failed test samples.

(a) Upon approval by the board, failed lots or batches may be used to create extracts. After processing, the extract must pass all quality control tests required in this section

before it may be sold, unless failed for tests that require immediate destruction.

(b) **Retesting.** A producer or processor must request retesting. The board may authorize the requested retest to validate a failed test result on a case-by-case basis. The producer or the processor requesting the retest must pay for the cost of all retesting.

(c) **Remediation.** Remediation is a process or technique applied to marijuana harvests, lots, or batches. Remediation may occur after the first failure of the lot, batch, or both depending on the failure, or if a retest process results in a second failure. Pesticide failure may not be remediated.

(i) Producers and processors may remediate failed lots, batches, or both so long as the remediation method does not impart any toxic or harmful substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to:

- (A) A licensed processor;
- (B) The producer or producer/processor who transfers the marijuana products;
- (C) A licensed retailer carrying marijuana products derived from the remediated lot or batch; or
- (D) A consumer upon request.

(ii) The entire lot or batch from which the failed sample(s) were deducted must be remediated.

(iii) No remediated lots, batches, or both may be sold or transported until quality control testing consistent with the requirements of this section is completed.

(iv) If a failed lot or batch is not remediated or reprocessed in any way, it cannot be retested. Any subsequent COAs produced without remediation or reprocessing of the failed batch will not supersede the initial regulatory compliance testing COA.

(7) A certificate of analysis issued by a certified lab for any marijuana product subject to the requirements of this chapter that has not already been transferred to a retail location expires twelve calendar months after issuance.

(8) **Referencing.** Certified labs may reference samples for terpenes, heavy metals, and pesticides testing to other certified labs by subcontracting for those fields of testing. Labs must record all referencing to other labs on a chain-of-custody manifest that includes, but is not limited to, the following information: Lab name, certification number, transfer date, address, contact information, delivery personnel, sample ID numbers, field of testing, and receiving personnel.

(9) Certified labs are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but a certified lab must have records proving all marijuana and marijuana-infused products in the certified lab's possession are held only for the testing purposes described in this chapter.

(10) The board or its designee may request that a licensee or a certified lab provide an employee of the board or their designee samples of marijuana or marijuana products or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened randomly for pesticides, chemical residues, unsafe levels of heavy metals,

and used for other quality control tests deemed necessary by the board.

(11) Quality control tests meeting all requirements of this chapter must be conducted for any additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products prohibited by the board under RCW 69.50.342 and this chapter.

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

WAC 314-55-1025 Proficiency testing. (1) For the purposes of this section, the following definitions apply:

(a) "Field of testing" means the categories of subject matter the laboratory tests, such as pesticide, microbial, potency, residual solvent, heavy metal, mycotoxin, foreign matter, and moisture content detection.

(b) "Proficiency testing (PT)" means the analysis of samples by a laboratory obtained from providers where the composition of the sample is unknown to the laboratory performing the analysis and the results of the analysis are used in part to evaluate the laboratory's ability to produce precise and accurate results.

(c) "Proficiency testing (PT) program" means an operation offered by a provider to detect a laboratory's ability to produce valid results for a given field of testing.

(d) "Provider" means a third-party company, organization, or entity not associated with certified laboratories or a laboratory seeking certification that operates an approved PT program and provides samples for use in PT testing.

(e) "Vendor" means an organization(s) approved by the ((WSLCB)) board to certify laboratories for marijuana testing, approve PT programs, and perform on-site assessments of laboratories.

(2) The ((WSLCB)) board or its vendor determines the sufficiency of PTs and maintains a list of approved PT programs. Laboratories may request authorization to conduct PT through other PT programs but must obtain approval for the PT program from ((WSLCB or WSLCB's)) the board or board's vendor prior to conducting PT. The ((WSLCB)) board may add the newly approved PT program to the list of approved PT programs as appropriate.

(3) As a condition of certification, laboratories must participate in PT and achieve a passing score for each field of testing for which the lab will be or is certified.

(4) A laboratory must successfully complete a minimum of one round of PT for each field of testing the lab seeks to be certified for and provide proof of the successful PT results prior to initial certification.

(5)(a) A certified laboratory must participate in a minimum of two rounds of PT per year for each field of testing to maintain its certification.

(b) To maintain certification, the laboratory must achieve a passing score, on an ongoing basis, in a minimum of two out of three successive rounds of PT. At least one of the scores must be from a round of PT that occurs within six months prior to the laboratory's certification renewal date.

(6) If the laboratory fails to achieve a passing score on at least eighty percent of the analytes in any proficiency test, the test is considered a failure. If the PT provider provides a

pass/fail on a per analyte basis but not on the overall round of PT the lab participates in, the pass/fail evaluation for each analyte will be used to evaluate whether the lab passed eighty percent of the analytes. If the PT provider does not provide individual acceptance criteria for each analyte, the following criteria will be applied to determine whether the lab achieves a passing score for the round of PT:

(a) +/- 30% recovery from the reference value for residual solvent testing; or

(b) +/- 3 z or 3 standard deviations from the reference value for all other fields of testing.

(7) If a laboratory fails a round of PT or reports a false negative on a micro PT, the laboratory must investigate the root cause of the laboratory's performance and establish a corrective action report for each unsatisfactory analytical result. The corrective action report must be kept and maintained by the laboratory for a period of three years, available for review during an on-site assessment or inspection, and provided to the ((WSLCB or WSLCB's)) board or board's vendor upon request.

(8) Laboratories are responsible for obtaining PT samples from vendors approved by ((WSLCB or WSLCB's)) the board or board's vendor. Laboratories are responsible for all costs associated with obtaining PT samples and rounds of PT.

(9) The laboratory must manage, analyze and report all PT samples in the same manner as customer samples including, but not limited to, adhering to the same sample tracking, sample preparation, analysis methods, standard operating procedures, calibrations, quality control, and acceptance criteria used in testing customer samples.

(10) The laboratory must authorize the PT provider to simultaneously release all results ((~~used for certification and/or remediation of failed studies to WSLCB or WSLCB's~~)), whether pass or fail, to the laboratory and the board or the board's vendor.

(11) The ((WSLCB)) board may require the laboratory to submit raw data and all photographs of plated materials along with the report of analysis of PT samples. The laboratory must keep and maintain all raw data and all photographs of plated materials from PT for a period of three years.

(12) The ((WSLCB)) board may waive proficiency tests for certain fields of testing if PT samples or PT programs are not readily available or for other valid reasons as determined by ((WSLCB)) the board.

(13)(a) The ((WSLCB)) board will suspend a laboratory's certification if the laboratory fails to maintain a passing score on an ongoing basis in two out of three successive PT studies. The ((WSLCB)) board may reinstate a laboratory's suspended certification if the laboratory successfully analyzes PT samples from a ((WSLCB or WSLCB's)) board or board's vendor approved PT provider, so long as the supplemental PT studies are performed at least fifteen days apart from the analysis date of one PT study to the analysis date of another PT study.

(b) The ((WSLCB)) board will suspend a laboratory's certification if the laboratory fails two consecutive rounds of PT. ((WSLCB)) The board may reinstate a laboratory's suspended certification once the laboratory conducts an investigation, provides the ((WSLCB)) board a deficiency report identifying the root cause of the failed PT, and successfully

analyzes PT samples from a (~~WSLCB or WSLCB's~~) board or board's vendor approved PT provider. The supplemental PT studies must be performed at least fifteen days apart from the analysis date of one PT study to the analysis date of another PT study.

(14) If a laboratory fails to remediate and have its certification reinstated under subsection (13)(a) or (b) of this section within six months of the suspension, the laboratory must reapply for certification as if the laboratory was never certified previously.

(15) A laboratory that has its certification suspended or revoked under this section may request an administrative hearing to contest the suspension as provided in chapter 34.05 RCW.

WSR 20-20-066
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed October 1, 2020, 3:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-10-077.

Title of Rule and Other Identifying Information: WAC 182-501-0180 Health care services provided outside the state of Washington—General.

Hearing Location(s): On November 10, 2020, at 10:00 a.m.

As the Governor's Safe Start plan progresses, it is yet unknown whether by the date of this public hearing restrictions of meeting in public places will be eased. To continue to be safe, this hearing is being scheduled as a virtual only hearing. This will not be an in-person hearing and there is not a physical location available. To attend, you must register **prior** to the virtual public hearing (November 10, 2020, 10:00 a.m. Pacific Time). Registration URL <https://attendeegotowebinar.com/register/7954220468570504976>. Webinar ID: 257-880-459. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than November 11, 2020.

Submit Written Comments to: Health Care Authority (HCA) Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by November 10, 2020.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by October 23, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-501-0180 so it applies to both fee-for-service clients and clients enrolled in a managed care organization.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Joan Chappell, P.O. Box 45506, Olympia, WA 98504-5506, 360-752-1071.

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

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

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. These rules do not impose a disproportionate cost impact on small businesses or nonprofits.

October 1, 2020
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-15-053, filed 7/9/15, effective 8/9/15)

WAC 182-501-0180 Health care services provided outside the state of Washington—General provisions. WAC 182-501-0180 through 182-501-0184 (~~apply only to~~) describe the health care services ((payable)) available to a Washington apple health client on a fee-for-service basis ((for Washington apple health (WAH) clients)) or to a client enrolled in a managed care organization (MCO) (defined in WAC 182-538-050).

(1) Subject to the requirements, exceptions, and limitations in this section, WAC 182-501-0182, and 182-501-0184, the medicaid agency covers emergency and nonemergency out-of-state health care services provided to eligible ((WAH)) Washington apple health recipients when the services are:

(a) Within the scope of the client's or enrollee's health care program as specified under chapter 182-501 WAC or other program rules;

(b) Allowed to be provided outside the state of Washington by specific program WAC; and

(c) Medically necessary as defined in WAC 182-500-0070.

(2) The agency does not cover services provided outside the state of Washington under the Involuntary Treatment Act (chapter 71.05 RCW (~~and chapter 388-865 WAC~~)), including designated bordering cities.

(3) When the agency pays for covered health care services furnished to an eligible ((WAH)) Washington apple health client or enrollee outside the state of Washington, its payment is payment in full according to 42 C.F.R. 447.15. No additional payment may be sought from the client (see WAC 182-502-0160).

(4) The agency determines coverage for transportation services provided out of state, including ambulance services, according to chapter 182-546 WAC.

(5) With the exception of designated bordering cities (see WAC 182-501-0175), if the client or enrollee travels out of state expressly to obtain health care, the service must be prior authorized by the agency. See WAC 182-501-0182 for requirements related to out-of-state nonemergency treatment and WAC 182-501-0165 for the agency's medical necessity determination process.

(6) The agency does not cover health care services provided outside the United States and U.S. territories, except in British Columbia, Canada. See WAC 182-501-0184 for limitations on coverage of, and payment for, health care provided to ~~((WAH))~~ Washington apple health clients or enrollees in British Columbia, Canada.

(7) See WAC 182-502-0120 for provider requirements for payment of health care provided outside the state of Washington.

WSR 20-20-071

PROPOSED RULES

EDMONDS COMMUNITY COLLEGE

[Filed October 2, 2020, 8:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-17-125.

Title of Rule and Other Identifying Information: Chapter 132Y-300 WAC, Anti-discrimination and harassment policies; and chapter 132Y-125 WAC, Student code of conduct.

Hearing Location(s): On November 10, 2020, at 4:00 p.m., via Zoom. Due to COVID-19, this meeting will be held online.

Date of Intended Adoption: November 10[, 2020].

Submit Written Comments to: Jorge de la Torre, 20000 68th Avenue West, Lynnwood, WA 98036, email jorge.dela.torre@email.edcc.edu, by Monday, November 2, 2020.

Assistance for Persons with Disabilities: Contact Amber Marti, executive assistant to executive director of human resources, phone 425-640-1036, email amber.marti@email.edcc.edu, by Monday, November 2, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposed changes is to update the existing rules to comply with recent changes to federal Title IX policy 34 C.F.R. Part 106.

Reasons Supporting Proposal: The proposed rules will provide guidance, clarity, and consistency to the student code of conduct and anti-discrimination and harassment policy. Changes to the WAC have been proposed in response to the recent changes to federal Title IX regulations, including an updated definition of sexual harassment, the rule of due process in the grievance process, changes to jurisdiction, and the right to a hearing with provisions for cross-examination.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Name of Proponent: Edmonds College, governmental.

Name of Agency Personnel Responsible for Drafting: Amber Marti, Clearview, Room 122, 425-640-1036; Implementation: Christina Castorena, Lynnwood Hall, Room 142,

425-640-1668; and Enforcement: Mushka Rohani, Clearview, Room 122, 425-640-1647.

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

October 02, 2020

Mushka Rohani

Executive Director
of Human Resources

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-001 Student code of conduct. (1) **Authority.** The Edmonds ~~((Community))~~ College board of trustees, acting pursuant to RCW 28B.50.140~~((144))~~ (13), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president for student services or their designee. The student conduct officer or delegee shall serve as the principal investigator and administrator for alleged violations of this code.

(2) **Statement of student rights.** As members of the Edmonds ~~((Community))~~ College academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following rights are guaranteed to each student within the limitations of statutory law and college policies necessary to achieve the educational goals of the college~~((; and also acting pursuant to Edmonds Community College Academic Freedom Policy (B.1.4)))~~:

(a) **Academic freedom.**

(i) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(ii) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3) (b).

(iii) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are

responsible for meeting the standards of academic performance established by each of their instructors.

(iv) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(b) **Due process.**

(i) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(ii) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(iii) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in the student conduct hearing procedures.

(3) **Student misconduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which includes, but is not limited to, any of the following:

(a) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to:

(i) Cheating (~~((including, but not limited to))~~): Includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment, intentional use or attempted use of unauthorized material, information, or study aids, misrepresentation of invention or any information such as falsifying research, inventing or exaggerating data, or listing incorrect or fictitious references.

(ii) Plagiarism including, but not limited to, presenting or submitting another person's, entities', and/or sources' ideas, words, or other works in an instructional course without assigning proper credit.

(iii) Unauthorized collaboration including, but not limited to, intentionally sharing or working together in an academic exercise when such actions are not approved by the course instructor.

(iv) Academic dishonesty including, but not limited to, presenting or submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).

(b) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(i) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(ii) Tampering with an election conducted by or for college students; or

(iii) Knowingly furnishing false information, or failing to furnish accurate and honest information, in response to the request or requirement of a college officer or employee.

(c) **Obstruction or ~~((disruption of))~~ disruptive conduct. Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise hinders:**

(i) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruc-

tion of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(ii) Any operation of the college, including the infringement on the rights of another member(s) of the college community; or

(iii) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(d) **Assault, intimidation, harassment.** Unwanted touching, assault, battery, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(i) Bullying is (~~((physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and))~~) defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(ii) Stalking is (~~((intentional and repeated harassment or repeated following of another person, which places that person in reasonable fear that the stalker intends to injure the person, another person, or the property of the person or another person, and the stalker either intends to frighten, intimidate, or harass the person, or knows or reasonably should know that the person is frightened, intimidated or harassed, even if the stalker lacks such an intent.~~

~~(A) The person being harassed or followed is placed in reasonable fear that the stalker intends to injure the person, another person, or property of the person or of another person.~~

~~(B) Reasonable fear is a fear that a reasonable person in the same situation would experience under most circumstances))~~ defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

(e) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, text and image messaging, electronic bulletin boards, and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email and/or social media identity, nonconsensual recording of sexual activity, and/or nonconsensual distribution of a recording of sexual activity.

(f) **Property violation.** Attempted or actual damage to, or theft or misuse of, real or personal property, or money of:

(i) The college or state;

(ii) Any student, college official, employee, or college affiliated or sponsored organization; or

(iii) Any other member of the college community, or organization; or

(iv) Possession of such property or money after it has been stolen.

(g) **Failure to comply with directive.** Failure to comply with the direction of a college official or employee who is acting in the legitimate performance of their duties, including refusal to properly identify oneself to such a person when requested to do so.

(h) **Weapons.** Possession of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm, unless previously authorized in writing by the president or designee.

(i) **Hazing.** Hazing includes, but is not limited to, any initiation into or affiliation with a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(j) **Tobacco violation.** Violation of the college's Tobacco ~~((Use—Smoking on Campus Policy (C-6.3.520)))~~ and Smoke-Free Policy HR 8.0.

(k) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(l) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(m) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW except in accordance with a lawful prescription for that student by a licensed health care professional.

(n) **Lewd conduct.** Conduct which is lewd, or obscene.

(o) **Discrimination.** Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy, marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity and expression; veteran's status; any other legally protected classification; or any violation of the college's nondiscrimination policy.

(p) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132Y-125-130. (prohibited conduct under Title IX).

(i) **Sexual harassment.** ~~((Conduct includes, but is not limited to, engaging in))~~ The term "sexual harassment" means unwelcome sexual or gender-based conduct including unwelcome sexual advances, requests for sexual favors, ~~((or other sexual conduct, including))~~ quid pro quo harassment, and other verbal, nonverbal, ~~((electronic or social media communication,))~~ or physical ~~((touching))~~ conduct of a sexual or a gendered nature that is sufficiently ~~((serious))~~ severe,

persistent, or pervasive as to ~~((deny or limit, and that does deny or limit, based on sex,))~~;

(A) Deny or limit the ability of a student to participate in or benefit from the college's educational program~~((s or that))~~;

(B) Alter the terms or conditions of employment for a college employee(s); and/or

(C) Create~~((s))~~ an intimidating, hostile, or offensive environment for other campus community members~~((, or violation of the college's sexual harassment policy))~~.

(ii) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(iii) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(A) Nonconsensual sexual intercourse ~~((is any))~~. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(B) Nonconsensual sexual contact ~~((is any intentional))~~. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(C) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately, as an ancestor, descendant, brother, or sister or either wholly or half related. Descendant includes stepchildren, and adopted children under the age of eighteen.

(D) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

~~((E))~~ Domestic violence ~~((includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.~~

~~((D))~~ Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person cohabitating with or has cohabitated with the victim, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from the person's act under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(F) Dating violence ~~((means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.~~

~~(E))~~). Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(I) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(II) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(aa) The length of the relationship;

(bb) The type of relationship; and

(cc) The frequency of interaction between the persons involved in the relationship.

~~(G) Stalking ((means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.~~

~~(F) Consent:)). Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:~~

~~(I) Fear for their safety or the safety of others; or~~

~~(II) Suffer substantial emotional distress.~~

For the purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(q) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy, marital status; age; religion; creed; genetic information; sexual orientation; gender identity and expression; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." ~~((as defined in (p)(i) of this subsection:))~~ Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(r) **Retaliation.** ~~((Retaliation against any individual for reporting, providing information, exercising one's own rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or~~

~~violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.)) Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such a person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.~~

(s) **Misuse of electronic resources.** Theft of or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(i) Unauthorized use of such resources or opening of a file, message, or other item;

(ii) Unauthorized duplication, transfer, download, upload, or distribution of a computer program, file, message, or other item;

(iii) Unauthorized use or distribution of someone else's password or other identification;

(iv) Use of such time or resources to interfere with someone else's work;

(v) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(vi) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(vii) Use of such time or resources in violation of applicable copyright or other law;

(viii) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(ix) Failure to comply with the college's regulation on appropriate use of college information technology resources or the electronic use policies as established by the college.

(t) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(u) **Safety violation.** Safety violation includes any non-accidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(v) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(w) **Abuse or misuse of hearing procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(i) Falsification or misrepresentation of information;

(ii) Disruption, or interference with the orderly conduct of a proceeding;

(iii) Interfering with someone else's proper participation in a proceeding;

(iv) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness, including retaliation;

(v) Attempting to influence the impartiality of, or harassing or intimidating a student conduct committee member; or

(vi) Failure to comply with any disciplinary sanction(s) imposed under ((EdCC's)) Edmonds College's student conduct code.

(x) **Ethical violation.** The breach of any generally recognized and/or published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or program.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal investigation or prosecution.

(4) **Sanctions.** Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students according to the student code of conduct hearing procedures.

(a) **Warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) **Reprimand.** Notice in writing that the student has violated one or more terms of the college's student conduct code and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance and/or enrollment, and/or participation in college programs or activities, depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance and/or enrollment at the college.

(d) **Suspension.** Dismissal from the college and from the student status for a stated period of time. There may be no refund of tuition or fees for the quarter in which the action is taken.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the sanction is taken.

(5) **Terms and conditions.** Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a sanction(s) include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of mone-

tary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as approved by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. A student may not return to campus if the evaluation indicates that the student is not capable of functioning within the college community, or if the evaluation lacks information for the college to make reasonable accommodations, or until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **No contact/trespass order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility for a stated period of time.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-005 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises~~(, to conduct that occurs)~~;

(b) At or in connection with college sponsored activities~~(s)~~; or

(c) To off-campus conduct that, in the judgment of the college, adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The ~~(college)~~ student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off-campus.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-010 Definitions. The following definitions shall apply for purposes of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays and/or college closures.

(2) "College premises" includes all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) "Conduct review officer" is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions, in accordance with the procedures of this code. ~~((The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.))~~

(4) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(6) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(7) ~~((The))~~ President is the president of Edmonds Community College. The president is authorized to delegate any of ~~((his or her))~~ their responsibilities as set forth in this chapter, and as may be reasonably necessary; and reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(8) "Complainant" is an alleged victim of sexual misconduct.

(9) "Respondent" is the student against whom disciplinary ~~((proceedings have been initiated or who has received sanctions))~~ action is initiated.

~~((9))~~ (10) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by email and by certified mail or first-class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

~~((10))~~ (11) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continu-

ing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

~~((11))~~ (12) "Student conduct officer" is a college administrator designated by the ~~((vice))~~ president ~~((for student services))~~ to be responsible for implementing and enforcing the student conduct code. ~~((The vice president for student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.))~~

(13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132Y-125-001.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-015 Initiation of disciplinary action.

(1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the vice president for student services shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and shall also specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(3) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings; or

(b) Impose a disciplinary sanction(s), as described in WAC 132Y-125-001 (4) and (5).

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(5) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and

describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-020 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Disciplinary cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals of the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary verbal warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-025 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer (~~designated by the vice president for student services~~). The conduct review officer shall not participate in any case in which (~~he or she is~~) they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon (~~both the parties~~) the respondent and the student conduct officer within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within (~~twenty-one~~) ten days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-030 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent

files a written request for review with the conduct review officer within ~~((twenty-one))~~ ten days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their views of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 15-12-068, filed 5/29/15, effective 6/29/15)

WAC 132Y-125-060 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

- (a) Has violated any provision of the code of conduct; and
- (b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or
- (c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) If the respondent chooses to appeal the summary suspension, the conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope;

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope;

(c) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings;

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision, which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal; and

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices, who may be bound or protected by it.

(6) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

NEW SECTION

WAC 132Y-125-125 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental

hearing procedures conflict with the Edmonds College's standard disciplinary procedures, WAC 132Y-125-005 through 132Y-125-060, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132Y-125-130 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Edmonds College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Quid pro quo harassment. An Edmonds College student employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Edmonds College's educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 132Y-125-135 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Edmonds College exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit Edmonds College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Edmonds College's student conduct code, WAC 132Y-125-001.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 132Y-125-140 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice

with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) Edmonds College will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132Y-125-145 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132Y-125-040. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether Edmonds College intends to offer the evidence at the hearing.

NEW SECTION

WAC 132Y-125-150 Rights of parties. (1) Edmonds College's student conduct procedures, WAC 132Y-125-040, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of Edmonds College's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132Y-125-155 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance means** that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132Y-125-160 Initial order. (1) In addition to complying with WAC 132Y-125-050, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Edmonds College's educational programs or activities; and

(h) Describes the process for appealing the initial order to the Edmonds College president.

(2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132Y-125-165 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132Y-125-055.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132Y-125-100 Supplemental sexual misconduct procedures.

WAC 132Y-125-105 Supplemental definitions.

WAC 132Y-125-110 Supplemental complaint process.

WAC 132Y-125-115 Supplemental appeal rights.

AMENDATORY SECTION (Amending WSR 15-12-069, filed 5/29/15, effective 6/29/15)

WAC 132Y-300-005 Statement of policy. Edmonds Community College provides equal opportunity in education and employment and does not discriminate on the basis of protected classes as required by state and federal law. Prohibited discrimination and/or harassment of protected classes includes sexual harassment.

~~((1) Harassment is defined, for the purpose of this policy, as unwelcome and unauthorized incidents and/or patterns of conduct or speech that are:~~

~~(a) Persistent, pervasive, or severe; and~~

~~(b) Based on an association or perceived association with a protected class and which:~~

~~(i) The respondent either knows, or should know, will have the effect of making the college environment hostile, intimidating, or demeaning to the complainant; and~~

~~(ii) Renders the college environment (including the environment for employees, students, and visitors) hostile, intimidating, or demeaning for the complainant.~~

~~(2) Sexual harassment is a form of sex discrimination. Sexual harassment is defined, for the purpose of this policy, as unwelcome sexual advances, requests, and other unwelcome conduct of a sexual nature where:~~

~~(a) Submission to such conduct is made, either expressly or implicitly, a term or condition of an individual's employment or education; or~~

~~(b) Submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting any individual; or~~

~~(c) Such unwelcome conduct is sufficiently persistent, pervasive, or severe to have the effect of substantially interfering with any individual's academic or professional performance.~~

~~(3) Sexual harassment conduct includes, but is not limited to, engaging in unwelcome sexual advances; requesting sexual favors; engaging in other sexual behaviors including verbal, nonverbal, electronic or social media communication; or physically touching that would create an intimidating, hostile, or offensive educational environment or substantially interfere with a reasonable person's work or educational performance.))~~

AMENDATORY SECTION (Amending WSR 15-12-069, filed 5/29/15, effective 6/29/15)

WAC 132Y-300-010 Procedures. (1) **Introduction.** Edmonds ((Community)) College, hereinafter referred to as "the college," recognizes its responsibility for investigating and resolving incidents; implementing corrective measures; monitoring the educational environment and workplace; and implementing regulations to stop, remediate, and prevent discrimination and harassment based on an individual's association ((or perceived association)) with protected classes as required by law. To this end, the college has enacted a policy prohibiting discrimination against and harassment of members of these protected classes and procedures that deal with complaints and violations of the policy. Any individual found to be in violation of the policy will be subject to disciplinary action up to and including expulsion from the college or dismissal from employment.

Any employee, student, or visitor who is the alleged subject of discrimination or harassment should report the incident or incidents to the EO/AA office, Title IX coordinator identified below. If the complaint is against that officer, the complainant should report the matter to the president's office for referral to an alternate designee.

Civil Rights: Equal Opportunity/Affirmative Action (EO/AA).

Title IX: Gender Discrimination, Sexual Harassment, and Sexual Violence.

Title: EO/AA Office, Title IX Coordinator

Office: Edmonds Community College

20000 - 68th Ave. W.

Clearview Building, Room 122

Lynnwood, WA 98036

~~((The EO/AA office, Title IX coordinator or designee:~~

~~• Will accept all complaints and referrals from college employees, students, and visitors.~~

- Will make determinations regarding how to handle requests by complainants for privacy.
- Will keep accurate records of all complaints and referrals for the required time period.
- May conduct investigations or assign and oversee investigations conducted by others.
- May impose interim remedial measures to protect parties during investigations of discrimination or harassment.
- Will issue written findings of fact on completed investigations.
- May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate action.

(2) Definitions.

(a) **Complainant.** Any employee, student, or visitor of the college who is the alleged subject of discrimination or harassment due to an association or perceived association with a protected class.

(b) **Complaint.** A description of facts that allege violation of the college's nondiscrimination and harassment policy.

(c) **Consent.** Knowing, voluntary, and clear permission, by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

Individuals cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when that person knows, or should know, that the other individual is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(d) **Discrimination.** The unfavorable treatment of a person based on an individual's association or perceived association with a protected class. Harassment is a form of discrimination.

(e) **Harassment.** Unwelcome and unauthorized incidents and/or patterns of conduct or speech that are persistent, pervasive, or severe and based on an association or perceived association with a protected class; and which the respondent either knows, or should know, will have the effect of making the college environment hostile, intimidating, or demeaning to the complainant, and renders the college environment (including the environment for employees, students, and visitors) hostile, intimidating, or demeaning for the complainant. Examples of conduct that could rise to the level of discriminatory harassment include, but are not limited to, the following:

- Epithets, "jokes," ridicule, mockery, or other offensive or derogatory conduct focused upon an individual's membership in a protected class.
- Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.

- Making, posting, emailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender, or any other protected class.

(f) **Protected class.** A group of individuals who are protected under state or federal laws, including laws that prohibit discrimination on the basis of age, citizenship, color, creed, disability, gender identity or expression, genetic information, marital status, national origin, pregnancy, race, religion, sex, sexual orientation, use of service animal, or veteran/military status.

(g) **Resolution.** The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline.

(h) **Respondent.** An individual who is a member of the campus community who allegedly discriminates against or harasses another person.

(i) **Sexual harassment.** Unwelcome sexual advances, requests, and other unwelcome conduct of a sexual nature where submission to such conduct is made, either expressly or implicitly, a term or condition of an individual's employment or education; or submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting any individual; or such unwelcome conduct is sufficiently persistent, pervasive, or severe to have the effect of substantially interfering with any individual's academic or professional performance. Two types of sexual harassment include:

(i) **Hostile environment sexual harassment.** A form of harassment that occurs when the conduct is sufficiently persistent, pervasive, or severe and so objectively offensive that it has the effect of altering the terms or conditions of an employee's employment or substantially limiting the ability of a student to participate in or benefit from the college's educational programs, social programs, and/or student housing.

(ii) **Quid pro quo sexual harassment.** A form of harassment that occurs when an individual in a position of real or perceived authority makes receiving a benefit conditional upon granting of sexual favors.

Examples of conduct that may qualify as sexual harassment include:

- Persistent comments or questions of a sexual nature.
- A supervisor who gives an employee a raise in exchange for submitting to sexual advances.
- An instructor who promises a student a better grade in exchange for sexual favors.
- Sexually explicit statements, questions, jokes, or anecdotes.
- Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.
- Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences.
- Persistent, unwanted attempts to change a professional relationship to an amorous relationship.
- Direct or indirect propositions for sexual activity.
- Unwelcome letters, emails, texts, telephone calls, or other communications referring to or depicting sexual activities.

~~(j) Sexual violence. A type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.~~

~~(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.~~

~~(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.~~

~~(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.~~

~~(iv) Dating violence is violence by a person who has been in a romantic or intimate relationship with the complainant. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.~~

~~(v) Stalking is intentional and repeated harassment or following of another person, which places that person in reasonable fear that the respondent intends to injure, intimidate, or harass that person. Stalking also includes instances where the respondent knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the respondent lacks such intent.~~

~~(3)) (2) Filing a complaint. The college encourages the timely reporting of any incidents of alleged discrimination or harassment. Any employee of, student of, or visitor to the college may file a complaint. Complaints ((may)) must be submitted in writing ((or verbally)).~~

For complainants who wish to submit a written complaint, a formal complaint form is available online at www.edcc.edu/titleix/. Hardcopies of the complaint form are available at the following locations on campus: Human resources office(;) and vice president for student services office. Any person submitting a discrimination or harassment complaint shall be provided with a written copy of the college's nondiscrimination and harassment policy and procedures.

~~((4)) The proposed content is designed to assist you with filing a discrimination and/or harassment complaint. Please write clearly and focus on the alleged discriminatory and/or harassing conduct. The complaint should include as much information regarding the incident(s) giving rise to the complaint as possible, including the location, date, and time of the alleged incident(s); the name of the individual or group whom the complaint is against, if known; a description of the incident(s); and the remedy sought.~~

You may attach additional documents if needed. Please include your contact information (phone, email, mailing address), sign, and return your complaint to the EO/AA

office, Title IX coordinator or designee. A link to an online reporting form is located at <http://www.edcc.edu/titleix/>.

~~(3) Confidentiality and right to privacy. The college will seek to protect the privacy of the ((individuals involved)) complainant to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, comply with the state and federal laws, ((and follow)) as well as the college's policy and procedures. ((The college cannot guarantee complete confidentiality. The EO/AA office, Title IX coordinator or designee will determine how to handle requests for privacy.~~

The EO/AA office, Title IX coordinator or designee will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks for their name to not be revealed to the respondent or that the college not investigate the allegation, the EO/AA office, Title IX coordinator or designee will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that their name not be disclosed or that the college not investigate, the EO/AA office, Title IX coordinator or designee will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

- ~~• The seriousness of the alleged sexual violence;~~
- ~~• The age of the complainant;~~
- ~~• Whether the sexual violence was perpetrated with a weapon;~~
- ~~• Whether the respondent has a history of committing acts of sexual violence or has been the subject of other sexual violence complaints;~~
- ~~• Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and~~
- ~~• Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).~~

~~If the college is unable to honor a complainant's request for privacy, the EO/AA office, Title IX coordinator or designee will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.~~

~~If the college decides not to conduct an investigation or take disciplinary action because of a request for privacy, the EO/AA office, Title IX coordinator or designee will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.~~

~~(5) Investigation procedure. Upon receiving a complaint, the college shall commence an impartial investigation. The EO/AA office, Title IX coordinator or designee shall be responsible for overseeing all investigations. The EO/AA office, Title IX coordinator or designee may conduct investigations. If the investigation is assigned to someone other than the EO/AA office, Title IX coordinator or designee then the~~

complainant and respondent shall be notified of the appointment of an investigator.

(a) ~~Interim measures.~~ The EO/AA office, Title IX coordinator or designee may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of nonecontact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the college's student code of conduct or the college's employment policies and collective bargaining agreements.

(b) ~~Investigation.~~ Complaints shall be thoroughly and impartially investigated. The investigation shall include, but will not be limited to, interviewing the complainant and the respondent, interviewing relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty days barring urgent circumstances. At the conclusion of the investigation, the investigator(s) shall set forth findings and recommendations in writing. If the investigator(s) is a designee, the investigator(s) shall send a copy of the findings and recommendations to the EO/AA office, Title IX coordinator or designee. The EO/AA office, Title IX coordinator or designee shall consider the findings and recommendations and determine, based on a preponderance of evidence, whether a violation of the nondiscrimination and harassment policy occurred, and, if so, what steps will be taken to resolve the complaint, remedy the effects of the violation on the complainant, and prevent the violation's recurrence. Possible remedial steps may include, but will not be limited to, referral for voluntary training/counseling, development of a remediation plan, a non-contact order, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the college's student code of conduct or the college's employment policies and collective bargaining agreements.

(c) ~~Written notice of decision.~~ The EO/AA office, Title IX coordinator or designee will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings and of actions taken or recommended in an effort to resolve the complaint, subject to the following limitations. The complainant shall be informed in writing of the findings and of actions taken or recommendations in an effort to resolve the complaint, such as a finding that the complaint is or is not meritorious or a recommendation that the respondent not contact the complainant. The complainant may be notified generally that the matter has been referred for disciplinary action. The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action. Both the complainant and the respondent are entitled to review any final findings, conclusions, and recommendations, subject to any FERPA confidentiality requirements.

(d) ~~Informal dispute resolution.~~ Informal dispute resolution processes, such as mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the complainant and

the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

~~(e) Final decision/reconsideration.~~ Either the complainant or the respondent may seek reconsideration of the decision by the EO/AA office, Title IX coordinator or designee. Requests for reconsideration must be submitted in writing to the EO/AA office, Title IX coordinator or designee within seven days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If no request for reconsideration is received within seven days, the decision becomes final. If a request for reconsideration is received, the EO/AA office, Title IX coordinator or designee shall respond within 14 days. The EO/AA office, Title IX coordinator or designee shall either deny the request or will issue an amended decision. Any amended decision is final and no further reconsideration is available.

~~(6))~~ Although the college will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.

(a) The Title IX coordinator will inform and attempt to obtain consent from the complainant before commencing an investigation of alleged discrimination or sexual harassment. If a complainant asks that their name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that their name not be disclosed or that the college not investigate, the Title IX coordinator will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

(i) The seriousness of the alleged sexual harassment;

(ii) The age of the complainant;

(iii) Whether the sexual harassment was perpetrated with a weapon;

(iv) Whether the respondent has a history of committing acts of sexual harassment or violence or has been the subject of other sexual harassment or violence complaints or findings;

(v) Whether the respondent threatened to commit additional acts of sexual harassment or violence against the complainant or others; and

(vi) Whether relevant evidence about the alleged incident can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

(b) If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this grievance procedure.

(c) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator will evaluate whether other measures are available to address the circumstances giving rise to the complaint and prevent their recurrence, and implement such measures if reasonably feasible.

(4) Publication of nondiscrimination and harassment policy and procedures. The policy and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or designee. Individuals who believe they have been subjected to discrimination or harassment will be provided a copy of the policy and procedures.

~~((7))~~ **(5) Limits to authority.** Nothing in these procedures shall prevent the president or designee from taking immediate disciplinary action in accordance with the college's policies and procedures, and federal, state, and/or municipal rules and regulations.

~~((8))~~ **(6) Retaliation, intimidation, and coercion.** Retaliation by, for, or against any participant (including complainant, respondent, witness, investigator, or EO/AA office, Title IX coordinator or designee) is expressly prohibited. Retaliatory action of any kind taken against a participant who is seeking redress under the nondiscrimination and harassment policy and using these procedures is prohibited and is subject to discipline. Individuals who think they have been retaliated against, intimidated, or coerced should contact the EO/AA office, Title IX coordinator or designee immediately.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132Y-300-001 Preamble.

WAC 132Y-300-020 Complaint content.

WSR 20-20-072
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 2, 2020, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-122.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-484-0006 TANF/SFA time limit extensions.

Hearing Location(s): On November 10, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held

via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than November 11, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 46440, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 10, 2020.

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 October 27, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to WAC 388-484-0006 will expand TANF time limit hardship criteria to include Washington state residents, who are otherwise eligible for TANF, that are experiencing a declared state of emergency.

Reasons Supporting Proposal: The proposed amendments are necessary to provide TANF cash assistance to families who have exhausted their sixty month TANF time limit and need cash assistance due to impacts of a declared state of emergency.

Statutory Authority for Adoption: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030; chapters 74.08A and 74.12 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: Sarah Mintzer, P.O. Box 45470, Olympia, WA 98504, 360-725-4619.

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

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

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

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

September 30, 2020
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-05-046, filed 2/13/20, effective 3/15/20)

WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive sixty or more months of TANF/SFA cash assistance?

After you receive sixty or more months of TANF/SFA cash assistance according to WAC 388-484-0005, you may

qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

(2) Who is eligible for a hardship TANF/SFA time limit extension?

You are eligible for a hardship TANF/SFA time limit extension if you are on TANF, are otherwise eligible for TANF, or are an ineligible parent, and you have received sixty cumulative months of TANF and:

(a) You are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) or you are an ineligible parent who meets the criteria for an exemption from mandatory WorkFirst participation; or

(b) You:

(i) Are a supplemental security income recipient or a Social Security disability insurance recipient; or

(ii) Are at least sixty-five years old, blind as defined by the Social Security Administration or disabled as determined under chapter 388-449 WAC; or

(iii) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or

(iv) Are working in unsubsidized employment for thirty-two hours or more per week; or

(v) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities; or

(vi) Are homeless as described in RCW 43.185C.010 (12); or

(vii) A resident of Washington state during any declared state of emergency.

(3) Who reviews and approves a hardship time limit extension?

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved when your time limit expires and how to request an administrative hearing if you disagree with the decision.

(4) When I have an individual responsibility plan, do my WorkFirst participation requirements change when I receive a hardship TANF/SFA time limit extension?

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participa-

tion requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

(5) Do my benefits change if I receive a hardship TANF/SFA time limit extension?

(a) You are still a TANF/SFA recipient or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

(6) How long will a hardship TANF/SFA time limit extension last?

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a), (b)(i) or (ii) then we will review your extension at least every twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b) (iii), (iv), (v), or (vi) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

WSR 20-20-077

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed October 2, 2020, 11:31 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Title 246 WAC, the department of health (DOH) is proposing to repeal AIDS education and training requirements that fall under the authority of the secretary of health, in support of ESHB 1551 Modernizing the control of certain communicable diseases.

Hearing Location(s): On November 18, 2020, at 9:30 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, DOH will not provide a physi-

cal location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To register for this hearing go to <https://attendee.gotowebinar.com/register/6232914124501564427>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: November 25, 2020.

Submit Written Comments to: Hope Kilbourne, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, hope.kilbourne2@doh.wa.gov, by November 18, 2020.

Assistance for Persons with Disabilities: Contact Hope Kilbourne, phone 360-236-4622, fax 360-236-2901, TTY 711, email hope.kilbourne2@doh.wa.gov, by November 10, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In support of ESHB 1551, DOH is proposing to repeal AIDS education and training requirements for professions and facilities under the secretary of health's authority. These rules detail the definitions, acceptable training, education, and documentation requirements for health professionals and employees concerning AIDS profession-specific rules including the number of hours of training required. The following requirements are being considered for repeal. Professions under the secretary's authority that are not listed below have chosen to repeal rules separately.

Health professions: Administrative procedures and requirements for credentialed health care providers. Part 8, AIDS prevention and information education requirements: WAC 246-12-250, 246-12-260, 246-12-270, 246-12-280.

Counselors: WAC 246-810-080.

Chemical dependency professionals and chemical dependency professionals trainees: WAC 246-811-035 (1)(d) and 246-811-075.

Dental hygienists: WAC 246-815-020(4) and 246-815-100(5).

Dietitians or nutritionists: WAC 246-822-120 (1)(b), (2) (d) and (3)(d) and 246-822-170 (AIDS education requirement only).

Dispensing opticians: WAC 246-824-045(4), 246-824-071(2), 246-824-170.

Genetic counselors: WAC 246-825-060(3) and 246-825-080(1)(d).

Medical assistants: WAC 246-827-0220 (1)(e), 246-827-0300(4), 246-827-0410(4), 246-827-0510(4).

Forensic phlebotomists: WAC 246-827A-0040(3).

Certified reflexologists: WAC 246-831-010 (2)(c)(iv) and 246-831-060 (2)(c).

Ocularists: WAC 246-849-110.

Orthotics and prosthetics rules: WAC 246-850-030(5).

Athletic trainers: WAC 246-916-010(3) and 246-916-030(4).

Radiological technologists: WAC 246-926-200.

Recreation therapists: WAC 246-927-010.

Respiratory care practitioners: WAC 246-928-550.

Sex offender treatment provider: WAC 246-930-020 (2)(f).

Surgical technologist program: WAC 246-939-020 (2)(a).

Certified animal massage therapists: WAC 246-940-020 (4) and 246-940-040(5).

Home care aide rules: WAC 246-980-040 (1)(d).

Facilities: Ambulatory surgical facilities: WAC 246-330-140(6).

Childbirth centers: WAC 246-329-110 (1)(g).

Hospital licensing regulations: WAC 246-320-156(9).

Private alcohol and chemical dependency hospitals: WAC 246-324-050 (12)(e) (HIV/AIDS training only) and 246-324-060.

Private psychiatric and alcoholism hospitals: WAC 246-322-050 (12)(e) and 246-322-060.

Reasons Supporting Proposal: ESHB 1551 repeals statutes concerning AIDS education and training for emergency medical personnel, health professionals, and health care facility employees intended to help reduce the stigma towards people living with HIV/AIDS by not isolating AIDS as an exceptional disease that requires specific training and education separate from other health conditions.

This bill repeals the statutory authority supporting these requirements. Repealing AIDS education and training requirements within Title 246 WAC, supports reducing the stigma towards people living with HIV/AIDS.

Statutory Authority for Adoption: RCW 18.19.050, 18.29.130, 18.29.210, 18.34.120, 18.46.060, 18.55.095, 18.84.040, 18.88B.060, 18.89.050, 18.130.050, 18.138.070, 18.155.040, 18.200.050, 18.205.060, 18.215.040, 18.230.-040, 18.240.050, 18.250.020, 18.290.020, 18.360.030, 18.360.070, 70.41.030, 70.230.020, 71.12.670, and 18.108.085.

Statute Being Implemented: ESHB 1551 (chapter 76, Laws of 2020); RCW 70.24.260, 70.24.270, 70.24.310.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Hope Kilbourne, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4622.

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 agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts 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.

October 1, 2020

Jessica Todorovich

Chief of Staff

for John Wiesman, DrPH, MPH

Secretary

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-12-250 Definitions.
- WAC 246-12-260 Who must obtain AIDS education?
- WAC 246-12-270 Acceptable AIDS education and training.
- WAC 246-12-280 What is acceptable documentation?

AMENDATORY SECTION (Amending WSR 09-07-050, filed 3/11/09, effective 4/11/09)

WAC 246-320-156 Management of human resources. This section ensures that hospitals provide competent staff consistent with scope of services.

Hospitals must:

- (1) Establish, review, and update written job descriptions for each job classification;
- (2) Conduct periodic staff performance reviews;
- (3) Assure qualified staff available to operate each department including a process for competency, skill assessment and development;
- (4) Assure supervision of staff;
- (5) Document verification of staff licensure, certification, or registration;
- (6) Complete tuberculosis screening for new and current employees consistent with the *Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Healthcare Facilities*, 2005. *Morbidity Mortality Weekly Report (MMWR)* Volume 54, December 30, 2005;
- (7) Orient staff to their assigned work environment;
- (8) Give infection control information to staff upon hire and annually which includes:
 - (a) Education on general infection control according to chapter 296-823 WAC bloodborne pathogens exposure control;
 - (b) Education specific to infection control for multidrug-resistant organisms; and
 - (c) General and specific infection control measures related to the patient care areas where staff work((;
- ~~(9) Establish and implement an education plan that verifies or arranges for the training of staff on prevention, transmission, and treatment of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) consistent with RCW 70.24.310).~~

AMENDATORY SECTION (Amending WSR 95-22-012, filed 10/20/95, effective 11/20/95)

WAC 246-322-050 Staff. The licensee shall:

- (1) Employ sufficient, qualified staff to:
 - (a) Provide adequate patient services;
 - (b) Maintain the hospital free of safety hazards; and
 - (c) Implement fire and disaster plans;
- (2) Develop and maintain a written job description for the administrator and each staff position;
- (3) Maintain evidence of appropriate qualifications and current credentials prior to hiring, or granting or renewing

clinical privileges or association of any health care professional;

- (4) Verify work references prior to hiring staff;
- (5) Assure all patient-care staff including those transporting patients and supervising patient activities, except licensed staff whose professional training exceeds first-responder training, have within thirty days of employment:
 - (a) Current cardiopulmonary resuscitation cards from instructors certified by the American Red Cross, American Heart Association, United States Bureau of Mines, or Washington state department of labor and industries; and
 - (b) Current first-aid cards from instructors certified as in (a) of this subsection;
- (6) Provide and document orientation and appropriate training for all staff, including:
 - (a) Organization of the hospital;
 - (b) Physical layout of hospital, including buildings, departments, exits, and services;
 - (c) Fire and disaster plans, including monthly drills;
 - (d) Infection control;
 - (e) Specific duties and responsibilities;
 - (f) Policies, procedures, and equipment necessary to perform duties;
 - (g) Patient rights according to chapters 71.05 and 71.34 RCW and patient abuse;
 - (h) Managing patient behavior; and
 - (i) Appropriate training for expected duties;
- (7) Make available an ongoing, documented, in-service education program((;)) including, but not limited to:
 - (a) For each staff person, training to maintain and update competencies needed to perform assigned duties and responsibilities; and
 - (b) For patient care staff, in addition to (a) of this subsection, the following training:
 - (i) Methods of patient care;
 - (ii) Using the least restrictive alternatives;
 - (iii) Managing assaultive and self-destructive behavior;
 - (iv) Patient rights pursuant to chapters 71.05 and 71.34 RCW;
 - (v) Special needs of the patient population, such as children, minorities, elderly, and individuals with disabilities;
 - (vi) Cardiopulmonary resuscitation; and
 - (vii) First-aid training;
 - (8) When volunteer services are used within the hospital:
 - (a) Designate a qualified employee to be responsible for volunteer services;
 - (b) Provide and document orientation and training according to subsections (6) and (7) of this section for each volunteer; and
 - (c) Provide supervision and periodic written evaluations of each volunteer working directly with patients;
- (9) In addition to following WISHA requirements, protect patients from tuberculosis by requiring each staff person to have upon employment or starting service, and each year thereafter during the individual's association with the hospital:
 - (a) A tuberculin skin test by the Mantoux method, unless the staff person:

(i) Documents a previous positive Mantoux skin test, which is ten or more millimeters of induration read at forty-eight to seventy-two hours;

(ii) Documents meeting the requirements of this subsection within the six months preceding the date of employment; or

(iii) Provides a written waiver from the department or authorized local health department stating the Mantoux skin test presents a hazard to the staff person's health;

(b) A second test one to three weeks after a negative Mantoux skin test for staff thirty-five years of age or older; and

(c) A chest X-ray within seven days of any positive Mantoux skin test;

(10) Report positive chest X-rays to the appropriate public health authority, and follow precautions ordered by a physician or public health authority;

(11) Restrict a staff person's contact with patients when the staff person has a known communicable disease in the infectious stage which is likely to be spread in the hospital setting or by casual contact; and

(12) Maintain a record on the hospital premises for each staff person, during employment and for two years following termination of employment(§) including, but not limited to:

(a) An employment application;

(b) Verification of required education, training and credentials;

(c) Documentation of contacting work references as required by subsection (4) of this section;

(d) Criminal history disclosure and background checks as required in WAC 246-322-030;

(e) ~~(Verification of current cardiopulmonary resuscitation, first aid and HIV/AIDS training;~~

(f)) Tuberculin test results, reports of X-ray findings, exceptions, physician or public health official orders, and waivers; and

~~((g))~~ (f) Annual performance evaluations.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-322-060 HIV/AIDS education and training.

AMENDATORY SECTION (Amending WSR 95-22-013, filed 10/20/95, effective 11/20/95)

WAC 246-324-050 Staff. The licensee shall:

(1) Employ sufficient, qualified staff to:

(a) Provide adequate patient services;

(b) Maintain the hospital free of safety hazards; and

(c) Implement fire and disaster plans(§);

(2) Develop and maintain a written job description for the administrator and each staff position;

(3) Maintain evidence of appropriate qualifications and current credentials prior to hiring, or granting or renewing clinical privileges or association of any health care professional;

(4) Verify work references prior to hiring staff;

(5) Assure all patient-care staff including those transporting patients and supervising patient activities, except licensed staff whose professional training exceeds first-responder training, have within thirty days of employment:

(a) Current cardiopulmonary resuscitation cards from instructors certified by the American Red Cross, American Heart Association, United States Bureau of Mines, or Washington state department of labor and industries; and

(b) Current first-aid cards from instructors certified as in (a) of this subsection(§);

(6) Provide and document orientation and appropriate training for all staff, including:

(a) Organization of the hospital;

(b) Physical layout of hospital, including buildings, departments, exits, and services;

(c) Fire and disaster plans, including monthly drills;

(d) Infection control;

(e) Specific duties and responsibilities;

(f) Policies, procedures, and equipment necessary to perform duties;

(g) Patient rights according to chapters 71.05 and 71.34 RCW and patient abuse;

(h) Managing patient behavior; and

(i) Appropriate training for expected duties(§);

(7) Make available an ongoing, documented, in-service education program(§) including, but not limited to:

(a) For each staff person, training to maintain and update competencies needed to perform assigned duties and responsibilities; and

(b) For patient care staff, in addition to (a) of this subsection, the following training:

(i) Methods of patient care;

(ii) Using the least restrictive alternatives;

(iii) Managing assaultive and self-destructive behavior;

(iv) Patient rights pursuant to chapters 71.05 and 71.34 RCW;

(v) Special needs of the patient population, such as children, minorities, elderly, and individuals with disabilities;

(vi) Cardiopulmonary resuscitation; and

(vii) First-aid training(§);

(8) When volunteer services are used within the hospital:

(a) Designate a qualified employee to be responsible for volunteer services;

(b) Provide and document orientation and training according to subsections (6) and (7) of this section for each volunteer; and

(c) Provide supervision and periodic written evaluations of each volunteer working directly with patients(§);

(9) In addition to following WISHA requirements, protect patients from tuberculosis by requiring each staff person to have upon employment or starting service, and each year thereafter during the individual's association with the hospital:

(a) A tuberculin skin test by the Mantoux method, unless the staff person:

(i) Documents a previous positive Mantoux skin test, which is ten or more millimeters of induration read at forty-eight to seventy-two hours;

(ii) Documents meeting the requirements of this subsection within the six months preceding the date of employment; or

(iii) Provides a written waiver from the department or authorized local health department stating the Mantoux skin test presents a hazard to the staff person's health(=);

(b) A second test one to three weeks after a negative Mantoux skin test for staff thirty-five years of age or older; and

(c) A chest X-ray within seven days of any positive Mantoux skin test(=);

(10) Report positive chest X-rays to the appropriate public health authority, and follow precautions ordered by a physician or public health authority;

(11) Restrict a staff person's contact with patients when the staff person has a known communicable disease in the infectious stage which is likely to be spread in the hospital setting or by casual contact; and

(12) Maintain a record on the hospital premises for each staff person, during employment and for two years following termination of employment(=) including, but not limited to:

(a) An employment application;

(b) Verification of required education, training and credentials;

(c) Documentation of contacting work references as required by subsection (4) of this section;

(d) Criminal history disclosure and background checks as required in WAC 246-324-030;

(e) Verification of current cardiopulmonary resuscitation(=) and first-aid ((and HIV/AIDS training));

(f) Tuberculin test results, reports of X-ray findings, exceptions, physician or public health official orders, and waivers; and

(g) Annual performance evaluations.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-324-060 HIV/AIDS education and training.

AMENDATORY SECTION (Amending WSR 07-07-075, filed 3/16/07, effective 4/16/07)

WAC 246-329-110 Personnel policy and procedures and records. The purpose of this section is to ensure the birth center provides direction and standards in the employment, contracting and recording of personnel procedures.

(1) A childbirth center applicant or licensee must establish and implement policy and procedures which include, but are not limited to:

(a) For those birth centers operated by an employer as defined by RCW 49.60.040(3), employment criteria consistent with chapter 49.60 RCW;

(b) Job descriptions for employees, contractor agreements, volunteer responsibility statements and agreements with students commensurate with responsibilities and consent with health care professional credentialing and scope of practice as defined in relevant practice acts and associated rules;

(c) Verification of clinical staff credentials;

(d) Orientation to current agency policies and procedures and verification of skills or training for all clinical staff;

(e) Current neonatal and adult cardiopulmonary resuscitation training consistent with agency policies and procedures and community standards for all clinical staff;

(f) Infection control practices for clinical staff including communicable disease testing, immunization, vaccination and universal precautions or equivalent method of preventing the transmission of infection according to current local health authorities and shall include the availability of equipment necessary to implement plans of care and infection control policies and procedures;

(i) Birth centers must establish and implement a TB screening program for personnel;

(ii) Birth centers must provide or offer to employees Hepatitis B vaccination according to WAC 296-62-08001; and

(iii) Birth centers must assure that all contractors have received or been offered Hepatitis B vaccination according to WAC 296-62-08001;

~~(g) ((Verification of appropriate education and training of all personnel, contractors, student and volunteers on the prevention, transmission, and treatment of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) consistent with RCW 70.24.310;~~

~~(h))~~ Performance evaluations of all personnel, including evaluations of contractor and student agreements to be conducted per birth center's policy and procedure; and

~~((h))~~ (h) Washington state patrol criminal background inquiries and disclosure statements under RCW 43.43.830 through 43.43.845 for the administrator, owner, director of services and personnel, contractors, volunteers, students, and any other individual associated with the licensee who has direct contact with children under sixteen years of age, people with developmental disabilities or vulnerable adults.

(2) Each employee, contractor, student and volunteer shall have a current record maintained by the birth center which contains, but is not limited to, the following information:

(a) Documentation of the items stated above in subsection (1)(b) through (e) ~~((and))~~, (g) ~~((through (h)))~~, and (h) of this section.

(b) Evidence of communicable disease testing as required by local health authorities and per birth center policy and procedures and shall include, at a minimum, documented evidence of tuberculin (TB) screening as required in WAC 246-329-110 (1)(f) and documented evidence of Hepatitis B vaccination being provided or offered according to WAC 296-62-08001.

AMENDATORY SECTION (Amending WSR 09-09-032, filed 4/7/09, effective 5/8/09)

WAC 246-330-140 Management of human resources. This section ensures that ambulatory surgical facilities provide competent staff consistent with scope of services.

Ambulatory surgical facilities must:

- (1) Create and periodically review job descriptions for all staff;
 - (2) Supervise staff performance to assure competency;
 - (3) Verify and document licensure, certification, or registration of staff;
 - (4) Complete tuberculosis screening for new and current employees consistent with the *Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Healthcare Facilities, 2005. Morbidity Mortality Weekly Report (MMWR) Volume 54, December 30, 2005;*
 - (5) Provide infection control information to staff upon hire and annually which includes:
 - (a) Education on general infection control according to chapter 296-823 WAC blood borne pathogens exposure control; and
 - (b) General and specific infection control measures related to patient care.
- ~~((6) Establish and implement an education plan that verifies staff training on prevention, transmission, and treatment of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) consistent with RCW 70.24.310.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-810-080 What are the requirements for AIDS prevention and information education?

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-811-035 Certification of a substance use disorder professional trainee. (1) The department of health will issue a substance use disorder professional trainee certificate to an individual who:

- (a) Submits an application on forms the department provides;
- (b) Includes written documentation to meet the eligibility criteria;
- (c) Declares that he or she is enrolled in an approved school and gaining the experience required to receive a substance use disorder professional credential(~~(;~~
- ~~(d) Submit evidence of completion of four clock hours of AIDS education. The requirement of WAC 246-811-030 (2) (g) will satisfy this requirement)).~~
- (2) A substance use disorder professional trainee must submit a signed declaration with their annual renewal that states they are enrolled in an approved education program, or have completed the educational requirements, and are obtaining the experience requirements for a substance use disorder professional credential.
- (3) A substance use disorder professional trainee certificate can only be renewed four times.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-811-075 AIDS prevention and information education requirements.

AMENDATORY SECTION (Amending WSR 18-21-141, filed 10/19/18, effective 11/19/18)

WAC 246-815-020 Dental hygiene licensure—Eligibility and application requirements. An applicant for a dental hygiene license shall submit to the department the following:

- (1) An initial application on forms provided by the department;
- (2) The fee required under WAC 246-815-990;
- (3) Proof of successful completion of the Washington state dental hygiene drug and law jurisprudence exam as required by the department;
- (4) ~~((Proof of completion of seven clock hours of HIV/AIDS education as required in chapter 246-12 WAC, Part 8;~~
- ~~(5))~~ Official transcripts verifying successful completion of an approved dental hygiene education program and proof of successful completion of any applicable expanded education programs approved under WAC 246-815-030. Official transcripts must be sent directly to the department by the dental hygiene education program(s). No other proof of successful completion is acceptable;
- ~~((6))~~ (5) Official verification of passing the National Board Dental Hygiene written examination, as offered by the American Dental Association. Official verification must be sent directly to the department from the American Dental Association Department of Testing Services; and
- ~~((7))~~ (6) Official verification of passing the dental hygiene examinations as required in WAC 246-815-050. Official verification must be sent directly to the department from the testing agency.

AMENDATORY SECTION (Amending WSR 18-21-141, filed 10/19/18, effective 11/19/18)

WAC 246-815-100 Licensure by interstate endorsement of credentials. An individual may be eligible for a Washington state dental hygiene license if the applicant:

- (1) Has successfully completed a dental hygiene education program in compliance with the requirements listed in WAC 246-815-030.
- (2) Holds a valid, current, nonlimited license in another state.
- (3) Has been currently engaged in clinical practice at any time within the previous year as a dental hygienist in another state or in the discharge of official duties in the United States Armed Services, Coast Guard, Public Health Services, United States Department of Veteran Affairs, or Bureau of Indian Affairs. Verification of licensure must be obtained from the state of licensure, and any fees for verification required by the state of licensure must be paid by the applicant.
- (4) Has successfully completed a dental hygiene examination where the other state's licensing standards are substantively equivalent to the licensing standards in the state of Washington. The other state's examination must have

included the following portions and standards of competency.

(a) Written tests - The written tests mean the National Board of Dental Hygiene examination as required in WAC 246-815-020.

(b) Practical tests - All portions must be graded anonymously by calibrated practicing dental hygienists or dental hygienists and dentists. Examiners will be calibrated to the standards of competency. The examination must have equivalent patient selection criteria for the patient evaluation, prophylaxis and anesthesia portions. In lieu of the WREB or CRDTS practical tests, the secretary may accept substantially equivalent tests. The practical tests include:

- (i) Patient evaluation clinical competency including an extra-oral and intra-oral examination;
- (ii) Prophylaxis clinical competency;
- (iii) Anesthesia clinical competency; and
- (iv) Restorative clinical competency.

(c) If the secretary finds that another state's licensing standards are substantively equivalent except for portion(s) of the examination, the applicant may take that portion(s) to qualify for interstate endorsement. The applicant must successfully complete the portion(s) of the exam to qualify for interstate endorsement.

~~(5) ((Has completed seven clock hours of HIV/AIDS education as required in chapter 246-12 WAC, Part 8.~~

~~(6))~~ Has passed the Washington state drug and law jurisprudence examination.

~~((7))~~ (6) Submits a completed application on forms provided by the department.

~~((8))~~ (7) Pays fees as required in WAC 246-815-990.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-822-120 Application requirements. (1) Individuals applying for certification as a certified dietitian must submit:

- (a) A completed application form with fee; and
- (b) ~~((Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8; and~~
- ~~(e))~~ Verification of current registration status with the commission on dietetic registration.

(2) Individuals applying for certification as a certified dietitian who have not passed the required written examination or who are not registered with the commission on dietetic registration must:

(a) Provide transcripts forwarded directly from the issuing college or university showing completion of a baccalaureate degree or higher in a major course of study in human nutrition, foods and nutrition, dietetics, or food management;

(b) Provide evidence of completion of a continuous pre-professional experience or coordinated undergraduate program in dietetics under the supervision of a qualified supervisor; and

(c) Take and pass the required written examination(~~;~~ and

~~(d) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8)).~~

(3) Individuals applying for certification as a certified nutritionist must submit:

(a) A completed application form with fee; and

(b) Documentation that the applicant meets the application requirements for certified dietitians, as set forth in subsection (1) or (2) of this section; or

(c) Transcripts forwarded directly from the issuing college or university showing completion of a masters or doctorate degree in one of the following subject areas: Human nutrition, nutrition education, foods and nutrition, or public health nutrition(~~;~~ and

~~(d) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8)).~~

AMENDATORY SECTION (Amending WSR 92-02-018, filed 12/23/91, effective 1/23/92)

WAC 246-822-170 Certification for dietitians—Grandfathering. An individual may be certified as a certified dietitian if he or she provides evidence of meeting criteria for registration with the commission on dietetic registration on June 9, 1988(~~;~~ and provides documentation of completion of the AIDS education requirements as set forth in WAC 246-822-110)).

AMENDATORY SECTION (Amending WSR 18-04-110, filed 2/7/18, effective 3/15/18)

WAC 246-824-045 License application. An applicant for a dispensing optician license must submit the following:

(1) A completed application on forms provided by the department;

(2) Proof of eligibility under WAC 246-824-040;

(3) Verification of passing the examination under WAC 246-824-040(4); and

(4) ~~((Proof of completing four clock hours of AIDS education and training as required by chapter 246-12 WAC, Part 8; and~~

~~(5))~~ Fees required under WAC 246-824-990.

AMENDATORY SECTION (Amending WSR 18-04-110, filed 2/7/18, effective 3/15/18)

WAC 246-824-071 Applicants currently licensed in other states. Before licensure to any individual currently licensed to practice as a dispensing optician in another state, as provided in chapter 18.34 RCW, applicants must provide evidence of:

(1) Verification of credential from any state and the state's substantially equivalent licensing standards;

(2) ~~((Completion of four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8;~~

~~(3))~~ Verification from all states in which the applicant has ever held a license, whether active or inactive, indicating that the applicant is not subject to charges or disciplinary action for unprofessional conduct or impairment.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-824-170 AIDS prevention and information education requirements.

AMENDATORY SECTION (Amending WSR 10-22-090, filed 11/1/10, effective 11/1/10)

WAC 246-825-060 Licensure requirements. (1) An applicant for licensure as a genetic counselor must:

(a) Have a master's degree from a genetic counseling training program that is accredited or was accredited at the time of the applicant's graduation by the ABGC or an equivalent program as determined by the ABGC; or

(b) Have a doctorate from a medical genetics training program that is accredited by ABMG or an equivalent program as determined by the ABMG; and

(2) Meet examination requirements under WAC 246-825-050; and

(3) ~~((Complete four clock hours of AIDS education and training as required under chapter 246-12 WAC, Part 8; and~~

~~((4)))~~ Pay fees required under WAC 246-825-990(2); and

~~((5)))~~ (4) Provide any other written declarations or documentation, as required by the secretary.

AMENDATORY SECTION (Amending WSR 10-22-090, filed 11/1/10, effective 11/1/10)

WAC 246-825-080 Licensure by endorsement. (1) An applicant for licensure as a genetic counselor who is currently licensed under the laws of another state shall file an application with the department and submit:

(a) Documentation verifying that the applicant meets the education requirements under WAC 246-825-060;

(b) Documentation that the applicant holds an unrestricted active license to practice as a genetic counselor in another state;

(c) Proof of passing the ABGC certification examination or the ABMG general genetics and genetic counseling specialty examinations or the ABMG clinical genetics specialty or subspecialty certification examinations;

(d) ~~((Documentation of completion of four clock hours of AIDS education and training as required under chapter 246-12 WAC, Part 8;~~

~~((e)))~~ Any other written declarations or documentation, as required by the secretary; and

~~((f)))~~ (e) Fees required under WAC 246-825-990(2).

(2) The secretary may examine an endorsement application to determine whether the licensing standards of the other state are substantially equivalent to the licensing standards in Washington state.

(3) An endorsement applicant may also apply for a temporary practice permit as established under WAC 246-12-050.

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0220 Medical assistant-certified—Application—Interim certification. (1) Application requirements - Applicants for a medical assistant-certified credential shall submit the following:

(a) Completed application on forms provided by the department;

(b) Proof of completion of high school education or its equivalent;

(c) Proof of successful completion of the required education or approved training program;

(d) Proof of successful completion of an approved examination under WAC 246-827-0200(2), completed within five years prior to submission of an initial application for this credential;

~~((Proof of completing seven clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;~~

~~((f)))~~ Any fee required in WAC 246-827-990; and

~~((g)))~~ (f) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department.

(2) An applicant who has met all the requirements in subsection (1) of this section, except passage of the examination, may be issued an interim certification.

(a) A person who has an interim certification possesses the full scope of practice of a medical assistant-certified.

(b) A person who has an interim certification must notify their employer any time they fail any of the examinations listed in WAC 246-827-0200(2).

(c) A person's interim certification expires upon issuance of the medical assistant-certified credential or one year after issuance of the interim certification, whichever occurs first.

(d) A person cannot renew an interim certification.

(e) A person is only eligible for an interim certification upon initial application.

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0300 Medical assistant-registered—Application. Registration requirements - Applicants for a medical assistant-registered credential shall submit the following:

(1) A completed application on forms provided by the department;

(2) Proof of completion of high school education or its equivalent;

(3) An endorsement signed by a health care practitioner;

(4) ~~((Proof of completing seven clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;~~

~~((5)))~~ Any fee required in WAC 246-827-990; and

~~((6)))~~ (5) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department.

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0410 Medical assistant-phlebotomist—Application. Application requirements - Applicants for a medical assistant-phlebotomist credential shall submit the following:

(1) A completed application on forms provided by the department;

(2) Proof of completion of high school education or its equivalent;

(3) Proof of successful completion of a phlebotomy program through a postsecondary school or college accredited by a regional or national accrediting organization recognized by the U.S. Department of Education or successful completion of a phlebotomy training program as attested by the phlebotomy training program's supervising health care practitioner;

(4) ~~((Proof of completing seven clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;~~

~~(5))) Any fee required in WAC 246-827-990; and~~

~~((6))) (5) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department.~~

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0510 Medical assistant-hemodialysis technician—Application. Applicants for a medical assistant-hemodialysis technician credential shall submit the following:

(1) A completed application on forms provided by the department;

(2) Proof of high school education or equivalent;

(3) Proof of successful completion of an approved training program or proof of national credential as a hemodialysis technician;

(4) ~~((Proof of completing seven clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;~~

~~(5))) Current cardiopulmonary resuscitation certification;~~

~~((6))) (5) Any fee required in WAC 246-827-990; and~~

~~((7))) (6) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department.~~

AMENDATORY SECTION (Amending WSR 19-09-063, filed 4/16/19, effective 5/17/19)

WAC 246-827A-0040 Application requirements. An applicant for a forensic phlebotomist credential must submit the following to the department:

(1) Completed application on forms provided by the department;

(2) Proof of successful completion of the required education or approved training program described under WAC 246-827A-0030;

(3) ~~((Proof of completing seven clock hours of HIV/AIDS education as required by chapter 246-12 WAC, Part 8;~~

~~(4))) Proof of current employment as a law enforcement or police officer, or current employment at a detention or correction facility;~~

~~((5))) (4) Any fee required in WAC 246-827A-990;~~

~~((6))) (5) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department; and~~

~~((7))) (6) Any additional documentation or information requested by the department.~~

AMENDATORY SECTION (Amending WSR 13-12-044, filed 5/31/13, effective 7/1/13)

WAC 246-831-010 Credentialing requirements. (1) An applicant for a reflexologist certification must be eighteen years of age or older.

(2) An applicant for a reflexologist certification must submit to the department:

(a) A completed application on forms provided by the secretary;

(b) Fees as required in WAC 246-831-990;

(c) Evidence of completion of:

(i) A reflexology education program approved by the secretary;

(ii) An examination approved by the secretary;

(iii) A jurisprudence examination approved by the secretary;

~~(iv) Four hours of AIDS education and training as required in chapter 246-12 WAC, Part 8).~~

(d) Any additional documents or information requested by the secretary.

AMENDATORY SECTION (Amending WSR 13-12-044, filed 5/31/13, effective 7/1/13)

WAC 246-831-060 Waiver of examination. An applicant may obtain a waiver of the examination for certification as a reflexologist.

(1) The applicant must apply for certification between July 1, 2013 and July 1, 2014.

(2) In addition to the requirements in RCW 18.108.131, the applicant must provide to the department:

(a) A completed application on forms provided by the secretary;

(b) Fees as required in WAC 246-831-990; and

~~(c) ((Verification of four clock hours of AIDS education and training as required in chapter 246-12 WAC, Part 8; and~~
~~(d))) Evidence of completion of a jurisprudence examination approved by the secretary.~~

(3)(a) Verification that the applicant has practiced reflexology as a licensed massage practitioner for at least five years prior to July 1, 2013; or

(b) Evidence satisfactory to the secretary that the applicant has, prior to July 1, 2013, successfully completed a course of study in a reflexology program approved by the secretary.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-849-110 AIDS prevention and information education requirements.

AMENDATORY SECTION (Amending WSR 19-09-065, filed 4/16/19, effective 5/17/19)

WAC 246-850-030 Application requirements. An applicant for licensure shall submit to the department the following:

(1) A completed application and fee as required in chapter 246-12 WAC, Part 2;

(2)(a) Official transcripts, certificate, or other documentation forwarded directly from the issuing agency where the applicant has earned a bachelor degree or completed a certificate program from a program accredited by NCOPE or CAAHEP, or any other accrediting body with substantially equivalent requirements;

(b) Documentation of successful completion of the clinical patient management course, if the applicant completes education requirements for licensure on or after January 1, 2020;

(3) Documentation of completion of an approved internship or residency as described in WAC 246-850-050;

(4) Documentation of successful completion of licensing examinations as approved by the secretary;

(5) ~~(Verification of four clock hours of HIV/AIDS education as required in chapter 246-12 WAC, Part 8;~~

~~(6))~~ Verification from all states in which the applicant holds or has held a license, whether active or inactive, indicating that the applicant is or has not been subject to charges or disciplinary action for unprofessional conduct or impairment; and

~~((7))~~ (6) Additional documentation as required by the secretary to determine whether an applicant is eligible for licensure.

AMENDATORY SECTION (Amending WSR 08-11-060, filed 5/16/08, effective 7/1/08)

WAC 246-916-010 Licensure requirements. To be eligible for licensure, applicants must provide evidence of:

(1) Completion of an approved educational program as determined in WAC 246-916-020; and

(2) Attaining a passing score on the examination administered by the board of certification for athletic trainers (BOC) or its predecessor or successor organization as approved by the secretary; and

~~(3) ((Completion of seven clock hours of AIDS education and training as required in chapter 246-12 WAC, Part 8; and~~

~~(4))~~ Any other written declarations or documentation, as required by the secretary.

AMENDATORY SECTION (Amending WSR 08-11-060, filed 5/16/08, effective 7/1/08)

WAC 246-916-030 Applicants currently licensed in other states. Before licensure may be issued to any individual currently licensed to practice as an athletic trainer in another state, as provided in chapter 18.250 RCW, applicants must provide evidence of:

(1) Having met the education requirements for licensure as defined in WAC 246-916-020; and

(2) Attaining a passing score on the examination as defined in WAC 246-916-010; and

(3) Verification of credential from any state; and

~~(4) ((Completion of seven clock hours of AIDS education and training as required in chapter 246-12 WAC, Part 8; and~~

~~(5))~~ Any other written declarations or documentation, as required by the secretary.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-926-200 AIDS prevention and information education requirements.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-927-010 How many hours of AIDS prevention and information education do I need?

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-928-550 Education and training in AIDS prevention is required for licensure as a respiratory care practitioner.

AMENDATORY SECTION (Amending WSR 05-12-014, filed 5/20/05, effective 6/20/05)

WAC 246-930-020 Underlying credential as a health professional required. (1) Under RCW 18.155.020(1), only credentialed health professionals may be certified as providers.

(2) A person who is credentialed as a health professional in a state or jurisdiction other than Washington may satisfy this requirement by submitting the following:

(a) A copy of the current nonexpired credential issued by the credentialing state;

(b) A copy of the statute, administrative regulation, or other official document of the issuing state which sets forth the minimum requirements for the credential;

(c) A statement from the issuing authority:

(i) That the credential is in good standing;

(ii) That there is no disciplinary action currently pending; and

(iii) Listing any formal discipline actions taken by the issuing authority with regard to the credential;

(d) A statement signed by the applicant, on a form provided by the department, submitting to the jurisdiction of the Washington state courts for the purpose of any litigation involving his or her practice as a sex offender treatment provider; and

(e) A statement signed by the applicant on a form provided by the department, that the applicant does not intend to practice the health profession for which he or she is credentialed by another state within the state of Washington without first obtaining an appropriate credential to do so from the state of Washington, except as may be authorized by Washington state law~~((and~~

~~(f) Applicants must complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8).~~

(3) Underlying registration, certification, or licensure shall be maintained in good standing. If an underlying registration, certification, or licensure is not renewed or is revoked, certification as a sex offender treatment provider or affiliate sex offender treatment provider is revoked. If an underlying registration, certificate or license is suspended, the sex offender treatment provider certification is suspended. If there is a stay of the suspension of an underlying registration, certificate or license the sex offender treatment provider program must independently evaluate the reasonableness of a stay for the sex offender treatment provider.

AMENDATORY SECTION (Amending WSR 01-14-044, filed 6/29/01, effective 7/30/01)

WAC 246-939-020 How do I register as a surgical technologist? (1) How do I obtain a registration application?

(a) Applicant may obtain an application by contacting the department. Applicants must return the completed application to be registered.

(b) Completed original applications shall be sent to the department of health.

(c) All applicants shall refer to chapter 246-12 WAC, Parts 1, 2, 10, and 11.

(2) Is there a requirement for education? ~~((a) Applicants must complete seven clock hours of AIDS education as required by RCW 70.24.270 and chapter 246-12 WAC, Part 8.~~

~~((b))~~ Registration does not require additional education.

AMENDATORY SECTION (Amending WSR 11-14-026, filed 6/24/11, effective 7/25/11)

WAC 246-940-020 Certification requirements. To qualify for certification, a candidate must:

(1) Successfully complete a three hundred hour training program approved by the secretary, that includes instruction in general animal massage techniques, kinesiology, anatomy, physiology, behavior, first-aid care and handling techniques:

(a) To practice animal massage on large animals, the three hundred hours of instruction must be related to the performance of animal massage on large animals;

(b) To practice animal massage on small animals, the three hundred hours of instruction must be related to the performance of animal massage on small animals;

(c) For certification in both small animal massage and large animal massage, the candidate must complete the training described in (a) and (b) of this subsection.

(2) Successfully complete a qualifying examination approved by the secretary:

(a) To practice animal massage on large animals, successfully complete the National Certification Examination for Equine Massage administered by the National Board of Certification for Animal Acupressure and Massage;

(b) To practice animal massage on small animals, successfully complete the National Certification Examination for Canine Massage administered by the National Board of Certification for Animal Acupressure and Massage.

(c) Candidates seeking certification in both small animal massage and large animal massage must meet all requirements in (a) and (b) of this subsection.

(3) Successfully complete the Washington state animal massage jurisprudence examination ~~(; and~~

~~(4) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8).~~

AMENDATORY SECTION (Amending WSR 17-11-058, filed 5/16/17, effective 7/1/17)

WAC 246-940-040 Application requirements. An applicant for certification as an animal massage therapist shall submit or cause to be submitted to the department:

(1) A completed application and fee;

(2) Proof of successful completion of the training required in WAC 246-940-050 received directly from the program where the applicant completed the training;

(3) Proof of successful completion of a certification examination required in WAC 246-940-020;

(4) Proof of successful completion of the Washington state jurisprudence examination as required in WAC 246-940-020;

~~(5) ((Verification of four clock hours of AIDS education as required in WAC 246-940-020;~~

~~((6))~~ Verification from all states in which the applicant holds or has held a credential to practice animal massage, indicating that the applicant has or has not been subject to charges or disciplinary action for unprofessional conduct or impairment; and

~~((7))~~ (6) Additional documentation as required by the secretary to determine whether an applicant is qualified for certification.

AMENDATORY SECTION (Amending WSR 18-20-072, filed 9/28/18, effective 10/29/18)

WAC 246-980-040 Certification requirements. (1) To qualify for certification as a home care aide, the applicant must:

(a) Successfully complete all training required by RCW 74.39A.074(1) within one hundred twenty calendar days of the date of hire as a long-term care worker;

(b) Successfully pass the home care aide certification examination, after completing training; and

(c) Become certified within two hundred days of date of hire, or two hundred sixty days if granted a provisional certificate under RCW 18.88B.041 ~~(; and~~

~~(d) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8. This is included in the basic training requirements in WAC 388-71-0906 and 388-112A-0310).~~

(2) An applicant for certification as a home care aide must submit to the department:

(a) A completed application for both certification and the examination on forms provided by the department;

(b) The exam fee set by the examination vendor and required fees under WAC 246-980-990; and

(c) A certificate of completion from an approved training program indicating that the applicant has successfully completed the entry level training required by RCW 74.39A.074.

The certificate of completion or other official verification may also be submitted directly from the approved instructor or training program.

(3) An applicant must submit to a state and federal background check as required by RCW 74.39A.056.

(4) An applicant exempt from certification under WAC 246-980-025(2) who voluntarily chooses to be certified must provide documentation of qualification for the exemption. The applicant is not required to take the training required in subsection (1)(a) of this section or provide proof of training completion to the department.

WSR 20-20-079
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed October 2, 2020, 4:09 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 357-25-027 What must be included in the agency's sexual harassment policy?

Hearing Location(s): On November 12, 2020, at 8:30 a.m. Office of Financial Management, audio conference only, Dial-in (888) 285-8919, Enter pin: 8101730, Code (if asked): 415.

Date of Intended Adoption: November 19, 2020.

Submit Written Comments to: Caroline Kirk, Office of Financial Management, P.O. Box 47500, Olympia, WA 98501, email Caroline.Kirk@ofm.wa.gov, fax 360-586-4694, by November 5, 2020.

Assistance for Persons with Disabilities: Contact office of financial management, TTY 711 or 1-800-833-6384, by November 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESHB 1692 was passed during the 2019 legislative session with an effective date of July 1, 2020. This bill adds new sections to chapter 42.56 RCW, Public Records Act. Three of these sections were codified as RCW 42.56.660, 42.56.665, and 42.56.675. This bill prevents an employer from disclosing records of harassment or stalking. If the requestor is a different party (not the person alleged to have been involved) requesting records of an employee, who has notified the employer of harassment or stalking, the employer must immediately notify the employee. If the employee seeks an injunction, the employee must in turn notify the employer.

Reasons Supporting Proposal: To place new provisions in Title 357 WAC so there are clear expectations on how public records requests will be handled.

Statutory Authority for Adoption: Chapter 43.01 RCW.

Statute Being Implemented: RCW 43.01.135.

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

Name of Proponent: [Not supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Caroline Kirk, 128 10th Avenue, Olympia, WA 98501, 360-407-4136.

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 related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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.

October 2, 2020
Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 18-17-131, filed 8/20/18, effective 9/21/18)

WAC 357-25-027 What must be included in the agency's sexual harassment policy? Agencies as defined in RCW 41.06.020 must at a minimum include the following in their policy on sexual harassment:

- (1) Indicate who is covered by the policy;
- (2) Provide that the employer is committed to providing a working environment free from sexual harassment of any kind;
- (3) ((State)) A statement that sexual harassment is an unlawful employment practice prohibited by Title VII of the Civil Rights Act of 1964 and RCW 49.60;
- (4) The definition of sexual harassment as defined by the Equal Employment Opportunity Commission;
- (5) Notify the employee or individual of their right to file a complaint with the Washington State Human Rights Commission under RCW 49.60.230 or the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964;
- (6) Identify how and to whom employees or individuals may raise concerns or file complaints. The policy should allow multiple avenues for an employee or individual to raise complaints or concerns and should clearly identify the positions or entities charged with receiving these complaints;
- (7) Advise all individuals covered by the policy that the employer is under a legal obligation to respond to allegations concerning a violation of the policy;
- (8) Identify the manner by which the employer will respond to alleged violations of the policy, including a formal investigation if necessary;
- (9) ((State)) A statement that the complainant shall be informed of the status and the outcome of an investigation;
- (10) Identify the agency's investigation or response procedure;
- (11) Define the roles and responsibilities of employees, managers, supervisors, and others covered by the policy with respect to the following:

(a) Preventing or not engaging in sexual harassment;

(b) Responding to concerns or allegations of violations of the policy;

(c) Participation in an investigation under the policy; and

(d) The prohibition against retaliation.

(12) ~~((State))~~ A statement that confidentiality cannot be guaranteed;

(13) A statement that responses to public records requests will be provided in accordance with RCW 42.56.660 and 42.56.675;

(14) Advise that retaliation against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation is prohibited;

~~((14))~~ (15) Advise that any employee found to have violated the policy will be subject to corrective and/or disciplinary action, up to and including dismissal;

~~((15))~~ (16) Advise that any employee found to have retaliated against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation will be subject to corrective and/or disciplinary action, up to and including dismissal; and

~~((16) State))~~ (17) A statement that an employer may not require an employee, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault occurring in the workplace, at work-related events coordinated by or through the employer, or between employees, or between an employer and an employee, off the employment premises in accordance with RCW 49.44.210.

For the purposes of this subsection, "employee" has the same meaning as defined in RCW 49.44.210.

WSR 20-20-080
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed October 2, 2020, 4:15 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 357-26-035 What actions must an employer take to provide reasonable pregnancy accommodations?, 357-26-040 When may an employer deny a reasonable pregnancy-related accommodation?, and 357-26-045 When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation what documentation may the employee be required to submit?

Hearing Location(s): On November 12, 2020, at 8:30 a.m. Office of Financial Management, audio conference only, Dial-in (888) 285-8919, Enter pin: 8101730, Code (if asked): 415.

Date of Intended Adoption: November 19, 2020.

Submit Written Comments to: Caroline Kirk, Office of Financial Management, P.O. Box 47500, Olympia, WA 98501, email caroline.kirk@ofm.wa.gov, fax 360-586-4694, by November 5, 2020.

Assistance for Persons with Disabilities: Contact office of financial management, TTY 711 or 1-800-833-6384, by November 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 134, Laws of 2020 (HB 2266) was passed during the 2020 legislative session with an effective date of June 11, 2020. This bill amends RCW 43.10.005 by adding language that an employer may not require an employee to provide written certification from a health care professional when the employee requests a reasonable accommodation for the expression of breast milk. The amendment to WAC 357-26-035 adds the reasons in which an employer may provide a reasonable pregnancy accommodation. The amendment to WAC 357-26-040 amends the reasons when an employer may deny a reasonable pregnancy-related accommodation. The amendment to WAC 357-26-045 amends for what reasons an employee may need to provide documentation for a requested reasonable pregnancy accommodation.

Reasons Supporting Proposal: To align Title 357 WAC with the changes made to RCW 43.10.005 effective June 11, 2020.

Statutory Authority for Adoption: Chapter 43.01 RCW.

Statute Being Implemented: RCW 43.10.005.

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

Name of Proponent: [Not supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Caroline Kirk, 128 10th Avenue, Olympia, WA 98501, 360-407-4136.

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 related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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.

October 2, 2020
Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 19-17-041, filed 8/15/19, effective 9/23/19)

WAC 357-26-035 What actions must an employer take to provide reasonable pregnancy accommodations?

(1) An employer must provide employees who are pregnant or have a pregnancy-related health condition a reasonable pregnancy accommodation ~~((for reasons as required in RCW 43.10.005-)), which includes the following:~~

(a) Providing more frequent, longer, or flexible restroom breaks;

(b) Modifying a no food or drink policy;

(c) Providing seating or allowing an employee to sit more frequently if the job requires standing;

(d) Providing reasonable break time for an employee to express breast milk for two years after the child's birth each time the employee has need to express the milk and providing a private location, other than a bathroom, if such a location exists at the place of business or worksite, which may be used by the employee to express breast milk. If the business location does not have a space for the employee to express breast milk, the employer shall work with the employee to identify a convenient location and work schedule to accommodate their needs;

(e) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, or acquiring or modifying equipment, devices, or an employee's work station;

(f) Providing a temporary transfer to a less strenuous or less hazardous position;

(g) Providing assistance with manual labor and limits on lifting;

(h) Scheduling flexibility for prenatal visits; and

(i) Any further pregnancy accommodation an employee may request and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the department of labor and industries or the employee's attending health care provider.

(2) An employer cannot require an employee who is pregnant or has a pregnancy-related health condition to take leave if another reasonable pregnancy accommodation can be provided.

(3) The employer is not required to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation.

AMENDATORY SECTION (Amending WSR 19-05-056, filed 2/15/19, effective 3/29/19)

WAC 357-26-040 When may an employer deny a reasonable pregnancy-related accommodation? The employer may deny a reasonable pregnancy-related accommodation based on undue hardship, which means an action requiring significant difficulty or expense, to the employer's program, enterprise or business for pregnancy accommodations listed in WAC 357-26-035 (1)(d) through ~~((h))~~ (i). The employer may not claim undue hardship for the pregnancy accommodations listed in WAC 357-26-035 (1)(a) through (c) or for limits on lifting over seventeen pounds.

AMENDATORY SECTION (Amending WSR 19-05-056, filed 2/15/19, effective 3/29/19)

WAC 357-26-045 When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation what documentation may the employee be required to submit? When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation, the employee may be required to submit written certification from their licensed physician or health care professional for those pregnancy accommodations listed in WAC 357-26-035 (1)~~((h))~~ (e) through ~~((h))~~ (i). An employee is not required

to submit written certification for pregnancy accommodations listed in WAC 357-26-035 (1)(a) through ~~((e))~~ (d) or for limits lifting over seventeen pounds.

WSR 20-20-081

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed October 2, 2020, 4:19 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-100 Must an employer have a policy for requesting and approving leave?, 357-31-325 When must an employer grant leave with pay for other miscellaneous reasons?, and 357-31-326 When may an employer grant leave with pay?

Hearing Location(s): On November 12, 2020, at 8:30 a.m. Office of Financial Management, audio conference only, Dial-in (888) 285-8919, Enter pin: 8101730, Code (if asked): 415.

Date of Intended Adoption: November 19, 2020.

Submit Written Comments to: Brandy Chinn, Office of Financial Management, P.O. Box 47500, Olympia, WA 98501, email Brandy.Chinn@ofm.wa.gov, fax 360-586-4694, by November 5, 2020.

Assistance for Persons with Disabilities: Contact office of financial management, TTY 711 or 1-800-833-6384, by November 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SB 6123 passed during the 2020 legislative session effective June 11, 2020. This bill adds language to chapter 41.06 RCW and requires all executive agencies to allow employees to take paid leave, not to exceed thirty days, in a two-year period, as needed to participate in life-giving procedures. For the purpose of this bill "life-giving procedures" includes organ donation but does not include donation of blood or plasma. The proposed amendment to WAC 357-31-325 is to require a general government employer to allow an employee to take paid leave, not to exceed thirty days in a two-year period to participate in life-giving procedures. The proposed amendment to WAC 357-31-326 (1) and (2) is to distinguish between the terms "life-giving procedures" and "donation of blood and plasma" between general government (GG) and higher education (HE). The proposed amendment to WAC 357-31-100 is to require a GG employer to update their leave policies to address if an employee may take additional paid leave beyond thirty days in a two-year period to participate in life-giving procedures in accordance with WAC 357-31-326.

In addition, the new subsection, WAC 357-31-325(5), is to require a GG employer to grant leave with pay (LWP) when an employee is required by Centers of Disease Control and Prevention guidelines to self-quarantine due to COVID-19 but is otherwise healthy and has not tested positive for COVID-19 and the employer has determined the employee does not have the option to telework. The new subsection,

WAC 357-31-326(4), is to allow a HE employer to grant LWP when an employee is required by CDC guidelines to self-quarantine due to COVID-19 but is otherwise healthy and has not tested positive for COVID-19 and the employer has determined the employee does not have the option to telework; to require an employer to grant leave without pay (LWOP) when an employee requests to be on LWOP due to COVID-19 to protect themselves, a family member or a household member.

Reasons Supporting Proposal: To align chapter 357-31 WAC with the requirements in the new law and to align Title 357 WAC with Governor Jay Inslee's issued Proclamation 20-05 which declares State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. Our governor further declared that state agencies and departments are directed to use state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the outbreak. The worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and Washington state significantly impact the life and health of our people, as well as the economy of Washington state, and is a public disaster that affects life, health, property or the public peace.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.570; and chapter 41.06 RCW.

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

Name of Proponent: [Not supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-407-4141.

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 related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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.

October 2, 2020
Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-100 Must an employer have a policy for requesting and approving leave? Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies or for an emergency health condition as provided in WAC 357-31-200 (1)(b);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020;

(3) Allow an employee to use accrued leave as a supplemental benefit as provided in WAC 357-31-248;

(4) Address advance notice from the employee when the employee is seeking leave under subsections (2) and (3) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave;

(5) Allow an employee to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child. The policy must state the total amount of sick leave allowed to be used beyond eighteen weeks in accordance with WAC 357-31-130;

(6) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter 296-128 WAC; ~~((and))~~

(7) Address overtime eligible employees that are required to provide reasonable notice to their employer for an absence from work for the use of paid sick leave under chapter 296-128 WAC; and

(8) Address whether a general government employee may take additional accrued leave beyond thirty days in a two-year period to participate in life-giving procedures in accordance with RCW 41.06.570.

AMENDATORY SECTION (Amending WSR 14-11-033, filed 5/14/14, effective 6/16/14)

WAC 357-31-325 When must an employer grant leave with pay for other miscellaneous reasons ((such as to take a state examination))? Leave with pay **must** be granted to an employee in accordance with WAC 357-31-320 and for the following reasons:

(1) To allow an employee to receive assessment from the employee assistance program.

(2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.

(a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

(b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

(3) When an employee is required to appear during working hours for a physical examination to determine physical fitness for military service.

(4) To allow a general government employee to take paid leave, not to exceed thirty days in a two-year period to participate in life-giving procedures, such as medical procedures, including testing, sampling, or donation of organs, tissues, and other body components for the purpose of donation, without compensation. For this subsection blood or plasma donations are not considered life-giving procedures.

(a) General government employers may take operational necessity into account and require the employee to provide reasonable advance notice.

(b) Employees must provide written proof from an accredited medical institution, physician, or other medical professional that the employee will or has participated in a life-giving procedure.

(5) When a general government employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.

AMENDATORY SECTION (Amending WSR 17-18-029, filed 8/28/17, effective 10/2/17)

WAC 357-31-326 When may an employer grant leave with pay? (1) ~~((An))~~ A general government employer may grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, or donating blood. Leave granted to participate in ((life-giving procedures)) blood and plasma donations must not exceed five days in a two-year period.

(2) A higher education employer may grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, participating in life-giving procedures, or donating blood. Leave granted to participate in life-giving procedures must not exceed five days in a two-year period.

(3) In the department of natural resources, leave with pay equivalent to one regular workshift may be allowed for the purpose of rest and recuperation after ten consecutive calendar days performing emergency work under an incident com-

mand system, defined in RCW 38.52.010. The employer may grant one additional day of leave with pay for rest and recuperation after twenty-one consecutive calendar days performing emergency work under an incident command system.

(4) When a higher education employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.

WSR 20-20-082

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed October 2, 2020, 4:24 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave?, 357-31-395 What definitions apply to shared leave?, 357-31-400 How much shared leave may an employee receive?, 357-31-403 May an employer prevent an employee from using shared leave intermittently or on nonconsecutive days?, 357-31-405 What documentation may an employee seeking shared leave be required to submit?, 357-31-435 Must employees use their own leave before using shared leave?, 357-31-687 Must employees use their own leave before receiving shared leave from the uniformed service shared leave pool?, and 357-31-797 Must employees use their own leave before receiving shared leave from the veterans' in-state service shared leave pool?

Hearing Location(s): On November 12, 2020, at 8:30 a.m. Office of financial management, audio conference only, Dial-in (888) 285-8919, Enter pin: 8101730, Code (if asked): 415.

Date of Intended Adoption: November 19, 2020.

Submit Written Comments to: Brandy Chinn, office of financial management, P.O. Box 47500, Olympia, WA

98501, email Brandy.Chinn@ofm.wa.gov, fax 360-586-4694, by November 5, 2020.

Assistance for Persons with Disabilities: Contact Office of Financial Management, TTY 711 or 1-800-833-6384, by November 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 2739 passed during the 2020 legislative session. This bill makes several changes to the state shared leave program by amending RCW 41.04.655 (effective June 11, 2020), 41.04.665 (effective March 17, 2020), and adding a new section to chapter 41.04 RCW (effective June 11, 2020). The proposed amendment to WAC 357-31-395 removes the language under the parental leave definition which states parental leave is for a period of up to sixteen weeks after the birth or placement to align with changes to RCW 41.04.665. The bill amended the parental leave definition and created a new section. The proposed amendment to WAC 357-31-400 is to address the parental leave language that was removed in WAC 357-31-395 and to add an employee receiving industrial insurance wage replacement benefits may receive up to twenty-five percent of their base salary from the receipt of shared leave. The proposed new section WAC 357-31-403 is to address that an employer may not prevent an employee from using shared leave intermittently or on nonconsecutive days so long as the leave has not been returned. The proposed amendments to WAC 357-31-435 is to address that an employee is not required to deplete all of applicable leave types and which leave types an employee may have in reserve to align with the new definition of "shortly deplete." The proposed amendment to WAC 357-31-687 states that an employee is not required to deplete all of their accrued vacation leave and paid military leave before receiving shared leave from the uniformed service shared leave pool. The proposed amendment to WAC 357-31-797 states that an employee is not required to deplete all of their accrued vacation leave and sick leave before receiving shared leave from the veterans' in-state service shared leave pool. The proposed amendment to WAC 357-31-390 will allow an agency head to grant shared leave to an employee without considering other shared leave requirements, such as meeting the reasons to qualify for shared leave; the absence will likely cause the employee to go on leave without pay status or terminate state employment; the employee's absence and the use of shared leave are justified; the employee has depleted or will shortly deplete their accrued leave; and the employee has abided by agency rules in accordance with RCW 41.04.665 (1)(e), if the employee or relative or household member is isolated or quarantined due to COVID-19. Shared leave for this purpose may be granted until the Governor's COVID-19 State of Emergency declaration, or any amendments thereto, expire. The proposed amendment to WAC 357-31-405 allows an employer to require written verification for shared leave absences related to COVID-19.

Reasons Supporting Proposal: To align chapter 357-31 WAC with the requirements in the new law.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: Chapter 6, Laws of 2020.

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

Name of Proponent: [Not supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-407-4141.

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 related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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.

October 2, 2020

Roselyn Marcus

Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 18-17-130, filed 8/20/18, effective 9/21/18)

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment or physical or mental condition which is of an extraordinary or severe nature;

(b) Has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers their services to either a governmental agency or to a non-profit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(d) Is a victim of domestic violence, sexual assault or stalking as defined in RCW 41.04.655;

(e) Is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability;

(f) Is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointments or treatments;

(g) Needs the time for parental leave as defined in WAC 357-31-395(3); or

(h) Is sick or temporarily disabled because of a pregnancy disability as defined in WAC 357-31-395(4).

(2) The condition(s) listed in subsection (1)(a) through (d) of this section is likely to cause, the employee to go on leave without pay status or terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete leave in accordance with WAC 357-31-435. ~~((If the employee qualifies under subsection (1)(g) or (h) of this section the employee is not required to deplete all of their vacation leave or sick leave in accordance with WAC 357-31-435.))~~

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a), (d), (g), or (h) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

~~(6)(a) ((If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a))~~ Until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring a state of emergency in the state of Washington, or any amendment thereto, whichever is later, an employer may permit an employee to receive shared leave as a result of the 2019 novel coronavirus (COVID-19). An employer should consider whether one of the following circumstances exists in determining whether to grant shared leave under this subsection:

(i) The employee tests positive for COVID-19 or has symptoms of COVID-19 and is seeking a medical diagnosis;

(ii) The employee, or a relative or household member, is isolated or quarantined as recommended, requested or ordered by a public health official or health care provider as a result of suspected or confirmed infection with or exposure to COVID-19;

(iii) The employee is considered under the criteria set by the Centers for Disease Control and Prevention (CDC) to be at increased risk of severe illness and death due to COVID-19;

(iv) The employee cannot work due to the closure of their child's school and/or the unavailability of a child care provider due to COVID-19; or

(v) The employee is not sick but has been advised by a health care provider not to be in the workplace due to risk of COVID-19 but does not fall into the CDC high risk categories.

(b) An employer may permit use of shared leave under this subsection without considering the other requirements of this section.

AMENDATORY SECTION (Amending WSR 19-05-055, filed 2/15/19, effective 3/29/19)

WAC 357-31-395 What definitions apply to shared leave? The following definitions apply to shared leave as defined in RCW 41.04.655:

(1) ~~((As defined in RCW 41.04.655.))~~ "Employee" means any employee of the state, including employees of school districts and educational service districts, who are

entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained.

(2) "Employee's relative" normally must be limited to the employee's spouse, registered domestic partner, child, grandchild, sibling, grandparent, or parent.

(3) "Parental leave" means leave to bond and care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care ~~((, for a period of up to sixteen weeks after the birth or placement)).~~

(4) "Pregnancy disability" means a pregnancy-related medical condition or miscarriage.

~~(5) ("Severe" or "extraordinary" condition is defined as serious, extreme or life threatening.~~

~~(6))~~ "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(6) "Severe" or "extraordinary" condition is defined as serious, extreme or life threatening.

(7) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard and any other category of persons designated by the President of the United States in time of war or national emergency.

AMENDATORY SECTION (Amending WSR 10-11-074, filed 5/14/10, effective 6/15/10)

WAC 357-31-400 How much shared leave may an employee receive? (1) The employer determines the amount of leave, if any, which an employee may receive under these rules. However, an employee must not receive more than five hundred twenty-two days of shared leave during total state employment. An employer may authorize leave in excess of five hundred twenty-two days in extraordinary circumstances for an employee qualifying for shared leave because they are suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature. A nonpermanent employee who is eligible to use accrued leave or personal holiday may not use shared leave beyond the expected end date of the appointment. Leave used under the sick leave pool program, as described in WAC 357-31-570, is included in the five hundred twenty-two day limit.

(2) An employee receiving shared leave for parental leave in accordance with WAC 357-31-395 may receive up to sixteen weeks immediately after the birth or placement unless the birth parent suffers from a pregnancy disability. When a birth parent suffers from a pregnancy disability the period of sixteen weeks for parental leave begins immediately after the pregnancy disability has ended provided the parental leave is used within the first year of the child's life.

(3) An employee receiving industrial insurance wage replacement benefits may receive up to twenty-five percent of their base salary from the receipt of shared leave.

(4) Employers are encouraged to consider other methods of accommodating the employee's needs such as modified duty, modified hours, flex-time, or special assignments in place of shared leave.

NEW SECTION

WAC 357-31-403 May an employer prevent an employee from using shared leave intermittently or on nonconsecutive days? An employer may not prevent an employee from using shared leave intermittently or on nonconsecutive days so long as the leave has not been returned under WAC 357-31-445.

AMENDATORY SECTION (Amending WSR 18-17-130, filed 8/20/18, effective 9/21/18)

WAC 357-31-405 What documentation may an employee seeking shared leave be required to submit? An employee may be required to submit the following documentation before the employer approves or disapproves the employee's request for shared leave:

(1) For employees seeking shared leave under WAC 357-31-390 (1)(a), the employer may require the employee to submit a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition.

(2) For employees seeking shared leave under WAC 357-31-390 (1)(b), the employer may require the employee to submit a copy of the military orders verifying the employee's required.

(3) For employees seeking shared leave under WAC 357-31-390 (1)(c), proof of acceptance of an employee's offer to volunteer for either a governmental agency or a non-profit organization during a declared state of emergency.

(4) For employees seeking shared leave under WAC 357-31-390 (1)(d), the employer may require that the request be supported by documentation. An employee may satisfy the verification requirement by providing the employer with one or more of the following:

(a) A police report indicating that the employee was a victim of domestic violence, sexual assault or stalking;

(b) A court order protecting or separating the employee from the perpetrator of the act of domestic violence, sexual assault or stalking;

(c) Evidence from the court or prosecuting attorney that the employee appeared or is scheduled to appear in court in connection with an incident of domestic violence, sexual assault or stalking;

(d) An employee's written statement that the employee is a victim of domestic violence, sexual assault or stalking; or

(e) Documentation that the employee is a victim of domestic violence, sexual assault or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault or stalking: An advocate for victims of domestic violence, sexual assault or stalking; an attorney; a member of the clergy; or a medical or other professional.

(5) Employees seeking shared leave under WAC 357-31-390 (1)(e) or (f), the employee must provide documentation in accordance with WAC 357-31-805.

(6) Employees seeking shared leave under WAC 357-31-390 (1)(g), the employer may require verification of the birth or adoption of the child or proof of a current foster parent license or a court document for foster care or placement.

(7) Employees seeking shared leave under WAC 357-31-390 (1)(h), the employer may require a medical certification from a licensed physician or health care practitioner verifying that the employee has a pregnancy disability.

(8) For employees seeking shared leave under WAC 357-31-390(6), the employer may require written verification submitted electronically, confirming the circumstances of isolation or quarantine, that the employee is high risk, that no other suitable person is available to provide child care, or other circumstances listed in WAC 357-31-390 (6)(a)(i) through (v). This may include a signed affidavit from the employee, or any other information requested by the employer.

AMENDATORY SECTION (Amending WSR 18-17-130, filed 8/20/18, effective 9/21/18)

WAC 357-31-435 Must employees use their own leave before using shared leave? (1) Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday(~~(, sick leave and vacation leave))~~ and holiday credit that they have accrued before using shared leave. The employee is not required to deplete all of their accrued vacation and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

(2) Employees who qualify for shared leave under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565, personal holiday(~~(, accrued vacation leave and paid military leave allowed under RCW 38.40.060))~~ and holiday credit before using shared leave. The employee is not required to deplete all of their accrued vacation leave and paid military leave allowed under RCW 38.40.060 and can maintain up to forty hours of vacation leave and forty hours of paid military leave.

(3) Employees who qualify for shared leave under WAC 357-31-390 (1)(c) and (d) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday (~~and vacation leave~~) and holiday credit that they have accrued before using shared leave. The employee is not required to deplete all of their accrued vacation leave and can maintain up to forty hours of vacation leave.

(4) Employees who qualify for shared leave under WAC 357-31-390 (1)(e) or (f) must first use all leave as described in WAC 357-31-797.

(5) Employees who qualify for shared leave under WAC 357-31-390 (1)(g) and/or (h) must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565 (~~and~~), personal holiday and holiday credit before using shared leave. The employee is not required to deplete

all of their accrued vacation leave and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

AMENDATORY SECTION (Amending WSR 18-03-080, filed 1/15/18, effective 2/16/18)

WAC 357-31-687 Must employees use their own leave before receiving shared leave from the uniformed service shared leave pool? Employees who are eligible to receive shared leave from the uniformed service shared leave pool must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, vacation leave, and paid military leave allowed under RCW 38.40.060 before receiving shared leave from the uniformed service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and paid military leave allowed under RCW 38.40.060 and can maintain up to forty hours of vacation leave and forty hours of paid military leave.

AMENDATORY SECTION (Amending WSR 18-03-080, filed 1/15/18, effective 2/16/18)

WAC 357-31-797 Must employees use their own leave before receiving shared leave from the veterans' in-state service shared leave pool? Employees who are eligible to receive shared leave from the veterans' in-state service shared leave pool must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave, and vacation leave before receiving shared leave from the veterans' in-state service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

WSR 20-20-083

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed October 2, 2020, 4:29 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-28-190 When must an employee receive shift premium?, 357-31-130 When may an employee use accrued sick leave?, 357-31-215 When may vacation leave be accumulated above the maximum two hundred forty hours?, 357-46-064 Are there any limits to temporary layoff?, and 357-46-066 What is the notice requirement to temporarily layoff an employee?

Hearing Location(s): On November 12, 2020, at 8:30 a.m., at the Office of Financial Management, audio conference only, Dial-in (888) 285-8919, Enter pin: 8101730, Code (if asked): 415.

Date of Intended Adoption: November 19, 2020.

Submit Written Comments to: Brandy Chinn, Office of Financial Management, P.O. Box 47500, Olympia, WA 98501, email Brandy.Chinn@ofm.wa.gov, fax 360-586-4694, by November 5, 2020.

Assistance for Persons with Disabilities: Contact office of financial management, TTY 711 or 1-800-833-6384, by November 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To state that if an employee voluntarily requests to work a shift in which the majority of the hours worked are between 6:00 p.m. and 6:00 a.m. and/or when an employee is scheduled to work a shift which is split with a minimum of four intervening hours not worked will not be eligible for shift premium; to allow an employee to request a statement of necessity to preserve leave acquired over two hundred forty hours between February 29, 2020, and the filing of the statement of necessity until the expiration of Proclamation 20-05 or any amendment thereto; to expand the reasons in which an employee may use accrued sick leave due to the novel coronavirus disease 2019 (COVID-19); to extend the timeframe in which a nonrepresented employee may be furloughed in a calendar year from thirty to sixty days; and to allow an employer the ability to provide less than a seven days' notice period if urgent budget or operational issues are present for temporary layoffs.

Reasons Supporting Proposal: To align Title 357 WAC with Governor Jay Inslee's issued Proclamation 20-05 which declares a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor further declared that state agencies and departments are directed to use state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the outbreak. The worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and Washington state significantly impacts the life and health of our people, as well as the economy of Washington state, and is a public disaster that affects life, health, property or the public peace.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: Chapter 41.06 RCW.

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

Name of Proponent: [Not supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-407-4141.

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 related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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.

October 2, 2020
 Roselyn Marcus
 Assistant Director of
 Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-190 When must an employee receive shift premium? (1) Shift premium at the rate specified in the compensation plan must be paid when:

(a) An employee is scheduled to work a shift in which the majority of hours worked daily or weekly are between 6:00 p.m. and 6:00 a.m.; or

(b) An employee is scheduled to work a shift which is split with a minimum of four intervening hours not worked.

(2) Shift premium must be paid for the entire daily or weekly shift that qualifies under subsection (1) of this section. Additionally, these employees are entitled to shift premium for all hours that the employees work adjoining that evening or night shift.

(3) Shift premium may be paid at a monthly rate as specified in the compensation plan for full time employees regularly assigned to a qualifying shift.

(4) An employee assigned to a shift that qualifies for shift premium pay must receive the same shift premium for authorized periods of paid leave and holidays and for up to five days of a temporary assignment to a shift that does not qualify. Continued payment of shift premium for a temporary assignment exceeding five days is at the discretion of the employer.

(5) Compensation under the provisions of this section must be in accordance with the employer's policy, as approved by the director, for the following individuals:

(a) Employees dispatched to emergency response duty under an incident command system as defined in RCW 38.52.010; and

(b) Employees of the department of corrections who are in charge of offenders assigned to assist in forest fire suppression and other emergency incidents.

(6) Exceptions to shift premium provisions may be approved by the director.

(7) For higher education employers, shift premium must not apply to police and fire officers where special pay salaries are correlated with a rotating shift in accordance with local practice.

(8) Employees may waive shift premium.

(9) Employees who voluntarily request to work a shift as described in subsection (1)(a) and (b) of this section will not be eligible for shift premium.

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-130 When may an employee use accrued sick leave? The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

(1) Employers **must** allow the use of accrued sick leave under the following conditions:

(a) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

(b) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(c) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such reason.

(d) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

(e) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

(f) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (1)(d) of this section.

(i) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(ii) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(g) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

(h) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(i) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(j) When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child for a period up to eighteen weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(2) Employers **may** allow the use of accrued sick leave under the following conditions:

(a) For condolence or bereavement;

(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255; ~~((or))~~

(c) To bond with a newborn, adoptive or foster child for a period beyond eighteen weeks as allowed in subsection (1)(i) of this section. Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond subsection (1)(i) of this section must be addressed in the employer's leave policy in accordance with WAC 357-31-100; or

(d) When a child is a family member of an employee or member of an employee's household and the child's school or place of care has been closed while proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, is in effect.

AMENDATORY SECTION (Amending WSR 17-18-028, filed 8/28/17, effective 10/2/17)

WAC 357-31-215 When may vacation leave be accumulated above the maximum two hundred forty hours? There are two circumstances in which vacation leave may be accumulated above the maximum of two hundred forty hours.

(1) If an employee's request for vacation leave is denied by the employer, and the employee is close to the maximum vacation leave (two hundred forty hours), the employer must grant an extension for each month that the employer defers the employee's request for vacation leave. The employer must maintain a statement of necessity justifying the extension.

(2) As an alternative to subsection (1) of this section, employees may also accumulate vacation leave in excess of two hundred forty hours as follows:

(a) An employee may accumulate the vacation leave hours between the time the two hundred forty hours is accrued and his/her next anniversary date of state employment.

(b) Leave accumulated above two hundred forty hours must be used by the next anniversary date and in accordance with the employer's leave policy. If such leave is not used before the employee's anniversary date, the excess leave is automatically lost and considered to have never existed.

(c) A statement of necessity, as described in subsection (1) of this section, can only defer leave that the employee has not accrued as of the date of the statement of necessity. Any accrued leave in excess of two hundred forty hours as of the date of the statement of necessity cannot be deferred regardless of circumstances except in accordance with subsection (3) of this section. For example:

On June 15th, an employee is assigned to work on a special project. It is expected that the assignment will last six months. Due to an ambitious timeline and strict deadlines, the employee will not be able to take any vacation leave during that time.

- On June 15th, the employee's vacation leave balance is two hundred sixty hours.

- The employee accrues ten hours monthly.

- The employee's anniversary date is October 16th.

Because the employee will not be able to use leave from June 15th through December 15th the employee files a statement of necessity asking to defer the leave accrued during this time. This deferred leave will not be lost as long as the employee uses the deferred hours by their next anniversary date (October 16th of the following year).

The twenty hours of excess vacation leave the employee had on June 15th are not covered by the statement of necessity.

(3) Beginning February 29, 2020, a statement of necessity, as described in subsection (1) of this section, may be used to preserve leave acquired over two hundred forty hours between February 29, 2020, and the filing of the statement of necessity. This is effective until the expiration of proclamation 20-43, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later.

AMENDATORY SECTION (Amending WSR 16-05-058, filed 2/12/16, effective 3/14/16)

WAC 357-46-064 Are there any limits to temporary layoff? Under the provisions of WAC 357-46-063, an employer may not:

(1) Furlough an employee for more than ~~((thirty))~~ sixty calendar days in a calendar year; or

(2) Temporarily reduce an employee's regular work schedule to less than twenty hours a week for more than sixty calendar days in a calendar year.

The only exception to these limits is if the temporary layoff is due to the failure of congress to pass a continuing resolution or a federal budget.

AMENDATORY SECTION (Amending WSR 16-05-058, filed 2/12/16, effective 3/14/16)

WAC 357-46-066 What is the notice requirement to temporarily layoff an employee? An employer ~~((must))~~ will normally provide ~~((the))~~ an employee seven calendar days' notice of temporary layoff. Employers may provide less than seven calendar days' notice if urgent budget or operational issues are present. Employers must make a reasonable effort to provide as much time as possible for temporary layoff notification. The temporary layoff notice must inform the employee of their status during temporary layoff and the expected duration of the temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

In the event that a temporary layoff is implemented due to the failure of congress to pass a continuing resolution or a federal budget, an employer must provide the employee at least one calendar day's notice of temporary layoff. The temporary layoff notice must inform the employee of their status during temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

WSR 20-20-086
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 5, 2020, 8:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-13-047.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-454-0006. The department makes background checks on adults who are acting in place of a parent without court-ordered custody.

Hearing Location(s): On November 10, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than November 11, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 10, 2020.

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 October 27, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments align rule language with changes in state law under 2SHB 1645 (chapter 270, Laws of 2020), effective January 1, 2021. The amendments reflect that founded findings of child abuse and neglect, and dependencies related to founded findings of child abuse and neglect, will not be considered when a background check is required and a certificate of parental improvement accompanies the finding. Cross references to disqualifying crimes lists that were recodified upon creation of the department of children, youth, and families are also updated.

Reasons Supporting Proposal: The proposed language supports implementation of policy changes as provided in 2SHB 1645 (chapter 270, Laws of 2020) and corrects obsolete WAC cross references.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.12.290.

Statute Being Implemented: RCW 43.43.832.

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: Melissa Kenney, P.O. Box 45470, Olympia, WA 98504-5470, 360-764-3272.

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

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

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

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

October 1, 2020
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-24-037, filed 11/30/16, effective 1/1/17)

WAC 388-454-0006 The department makes background checks on adults who are acting in place of a parent without court-ordered custody. (1) We check your background when you ask for temporary assistance for needy families (TANF) or state family assistance (SFA) benefits for a child who:

- (a) Is not related to you; and
- (b) Lives with you but you do not have a court order that gives you legal custody of the child.
- (2) A child who is not related to you cannot receive TANF/SFA benefits while living with you until we have completed a background check and the results of the background check meet the criteria in subsection (3) through (5) of this section.
- (3) A child who is not related to you cannot receive benefits while living with you if:
 - (a) You have been convicted of a crime listed in WAC ((388-06A-0170)) 110-04-0100 (1)(a) through (e); or
 - (b) You have been convicted of a crime listed in WAC ((388-06A-0180)) 110-04-0110 (1) through (3) within the last five years; or
 - (c) You have a pending criminal charge for a disqualifying crime listed in WAC 110-04-0130 (1)(a) through (b); or
 - (d) You are determined by the department to not have the character, suitability, and competence necessary to receive benefits for a child not related to you, as described in subsection (4) and (5) of this section.
- (4) We review your background when you have been convicted of a crime listed in WAC ((388-06A-0180)) 110-04-0110 (1) through (3), more than five years ago to determine your character, suitability, and competence to receive benefits for a child not related to you. We consider the following factors:

- (a) The amount of time that has passed since you were convicted;
- (b) The seriousness of the crime that led to the conviction;
- (c) The number and types of convictions in your background; and
- (d) Your age at the time of the conviction.

(5) When you have a conviction for a crime other than those listed in WAC ((388-06A-0170)) 110-04-0100 (1)(a) through (e), or ((388-06A-0180)) 110-04-0110 (1) through (3) or have a founded finding of child abuse or neglect, as defined in WAC 110-03-0020, we review your background as described in subsection (4) of this section. If you have a founded finding of child abuse or neglect, or a dependency resulting from a finding of abuse or neglect, and have received a related certificate of parental improvement, as described in chapter 110-05 WAC, then that finding or dependency will not be considered in our determination.

(6) Expunged or sealed conviction records do not count against you.

WSR 20-20-088
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 5, 2020, 9:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-14-024.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-466-0120 Refugee cash assistance (RCA).

Hearing Location(s): On November 10, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than November 11, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 10, 2020.

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 October 27, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments will align the rule more closely with federal law and allow DSHS to extend RCA benefits beyond eight months when approved by the federal Office of Refugee Resettlement (ORR). RCA recipients are typically eligible to receive benefits for a maximum of eight months. However, during emergencies (such as the COVID-19 pandemic) federal law allows ORR to approve a blanket extension of the RCA eligibility period up to a thirty-six month maximum.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250; 45 C.F.R. § 400.300, and 8 U.S.C. § 1522 (e)(1).

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: Max Gibbs-Ruby, P.O. Box 45470, Olympia, WA 98504-5470, gibbsm@dshs.wa.gov.

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

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

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

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

October 2, 2020
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-03-137, filed 1/23/13, effective 2/23/13)

WAC 388-466-0120 Refugee cash assistance (RCA).
(1) Who can apply for refugee cash assistance (RCA)?

Anyone can apply to the department of social and health services (DSHS) for refugee cash assistance and have their eligibility determined within thirty days.

(2) How do I know if I qualify for RCA?

You may be eligible for RCA if you meet all of the following conditions:

(a) You have resided in the United States for less than eight months;

(b) You meet the immigration status requirements of WAC 388-466-0005;

(c) You meet the income and resource requirements under chapters 388-450 and 388-470 WAC;

(d) You meet the work and training requirements of WAC 388-466-0150; and

(e) You provide the name of the voluntary agency (VOLAG) which helped bring you to this country.

(3) What are the other reasons for not being eligible for RCA?

You may not be able to get RCA if you:

(a) Are eligible for temporary assistance for needy families (TANF) or supplemental security income (SSI); or

(b) Have been denied TANF due to your refusal to meet TANF eligibility requirements; or

(c) Are employable and have voluntarily quit or refused to accept a bona fide offer of employment within thirty consecutive days immediately prior to your application for RCA; or

(d) Are a full-time student in a college or university.

(4) If I am an asylee, what date will be used as an entry date?

If you are an asylee, your entry date will be the date that your asylum status is granted. For example: You entered the United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and were granted asylum on September 1, 2000. Your entry date is September 1, 2000. On September 1, 2000, you may be eligible for refugee cash assistance.

(5) If I am a victim of human trafficking, what kind of documentation do I need to provide to be eligible for RCA?

You are eligible for RCA to the same extent as a refugee if you are:

(a) An adult victim, eighteen years of age or older, you provide the original certification letter from the U.S. Department of Health and Human Services (DHHS), and you meet eligibility requirements in subsections (2)(c) and (d) of this section. You do not have to provide any other documentation of your immigration status. Your entry date will be the date on your certification letter;

(b) A child victim under the age of eighteen, in which case you do not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirement;

(c) A family member of a certified victim of human trafficking, you have a T-2, T-3, T-4, or T-5 Visa (Derivative T-Visas), and you meet the eligibility requirements in subsections (2)(c) and (d) of this section.

(6) Does getting a onetime cash grant from a voluntary agency (VOLAG) affect my eligibility for RCA?

No. In determining your eligibility for RCA DSHS does not count a onetime resettlement cash grant provided to you by your VOLAG.

(7) What is the effective date of my eligibility for RCA?

The date DSHS has sufficient information to make eligibility decision is the date your RCA begins.

(8) When does my RCA end?

(a) Your RCA ends on the last day of the eighth month starting with the month of your arrival to the United States. Count the eight months from the first day of the month of your entry into the United States. For example, if you entered the United States on May 28, 2000, May is your first month and December 2000 is your last month of RCA.

(b) If you get a job, your income will affect your RCA based on the TANF rules (chapter 388-450 WAC). If you earn more than is allowed by WAC 388-478-0035, you are no longer eligible for RCA.

(c) You may receive RCA benefits for more months if the federal office of refugee resettlement extends the eligibility period.

(9) Are there other reasons why RCA may end?

Your RCA also ends if:

(a) You move out of Washington state;

(b) Your unearned income and/or resources go over the maximum limit (WAC 388-466-0140); or

(c) You, without good cause, refuse to meet refugee employment and training requirements (WAC 388-466-0150).

(10) Will my spouse be eligible for RCA, if he/she arrives in the U.S. after me?

When your spouse arrives in the United States, DSHS determines his/her eligibility for RCA and/or other income assistance programs.

(a) Your spouse may be eligible for up to eight months of RCA based on his/her date of arrival into the United States.

(b) If you live together, you and your spouse are part of the same assistance unit and your spouse's eligibility for RCA is determined based on you and your spouse's combined income and resources (WAC 388-466-0140).

(11) Can I get additional money in an emergency?

If you have an emergency and need a cash payment to get or keep your housing or utilities, you may apply for the DSHS program called additional requirements for emergent needs (AREN). To receive AREN, you must meet the requirements in WAC 388-436-0002.

(12) What can I do if I disagree with a decision or action that has been taken by DSHS on my case?

If you disagree with a decision or action taken on your case by the department, you have the right to request a review of your case or an administrative hearing (WAC 388-02-0090). Your request must be made within ninety days of the date of the decision or action.

WSR 20-20-098

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed October 5, 2020, 1:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-17-109 on August 17, 2020.

Title of Rule and Other Identifying Information: WAC 220-415-080 2021 Spring black bear special permits.

Hearing Location(s): On December 3-5, 2020, at 8 a.m. This meeting will take place by webinar. The public may participate in the meeting. Visit our website at <http://wdfw.wa.gov/about/commission/meetings> or contact the commission office at 360-902-2267 or commission@dfw.wa.gov for instructions on how to join the meeting.

Date of Intended Adoption: December 18, 2020.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email Wildthing@dfw.wa.gov, fax 360-902-2162, <https://www.surveymonkey.com/r/DKDY6SD>, by October 29, 2020.

Assistance for Persons with Disabilities: Contact Dolores Noyes, phone 360-902-2346, TTY 360-902-2207, email dolores.noyes@dfw.wa.gov, by November 26, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 220-415-080 2021 Spring black bear special permits, the purpose of the proposed amendments is to align the rules with the appropriate season dates; adjust permit numbers in areas where

needed; adjust hunting areas where needed; and update harvest check, submitting biological samples and bear teeth requirements.

- Adjusted the years for spring black bear special permit hunts beginning April 15-June 15, 2021. The title will be as follows: WAC 220-415-080 2021 Spring black bear special permits.
- Removed Weyerhaeuser - Columbia Timber Lands from the North Skagit hunt.
- Adjusted the number of permits.
- Clarified the language for animal inspection.

Reasons Supporting Proposal: The change in title is editorial and clarifies the 2021 special permit hunts. The season date changes are intended to align all the spring seasons for consistency. The change to GMU 418 lets hunters know that Weyerhaeuser - Columbia Timber Lands are no longer part of this hunt boundary. The permit change in GMU 684 reflects the number of permits that the local biologist believes should be in place to deal with the conflict and maintain a viable bear population. The additional language related to the animal inspection is intended to clarify to hunters that the pelt and head must be unfrozen and that the evidence of sex must be attached. We further clarify that we will not be sealing the pelt and this is merely an inspection of the animal to collect biological information.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement:

Steve Bear, 1111 Washington Street S.E., 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 rule proposal does not require a cost-benefit analysis.

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

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

October 5, 2020

Ben Power

Interim Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-22-061, filed 11/5/19, effective 12/6/19)

WAC 220-415-080 ((2020)) 2021 Spring black bear special permits. It is unlawful to fail to comply with the provisions of this section. A violation of this section is punishable under RCW 77.15.410, 77.15.245, or 77.15.280, depending on the circumstances of the violation.

Who May Apply: Anyone with a valid Washington big game license, which includes black bear as a species option.

Hunt Areas, Permit Levels, and Season Dates for Each License Year:

Hunt Name	Hunt Area	Permits	Season Dates
Sherman	GMU 101 Note: Mandatory bear identification test required.	50	April ((+)) <u>15</u> - June 15
Kelly Hill	GMU 105 Note: Mandatory bear identification test required.	50	April ((+)) <u>15</u> - June 15
Douglas	GMU 108 Note: Mandatory bear identification test required.	40	April ((+)) <u>15</u> - June 15
Aladdin	GMU 111 Note: Mandatory bear identification test required.	50	April ((+)) <u>15</u> - June 15
49 Degrees North	GMU 117 Note: Mandatory bear identification test required.	100	April ((+)) <u>15</u> - June 15
Huckleberry	GMU 121	100	April ((+)) <u>15</u> - June 15
Blue Creek	GMU 154	18	April 15 - June 15
Dayton	GMU 162	18	April 15 - June 15
Tucannon	GMU 166	5	April 15 - June 15
Wenaha	GMU 169	60	April 15 - June 15
Mt. View	GMU 172	24	April 15 - June 15

Hunt Name	Hunt Area	Permits	Season Dates
Lick Creek	GMU 175	18	April 15 - June 15
Peola	GMU 178	5	April 15 - June 15
Couse	GMU 181	5	April 15 - June 15
Grande Ronde	GMU 186	5	April 15 - June 15
Kitsap	GMU 627	5	April 15 - (May 31) <u>June 15</u>
Mason	GMU 633	5	April 15 - (May 31) <u>June 15</u>
Bear River	GMU 681	20	April 15 - (May 31) <u>June 15</u>
Long Beach	GMU 684	(12) <u>10</u>	April 15 - (May 31) <u>June 15</u>
North Skagit	That portion of GMU 418 that is designated as the hunt area by DNR, Sierra Pacific, (Weyerhaeuser Columbia Timber Lands,) and Grandy Lake Timber company. Note: Mandatory bear identification test required.	30	April 15 - June 15
Copalis	GMU 642, 648, and 638 (excluding U.S. Forest Service lands).	50	April 15 - June 15

Bag Limit: One black bear per black bear special permit season.

License Required: A valid big game hunting license, which includes black bear as a species option, is required to apply for a spring black bear special permit. One black bear transport tag is included with a big game hunting license that has black bear as a species option.

Hunting Method: Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting black bear. The use of dogs or bait to hunt black bear is prohibited statewide.

Other Requirements: Hunters that are selected to hunt in GMUs located in grizzly bear recovery areas, as identified by the department, must successfully complete the annual WDFW online bear identification test with a passing score (80% or higher) or carry proof that they have passed an equivalent test from another state. The WDFW test may be taken repeatedly until a passing score is achieved. All hunters must carry proof of passing a bear identification test while hunting in the GMUs identified by the department.

Harvest Check, Submitting Biological Samples and Bear Teeth: All successful bear hunters must validate (notch) their bear tag consistent with WAC 220-413-020, notify the department within 72 hours of kill (excluding legal state holidays), provide the hunter's name, date and location of kill, and sex of animal. The unfrozen raw pelt, with evidence of sex attached, and the first premolar must be presented to an authorized department employee for (~~sealing~~) inspection within 5 days of notification of kill. All permit hunters must comply with harvest reporting and submission of biological samples as described above. Failure to comply with the submission of biological samples is a misdemeanor pursuant to RCW 77.15.280.

WSR 20-20-099
PROPOSED RULES
WASHINGTON STATE PATROL
 [Filed October 5, 2020, 1:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-17-032.

Title of Rule and Other Identifying Information: WAC 204-10-060 Equipment standards—Reflectors.

Hearing Location(s): On December 8, 2020, at 10:00 a.m. Call-in: 1-253-215-8782, Passcode: 303628.

Date of Intended Adoption: December 9, 2020.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email wsprules@wsp.wa.gov, by December 4, 2020.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, agency rules coordinator, phone 360-596-4017, email wsprules@wsp.wa.gov, by December 4, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, the WAC states on motorized foot scooters, the reflectors must be securely mounted and of a type conforming to 16 C.F.R. Part 1512. The types of reflectors mentioned in 16 C.F.R. Part 1512 are for bicycles only, the size and locations for these reflectors would not fit on motorized foot scooters.

The proposed rule changes would remove the reference of the C.F.R. on motorized foot scooters and add a new section that addresses the reflector requirements on motorized foot scooters.

Reasons Supporting Proposal: Updates are to provide clarity and clean up existing language.

Statutory Authority for Adoption: RCW 46.37.005, 46.37.320, and 46.20.500.

Statute Being Implemented: RCW 46.37.005, 46.37.320, and 46.20.500.

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

Name of Proponent: Washington state patrol, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Kimberly Mathis, Olympia, Washington, 360-596-4017; Enforcement: Washington State Patrol, Olympia, Washington, 360-596-4017.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt pursuant to RCW 34.05.328 (5)(b)(v).

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

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

October 5, 2020

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 08-19-079, filed 9/16/08, effective 10/17/08)

WAC 204-10-060 Reflectors. (1) On motor vehicles, reflex reflectors must be securely mounted on a rigid part of the vehicle with the plane of the lens perpendicular to the roadway and parallel to the rear axle. Side reflex reflectors must be mounted with the lens face perpendicular to the roadway and parallel to the rear wheels.

(2) On bicycles (~~and motorized foot scooters~~), the reflectors must be securely mounted and of a type conforming to 16 C.F.R. Part 1512.

(3) On motorized foot scooters, a red reflector on the rear that is visible from a distance of five hundred feet when directly in front of lawful upper beams of headlamps on a motor vehicle. It shall also be equipped with reflective material and of sufficient size and reflectivity to be visible from both sides at a distance of five hundred feet.

WSR 20-20-101

PROPOSED RULES

DEPARTMENT OF HEALTH

(Occupational Therapy Practice Board)

[Filed October 5, 2020, 1:56 p.m.]

Original Notice.

Expedited Rule Making—Proposed notice was filed as WSR 20-17-046.

Title of Rule and Other Identifying Information: WAC 246-847-051(4) and 246-847-190, enforcement of AIDS education and training rules. The occupational therapy practice board (board) is proposing to repeal these requirements in response to ESHB 1551 (chapter 76, Laws of 2020).

Hearing Location(s): On December 18, 2020, at 9:10 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the occupational therapy practice board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To access the meet-

ing: Please join my meeting from your computer, tablet or smartphone: <https://global.gotomeeting.com/join/860970933>. You can also dial in using your phone: United States: +1 (571) 317-3122. Access Code: 860-970-933. New to GoToMeeting? Get the app now and be ready when your first meeting starts.

Date of Intended Adoption: December 18, 2020.

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 December 11, 2020.

Assistance for Persons with Disabilities: Contact Kathy Weed, phone 360-236-4883, fax 360-236-4883, TTY 711, email <https://fortress.wa.gov/doh/policyreview>, by December 11, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective June 11, 2020, the following laws were repealed as a result of ESHB 1551: RCW 70.24.260 Emergency medical personnel—Rules for AIDS education and training, 70.24.270 Health professionals—Rules for AIDS education and training, and 70.24.310 Health care facility employees—Rules for AIDS education and training.

As a result of these laws being repealed, the department will repeal chapter 246-12 WAC, Part 8 - AIDS prevention and information education requirements. These rules detail the definitions, acceptable training and education, and documentation requirements for health professionals and employees concerning AIDS.

WAC 246-847-051(4) and 246-847-190 under the authority of the board requires compliance with chapter 246-12 WAC, Part 8 and 7 clock hours of AIDS education. The board will repeal WAC 246-847-150(4) and 246-847-190, and will no longer enforce these rules during the repeal process.

Reasons Supporting Proposal: When Washington adopted statutes [statutes] concerning AIDS, very little was known about the disease compared to today. Now, AIDS is so treatable and preventable, governor Inslee issued a proclamation in 2014 supporting End AIDS Washington; a statewide initiative to reduce new HIV cases by fifty percent by the end of 2020. Part of this effort includes reducing stigma, which includes updating state law. ESHB 1551 repeals statutes [statutes] concerning AIDS education and training for emergency medical personnel, health professionals, and health care facility employees to help reduce stigma towards people living with HIV by not singling out AIDS as an exceptional disease that requires specific training and education separate from other health conditions.

Statutory Authority for Adoption: RCW 18.59.130.

Statute Being Implemented: ESHB 1551.

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 Enforcement: Kathy Weed, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4883.

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 agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts 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.

October 5, 2020
Sunny Anderson, OTA
Chair

AMENDATORY SECTION (Amending WSR 18-09-032, filed 4/11/18, effective 8/1/18)

WAC 246-847-051 Military equivalence. A graduate of a United States military occupational therapy assistant course that is substantially equivalent to the requirements in chapters 18.59 RCW and 246-847 WAC may apply for licensure in this state when the following additional requirements have been submitted to the department:

(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; ~~and~~

(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).~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-847-190 AIDS education and training.

**WSR 20-20-115
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2019-03—Filed October 6, 2020, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-15-129.

Title of Rule and Other Identifying Information: Confidential communications.

Hearing Location(s): On November 12, 2020, at 3:30 p.m. Zoom meeting: Detailed information for attending the Zoom meeting posted on the office of insurance commissioner (OIC) website here: <https://www.insurance.wa.gov/confidential-communications-r-2019-03>. Due to the COVID-

19 public health emergency, this hearing will be held via Zoom.

Date of Intended Adoption: November 13, 2020.

Submit Written Comments to: Mandy Weeks-Green, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by November 12, 2020.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email melaniew@oic.wa.gov, by November 12, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner will consider adopting rules regarding confidential communications to ensure implementation as provided for in ESSB 5889 (chapter 56, Laws of 2019), which has been codified in RCW 48.43.505, 48.43.5051. In addition to adding new sections, the commissioner is considering amending existing WAC, including WAC 284-04-510, 284-43-2000, 284-43-2050, 284-43-3070, 284-43-4040, and 284-43-7100. The proposed changes to WAC 284-43-2000 and 284-43-7100 have been moved from this rule making to the consolidated rule making in R 2020-13.

Reasons Supporting Proposal: The legislature passed ESSB 5889 during the 2019 session. The bill concerns communications from the carrier to the enrollees. ESSB 5889 ensures the confidentiality of sensitive health services and ensures that carriers notify enrollees of their ability and options to request confidentiality. The OIC needs to develop rules to amend existing WAC and add new sections to implement the requirements of ESSB 5889.

Statutory Authority for Adoption: ESSB 5889 (chapter 56, Laws of 2019) (which has been codified in RCW 48.43.505, 48.43.5051); and 48.02.060.

Statute Being Implemented: ESSB 5889 (chapter 56, Laws of 2019) (which has been codified in RCW 48.43.505 and 48.43.5051).

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Mandy Weeks-Green, P.O. Box 40260, Olympia, WA 98504, 360-725-7169; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504, 360-725-7117; and Enforcement: Toni Hood, P.O. Box 40255, Olympia, WA 98504, 360-725-7050.

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 Bode Makinde, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7041, fax 360-586-3109, TTY 360-586-0241, email bodem@oic.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 rule content is explicitly and specifically dictated by statute.

Is exempt under RCW [no information supplied by the agency].

Explanation of exemptions: Health insurers are the businesses identified to be affected by this rule, which are large businesses, not small businesses, as defined in RCW 19.85.020(3).

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.

Section 1 - Rule groups and their status relative to RFA analysis:

Rule Group	WAC	SBEIS Exemption Category
Create new subchapter	WAC 284-43-0400	RCW 34.05.310(4) (Dictated by statute)
Create new subchapter	WAC 284-43-0410	RCW 34.05.310(4) (Dictated by statute)
Create new subchapter	WAC 284-43-0420	RCW 34.05.310(4) (Dictated by statute)
Create new subchapter	WAC 284-43-0430	RCW 34.05.310(4) (Dictated by statute)
Subsection (12) Whenever the prior authorization relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.	WAC 284-43-2050	RCW 34.05.310(4) (Dictated by statute)
Subsection (13) Whenever the notification relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505	WAC 284-43-2050	RCW 34.05.310(4) (Dictated by statute)
Subsection (20)(e) Whenever a predetermination notice relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.	WAC 284-43-2050	RCW 34.05.310(4) (Dictated by statute)
Subsection [(1)](c) Whenever an adverse benefit determination relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.	WAC 284-43-3070	RCW 34.05.310(4) (Dictated by statute)
Subsection (1)(a) Whenever an adverse determination relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.	WAC 284-43-4040	RCW 34.05.310(4) (Dictated by statute)
Subsection (6)(a) Whenever an adverse determination notification relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.	WAC 284-43-4040	RCW 34.05.310(4) (Dictated by statute)

Rule Group	WAC	SBEIS Exemption Category
Subsection (1)(a) Whenever the licensee is a health carrier, as defined in WAC 284-43-0160, and the request relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.	WAC 284-04-510	RCW 34.05.310(4) (Dictated by statute)
Subsection (2)(a) Whenever the licensee is also a health carrier, as defined in WAC 284-43-0610, and the request relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.	WAC 284-04-510	RCW 34.05.310(4) (Dictated by statute)
Subsection (3)(c) Whenever the licensee is also a health carrier, as defined in WAC 284-43-0610, the health carrier must follow RCW 48.43.505.	WAC 284-04-510	RCW 34.05.310(4) (Dictated by statute)
Subsection (5) Where the licensee is required to follow RCW 48.43.505, the nondisclosure request shall be made using the form in RCW 48.43.505(4).	WAC 284-04-510	RCW 34.05.310(4) (Dictated by statute)

Section 2 - Cost of Compliance/Minor cost Threshold: The health insurers that are affected by this rule are large, interstate insurers and are not small businesses as defined in RCW 19.85.020(3). OIC applied a default cost of compliance (\$100) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). Below are calculations for minor cost thresholds across all impacted industries based on the best analogous NAICS types. For these reasons, the proposed rules do not impose more than minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	Average Annual Employment	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
524113	Direct Life Insurance Carriers	25599.65	2,787	\$25,599.65 2018 Dataset pulled from USBLS	\$3,520.62 2018 Dataset pulled from DOR
524114	Direct Health and Medical Insurance Carriers	228929.41	6,777	\$88,030.57 2018 Dataset pulled from USBLS	\$228,929.41 2018 Dataset pulled from DOR
524210	Insurance Agencies and Brokerages	4879.47	15,498	\$4,879.47 2018 Dataset pulled from USBLS	\$2,407.22 2018 Dataset pulled from DOR

A copy of the detailed cost calculations may be obtained by contacting Bode Makinde, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7041, fax 360-586-3109, TTY 360-586-0241, email bodem@oic.wa.gov.

October 6, 2020
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 01-03-034, filed 1/9/01, effective 2/9/01)

WAC 284-04-510 Right to limit disclosure of health information. (1)(a) Notwithstanding other provisions of this chapter, a licensee shall limit disclosure of any information, including health information, about an individual who is the subject of the information if the individual clearly states in writing that disclosure to specified individuals of all or part of that information could jeopardize the safety of the individual. Disclosure of information under this subsection shall be limited consistent with the individual's request, such as a request for the licensee to not release any information to a spouse to prevent domestic violence.

(b) Whenever the licensee is a health carrier, as defined in WAC 284-43-0160, and the request relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

(2)(a) Notwithstanding any insurance law requiring the disclosure of information, a licensee shall not disclose non-public personal health information concerning health services related to reproductive health, sexually transmitted diseases, chemical dependency and mental health, including mailing appointment notices, calling the home to confirm appointments, or mailing a bill or explanation of benefits to a policyholder or certificate holder, if the individual who is the subject of the information makes a written request. In addition, a licensee shall not require an adult individual to obtain the policyholder's or other covered person's authorization to receive health care services or to submit a claim.

(b) Whenever the licensee is also a health carrier, as defined in WAC 284-43-0610, and the request relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

(3)(a) A licensee shall recognize the right of any minor who may obtain health care without the consent of a parent or legal guardian pursuant to state or federal law, to exclusively exercise rights granted under this section regarding health information; and

(b) Shall not disclose any nonpublic personal health information related to any health care service to which the minor has lawfully consented, including mailing appointment notices, calling the home to confirm appointments, or mailing a bill or explanation of benefits to a policyholder or other covered person, without the express authorization of the minor. In addition, a licensee shall not require the minor to obtain the policyholder's or other covered person's authorization to receive health care services or to submit a claim as to health care which the minor may obtain without parental consent under state or federal law; and

(c) Whenever the licensee is also a health carrier, as defined in WAC 284-43-0610, the health carrier must follow RCW 48.43.505.

(4) When requesting nondisclosure, the individual shall include in the request:

- (a) Their name and address;
- (b) Description of the type of information that should not be disclosed;
- (c) In the case of reproductive health information, the type of services subject to nondisclosure;
- (d) The identity or description of the types of persons from whom information should be withheld;
- (e) Information as to how payment will be made for any benefit cost sharing;

(f) A phone number or email address where the individual may be reached if additional information or clarification is necessary to satisfy the request.

(5) Where the licensee is required to follow RCW 48.43.505, the nondisclosure request shall be made using the form in RCW 48.43.505(4).

SUBCHAPTER ((B)) B1

PLAN MANAGEMENT

SUBCHAPTER B2

CONFIDENTIALITY OF INSURANCE COMMUNICATIONS

NEW SECTION

WAC 284-43-0400 Purpose and scope. (1) The purpose of this subchapter is to establish uniform regulatory standards for health carriers and to create minimum standards for carriers to adopt policies and procedures that conform administrative, business, and operational practices to protect

an enrollee's right to privacy and right to confidential health care services granted under state or federal laws.

(2) This subchapter applies to all health carriers except as otherwise expressly provided in this subchapter. Health carriers are responsible for compliance with the provisions of this subchapter and are responsible for the compliance of any person or organization acting on behalf of or at the direction of the carrier, or acting pursuant to carrier standards or requirements concerning the coverage of, payment for, or administration of health care benefits. A carrier may not offer as a defense to a violation of any provision of this subchapter that the violation arose from the act or omission of a participating provider or facility, network administrator, claims administrator, health care benefit manager, or other person acting on behalf of or at the direction of the carrier, or acting pursuant to carrier standards or requirements under a contract with the carrier rather than from the direct act or omission of the carrier.

NEW SECTION

WAC 284-43-0410 Definitions. (1) "Communications subject to confidentiality" means written, verbal, or electronic communication regarding sensitive health care services, and all health care services if a protected individual has requested to limited disclosure including:

- (a) Bills and attempts to collect payment, except for premium billing that does not contain any health information;
- (b) A notice of adverse benefit determination;
- (c) An explanation of benefits notice;
- (d) A carrier's request for additional information regarding a claim;
- (e) A notice of contested claim;
- (f) The name and address of a provider, a description of services provided, and other visit information; and
- (g) Any written, oral, or electronic communication from a carrier that contains protected health information.

(2) "Protected individual" has the same meaning as the definition of protected individual in RCW 48.43.005.

(3) "Sensitive health care services" has the same meaning as the definition of sensitive health care services in RCW 48.43.005.

NEW SECTION

WAC 284-43-0420 Sensitive health care services. (1) A health carrier must direct all communication regarding sensitive health care services, including communications subject to confidentiality, directly to the protected individual. To facilitate communication of these services, a carrier must allow the protected individual to select their preferred communication format and may provide sensitive health services communications to the protected individual by:

- (a) Health care portal that is only accessible to the protected individual;
- (b) Email address, if provided by the protected individual;
- (c) Telephone of the protected individual; or
- (d) Mail to the address requested by a protected individual, and if no address has been requested, then mail to the

known address if the communication and envelope are addressed only to the protected individual.

(2) When a protected individual provides their express written consent or verbal authorization on a recorded line, a health carrier may disclose information concerning sensitive health care services for that protected individual as specified by the protected individual.

(3) A health carrier must establish a process for informing enrollees, including protected individuals, of how communications regarding sensitive health care services are managed, including the process to update the protected individual's contact information.

(a) Health carriers must post a confidentiality request form clearly and conspicuously on its website for individuals to change their communication preferences regarding sensitive health information, such as updating their address, or to select another means of communication. When carriers post the form on their website, or make the form available through other means, the form must accompany clear instructions about how a protected individual or enrollee may submit the form including other means available to change the contact information regarding sensitive health care information. If carriers utilize their own confidentiality request form, then carriers must also provide a link to the form specified for use and made available on the office of the insurance commissioner's website. Carriers must accept the form specified by the commissioner when submitted by an enrollee or provider.

(b) Health carriers must implement the request and any subsequent request for changes within three business days from receipt of the request. If a request is incomplete or missing information, the carrier must implement as much of the request as possible, and contact the enrollee to obtain a complete request within three business days.

(4) For the purposes of appealing an adverse benefit determination, a protected individual may request that a health carrier direct sensitive health care communications and communications subject to confidentiality to another individual including, but not limited to, the policyholder, primary subscriber, or health care provider.

(5) Confidentiality of sensitive health care services does not prevent a health carrier from communicating with a provider, health care benefit manager, third-party administrator, another carrier and other HIPAA covered entities when necessary to process claims, state or federal mandated reporting, or for other activities necessary to ensure coverage including, but not limited to, coordination of benefits. If a carrier needs to communicate with a health care benefit manager or third-party administrator, then the health care benefit manager or third-party administrator must first ensure continued confidentiality, including continuing to communicate with the protected individual using their selected method of communication. If a carrier has a need to discuss services with another carrier or insurer, they must notify the other carrier or insurer of these requirements or ensure that they are aware of these requirements and any existing confidentiality requests.

(6) Communications and confidentiality required by this section must be provided according to the terms and requirements set forth in RCW 48.43.505.

NEW SECTION

WAC 284-43-0430 Requests regarding confidentiality and to limit disclosure. (1) When requested by an enrollee, a health carrier must limit disclosure of that enrollee's information, including personal health information and communications subjected to confidentiality. Once limited, a health carrier must communicate directly with the enrollee through the identified physical address, email, telephone number, or carrier portal.

(2) Health carriers must establish a process for informing enrollees, including protected individuals, of the ability to request confidentiality, limit disclosure, and update their contact information. Enrollees must be able to provide a request telephonically, or submit it by email or online, such as through a portal or on the carrier's webpage.

(a) Health carriers must post a confidentiality request form clearly and conspicuously on their website for individuals limit disclosure or to change their limits regarding communication preferences, such as updating their address, or selecting another means of communication. When carriers post the form on their website, or make the form available through other means, carriers must ensure that the form is accompanied by clear instructions about how a protected individual or enrollee may submit the form and the process, including other means available to change the enrollee's contact information. If carriers utilize their own confidentiality request form, then carriers must also provide a link to the form specified for use and made available on the office of the insurance commissioner's website. Carriers must accept the form specified by the commissioner when submitted by an enrollee or provider.

(b) Carriers must implement the request and any subsequent request for changes within three business days from receipt of the request. If a request is incomplete or missing information, the carrier must implement as much of the request as possible, and contact the enrollee to obtain a complete request within three business days.

(c) The request must remain in effect until the enrollee revokes or modifies the request in writing.

(3) Requests to limit disclosure do not prevent a health carrier from communicating with a provider, health care benefit manager, third-party administrator, another carrier and other HIPAA covered entities when necessary to process claims, state or federal mandated reporting, or for other activities necessary to ensure coverage including, but not limited to, coordination of benefits. If a carrier needs to communicate with a health care benefit manager or third-party administrator, then the benefit manager or third-party administrator must first ensure continued confidentiality, including continuing to communicate with the enrollee using their selected method of communication. If a carrier has a need to discuss services with another carrier or insurer, they must notify the other carrier or insurer of these requirements or ensure that they are aware of these requirements and any existing confidentiality requests.

(4) Confidentiality required by this section must be provided according to the terms and requirements set forth in RCW 48.43.505.

(5) Carriers must have processes and procedures in place to track information related to confidentiality requests made

under the requirements of this subchapter and RCW 48.43.-505, including the number of requests received by the carrier and the related time frames for processing the request. Carriers will submit this information to the commissioner when requested.

AMENDATORY SECTION (Amending WSR 17-12-069, filed 6/5/17, effective 1/1/18)

WAC 284-43-2050 Prior authorization processes. (1) This section applies to health benefit plans as defined in RCW 48.43.005, contracts for limited health care services as defined in RCW 48.44.035, and stand-alone dental and stand-alone vision plans. This section applies to plans issued or renewed on or after January 1, 2018. Unless stated otherwise, this section does not apply to prescription drug services.

(2) A carrier or its designated or contracted representative must maintain a documented prior authorization program description and use evidence-based clinical review criteria. A carrier or its designated or contracted representative must make determinations in accordance with the carrier's current clinical review criteria and use the medical necessity definition stated in the enrollee's plan. The prior authorization program must include a method for reviewing and updating clinical review criteria. A carrier is obligated to ensure compliance with prior authorization requirements, even if they use a third-party contractor. A carrier is not exempt from these requirements because it relied upon a third-party vendor or subcontracting arrangement for its prior authorization program. A carrier or its designated or contracted representative is not required to use medical evidence or standards in its prior authorization of religious nonmedical treatment or religious nonmedical nursing care.

(3) A prior authorization program must meet standards set forth by a national accreditation organization including, but not limited to, National Committee for Quality Assurance (NCQA), URAC, Joint Commission, and Accreditation Association for Ambulatory Health Care in addition to the requirements of this chapter. A prior authorization program must have staff who are properly qualified, trained, supervised, and supported by explicit written, current clinical review criteria and review procedures.

(4) Effective November 1, 2019, a carrier or its designated or contracted representative must have a current and accurate online prior authorization process. All parts of the process that utilize personally identifiable information must be accessed through a secure online process. The online process must be accessible to a participating provider and facility so that, prior to delivering a service, a provider and facility will have enough information to determine if a service is a benefit under the enrollee's plan and the information necessary to submit a complete prior authorization request. A carrier with an integrated delivery system is not required to comply with this subsection for the employees participating in the integrated delivery system. The online process must provide the information required for a provider or facility to determine for an enrollee's plan for a specific service:

- (a) If a service is a benefit;
- (b) If a prior authorization request is necessary;
- (c) What, if any preservice requirements apply; and

(d) If a prior authorization request is necessary, the following information:

(i) The clinical review criteria used to evaluate the request; and

(ii) Any required documentation.

(5) Effective November 1, 2019, in addition to other methods to process prior authorization requests, a carrier or its designated or contracted representative that requires prior authorization for services must have a secure online process for a participating provider or facility to complete a prior authorization request and upload documentation if necessary. A carrier with an integrated delivery system is not required to comply with this subsection for the employees participating in the integrated delivery system.

(6) Except for an integrated delivery system, a carrier or its designated or contracted representative must have a method that allows an out-of-network provider or facility to:

(a) Have access to any preservice requirements; and

(b) Request a prior authorization if prior authorization is required for an out-of-network provider or facility.

(7) A carrier or its designated or contracted representative that requires prior authorization for any service must allow a provider or facility to submit a request for a prior authorization at all times, including outside normal business hours.

(8) A carrier or its designated or contracted representative is responsible for maintaining a system of documenting information and supporting evidence submitted by a provider or facility while requesting prior authorization. This information must be kept until the claim has been paid or the appeals process has been exhausted.

(a) Upon request of the provider or facility, a carrier or its designated or contracted representative must remit to the provider or facility written acknowledgment of receipt of each document submitted by a provider or facility during the processing of a prior authorization request.

(b) When information is transmitted telephonically, a carrier or its designated or contracted representative must provide written acknowledgment of the information communicated by the provider or facility.

(9) A carrier or its designated or contracted representative must have written policies and procedures to assure that prior authorization determinations for a participating provider or facility are made within the appropriate time frames.

(a) Time frames must be appropriate to the severity of the enrollee condition and the urgency of the need for treatment, as documented in the prior authorization request.

(b) If the request from the participating provider or facility is not accompanied by all necessary information, the carrier or its designated or contracted representative must inform the provider or facility what additional information is needed and the deadline for its submission as set forth in this section.

(10) The time frames for carrier prior authorization determination and notification to a participating provider or facility are as follows:

(a) For standard prior authorization requests:

(i) The carrier or its designated or contracted representative must make a decision and provide notification within five calendar days.

(ii) If insufficient information has been provided to a carrier or its designated or contracted representative to make a decision, the carrier or its designated or contracted representative has five calendar days to request additional information from the provider or facility.

(A) The carrier or its designated or contracted representative must give a provider or facility five calendar days to give the necessary information to the carrier or its designated or contracted representative.

(B) The carrier or its designated or contracted representative must then make a decision and give notification within four calendar days of the receipt of the information or the deadline for receiving information, whichever is sooner.

(b) For expedited prior authorization requests:

(i) The carrier or its designated or contracted representative must make a decision and provide notification within two calendar days.

(ii) If insufficient information has been provided to a carrier or its designated or contracted representative to make a decision, the carrier or its designated or contracted representative has one calendar day to request additional information from the provider or facility.

(A) The carrier or its designated or contracted representative must give a provider or facility two calendar days to give the necessary information to the carrier or its designated or contracted representative.

(B) The carrier or its designated or contracted representative must then make a decision and give notification within two calendar days of the receipt of the information or the deadline for receiving information, whichever is sooner.

(iii) If the time frames for the approval of an expedited prior authorization are insufficient for a provider or facility to receive approval prior to the preferred delivery of the service, the prior authorization should be considered an extenuating circumstance as defined in WAC 284-43-2060.

(11) A carrier or its designated or contracted representative when conducting prior authorization must:

(a) Accept any evidence-based information from a provider or facility that will assist in the authorization process;

(b) Collect only the information necessary to authorize the service and maintain a process for the provider or facility to submit such records;

(c) If medical records are requested, require only the section(s) of the medical record necessary in that specific case to determine medical necessity or appropriateness of the service to be delivered, to include admission or extension of stay, frequency or duration of service; and

(d) Base review determinations on the medical information in the enrollee's records and obtained by the carrier up to the time of the review determination.

(12) When a provider or facility makes a request for the prior authorization, the response from the carrier or its designated or contracted representative must state if it is approved or denied. If the request is denied, the response must give the specific reason for the denial in clear and simple language. If the reason for the denial is based on clinical review criteria, the criteria must be provided. Written notice of the decision must be communicated to the provider or facility, and the enrollee. A decision may be provided orally, but subsequent written notice must also be provided. A denial must include

the department and credentials of the individual who has the authorizing authority to approve or deny the request. A denial must also include a phone number to contact the authorizing authority and a notice regarding the enrollee's appeal rights and process.

Whenever the prior authorization relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

(13) A prior authorization approval notification for all services must inform the requesting provider or facility, and the enrollee, whether the prior authorization is for a specific provider or facility. The notification must also state if the authorized service may be delivered by an out-of-network provider or facility and if so, disclose to the enrollee the financial implications for receiving services from an out-of-network provider or facility.

Whenever the notification relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

(14) A provider or facility may appeal a prior authorization denial to the carrier or its designated or contracted representative.

(15) Prior authorization determinations shall expire no sooner than forty-five days from date of approval. This requirement does not supersede RCW 48.43.039.

(16) In limited circumstances when an enrollee has to change plans due to a carrier's market withdrawal as defined in RCW 48.43.035 (4)(d) and 48.43.038 (3)(d), the subsequent carrier or its designated or contracted representative must recognize the prior authorization of the previous carrier until the new carrier's prior authorization process has been completed and its authorized treatment plan has been initiated. The subsequent carrier or its designated or contracted representative must ensure that the enrollee receives the previously authorized initial service as an in-network service. Enrollees must present proof of the prior authorization.

(a) For medical services, a carrier or its designated or contracted representative must recognize a prior authorization for at least thirty days or the expiration date of the original prior authorization, whichever is shorter.

(b) For pharmacy services, a carrier or its designated or contracted representative must recognize a prior authorization for the initial fill, or until the prior authorization process of the new carrier or its designated or contracted representative has been completed.

(17) Prior authorization for a facility-to-facility transport that requires prior authorization can be performed after the service is delivered. Authorization can only be based on information available to the carrier or its designated or contracted representative at the time of the prior authorization request.

(18) A carrier or its designated or contracted representative must have a prior authorization process that allows specialists the ability to request a prior authorization for a diagnostic or laboratory service based upon a review of medical records in advance of seeing the enrollee.

(19) A carrier or its designated or contracted representative must have a method that allows an enrollee, provider or facility to make a predetermination request when provided for by the plan.

(20) Predetermination notices must clearly disclose to the enrollee and requesting provider or facility, that the determination is not a prior authorization and does not guarantee services will be covered. The notice must state "A predetermination notice is not a prior authorization and does not guarantee services will be covered." Predetermination notices must be delivered within five calendar days of receipt of the request. Predetermination notices will disclose to a provider or facility for an enrollee's plan:

- (a) If a service is a benefit;
- (b) If a prior authorization request is necessary;
- (c) If any preservice requirements apply; ~~((and))~~

(d) If a prior authorization request is necessary or if a medical necessity review will be performed after the service has been delivered, the following information:

- (i) The clinical review criteria used to evaluate the request; and
- (ii) Any required documentation.

(e) Whenever a predetermination notice relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-3070 Notice and explanation of adverse benefit determination—General requirements. (1) A carrier must notify enrollees of an adverse benefit determination either electronically or by U.S. mail. The notification must be provided:

- (a) To an appellant or their authorized representative; ~~((and))~~
- (b) To the provider if the adverse benefit determination involves the preservice denial of treatment or procedure prescribed by the provider; and

(c) Whenever an adverse benefit determination relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

(2) A carrier or health plan's notice must include the following information, worded in plain language:

- (a) The specific reasons for the adverse benefit determination;
- (b) The specific health plan policy or contract sections on which the determination is based, including references to the provisions;
- (c) The plan's review procedures, including the appellant's right to a copy of the carrier and health plan's records related to the adverse benefit determination;
- (d) The time limits applicable to the review; and
- (e) The right of appellants and their providers to present evidence as part of a review of an adverse benefit determination.

(3) If an adverse benefit determination is based on medical necessity, decisions related to experimental treatment, or a similar exclusion or limit involving the exercise of professional judgment, the notification must contain either an explanation of the scientific or clinical basis for the determination, the manner in which the terms of the health plan were applied to the appellant's medical circumstances, or a state-

ment that such explanation is available free of charge upon request.

(4) If an internal rule, guideline, protocol, or other similar criterion was relied on in making the adverse benefit determination, the notice must contain either the specific rule, guideline, protocol, or other similar criterion; or a statement that a copy of the rule, guideline, protocol, or other criterion will be provided free of charge to the appellant on request.

(5) The notice of an adverse benefit determination must include an explanation of the right to review the records of relevant information, including evidence used by the carrier or the carrier's representative that influenced or supported the decision to make the adverse benefit determination.

(a) For purposes of this subsection, "relevant information" means information relied on in making the determination, or that was submitted, considered, or generated in the course of making the determination, regardless of whether the document, record, or information was relied on in making the determination.

(b) Relevant information includes any statement of policy, procedure, or administrative process concerning the denied treatment or benefit, regardless of whether it was relied on in making the determination.

(6) If the carrier and health plan determine that additional information is necessary to perfect the denied claim, the carrier and health plan must provide a description of the additional material or information that they require, with an explanation of why it is necessary, as soon as the need is identified.

(7) An enrollee or covered person may request that a carrier identify the medical, vocational, or other experts whose advice was obtained in connection with the adverse benefit determination, even if the advice was not relied on in making the determination. The carrier may satisfy this requirement by providing the job title, a statement as to whether the expert is affiliated with the carrier as an employee, and the expert's specialty, board certification status, or other criteria related to the expert's qualification without providing the expert's name or address. The carrier must be able to identify for the commissioner upon request the name of each expert whose advice was obtained in connection with the adverse benefit determination.

(8) The notice must include language substantially similar to the following:

"If you request a review of this adverse benefit determination, (Company name) will continue to provide coverage for the disputed benefit pending outcome of the review if you are currently receiving services or supplies under the disputed benefit. If (Company name) prevails in the appeal, you may be responsible for the cost of coverage received during the review period. The decision at the external review level is binding unless other remedies are available under state or federal law."

AMENDATORY SECTION (Amending WSR 16-23-168, filed 11/23/16, effective 1/1/17)

WAC 284-43-4040 Procedures for review and appeal of adverse determinations. (1) An enrollee or the enrollee's representative, including the treating provider (regardless of whether the provider is affiliated with the carrier) acting on behalf of the enrollee may appeal an adverse determination in writing. The carrier must reconsider the adverse determination and notify the enrollee of its decision within fourteen days of receipt of the appeal unless the carrier notifies the enrollee that an extension is necessary to complete the appeal; however, the extension cannot delay the decision beyond thirty days of the request for appeal, without the informed, written consent of the enrollee.

Whenever an adverse determination relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

(2) Whenever a health carrier makes an adverse determination and delay would jeopardize the enrollee's life or materially jeopardize the enrollee's health, the carrier shall expedite and process either a written or an oral appeal and issue a decision no later than seventy-two hours after receipt of the appeal. If the treating health care provider determines that delay could jeopardize the enrollee's health or ability to regain maximum function, the carrier shall presume the need for expeditious review, including the need for an expeditious determination in any independent review under WAC 284-43-4040 and 284-43A-150.

(3) A carrier may not take or threaten to take any punitive action against a provider acting on behalf or in support of an enrollee appealing an adverse determination.

(4) Appeals of adverse determinations shall be evaluated by health care providers who were not involved in the initial decision and who have appropriate expertise in the field of medicine that encompasses the enrollee's condition or disease.

(5) All appeals must include a review of all relevant information submitted by the enrollee or a provider acting on behalf of the enrollee.

(6) The carrier shall issue to affected parties and to any provider acting on behalf of the enrollee a written notification of the adverse determination that includes the actual reasons for the determination, the instructions for obtaining an appeal of the carrier's decision, a written statement of the clinical rationale for the decision, and instructions for obtaining the clinical review criteria used to make the determination.

Whenever an adverse determination notification relates to a protected individual, as defined in RCW 48.43.005, the health carrier must follow RCW 48.43.505.

**WSR 20-20-116
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2020-13—Filed October 6, 2020, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-16-131.

Title of Rule and Other Identifying Information: Accessing and receiving health care services and benefits through health plans, short term limited duration medical plans and student health plans, consistent with SHB 2338 (chapter 228, Laws of 2020), ESHB 2642 (chapter 345, Laws of 2020), ESHB 1879 (chapter 171, Laws of 2019), SSB 5889 (chapter 56, Laws of 2019) and related health care legislation enacted during the 2019 and 2020 legislative sessions.

Hearing Location(s): On November 12, 2020, at 11 a.m. Register for the Zoom videoconference here: https://wa-oic.zoom.us/join/jEvdUCopz8uGtYmAxLbgOQq4r4N0_TPIQKM. Due to the COVID-19 public health emergency, this hearing will be held via Zoom.

Date of Intended Adoption: November 13, 2020.

Submit Written Comments to: Jane Beyer, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by November 9, 2020.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email MelanieW@oic.wa.gov, by November 9, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2019 and 2020, the legislature enacted SHB 2338, ESHB 2642, ESHB 1879 and SSB 5889 and related health care legislation that address[ed] accessing and receiving health care services and benefits through health plans, short term limited duration medical plans and student health plans. Multiple provisions of the office of the insurance commissioner (OIC) rules in chapter 284-43 WAC need amendments to be consistent with the new laws, including rules related to carrier utilization review processes, essential health benefits, mental health parity and protection of individuals from discrimination by health carriers.

Reasons Supporting Proposal: This consolidated rule-making proceeding is necessary to ensure that current rules are amended as needed to be consistent with new statutes and that rules are adopted by OIC prior to January 1, 2021. These rules will facilitate implementation of the laws by ensuring that all affected consumers and health care entities understand their rights and obligations under the new laws.

Statutory Authority for Adoption: RCW 48.02.060, 48.20.460, 48.43.0128, 48.44.050, 48.46.200.

Statute Being Implemented: SHB 2338 (chapter 228, Laws of 2020), ESHB 2642 (chapter 345, Laws of 2020), ESHB 1879 (chapter 171, Laws of 2019), SSB 5889 (chapter 56, Laws of 2019), 2SSB 5602 (chapter 399, Laws of 2019).

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jane Beyer, P.O. Box 40260, Olympia, WA, 360-725-7043; Implementation: Molly Nolette/Todd Dixon, P.O. Box 40255, Tumwater, WA, 360-725-7117/360-725-7262; and Enforcement: Toni Hood, P.O. Box 40255, Tumwater, WA, 360-725-7050.

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 Bode Makinde, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, fax 360-725-7041, TTY 360-725-7041, email bodem@oic.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.

Is exempt under RCW [No information supplied by agency].

Explanation of exemptions: The stakeholders that are affected by this rule are not small businesses as defined in RCW 19.85.020(3).

WAC 284-43-5642 details the benefits that health carriers must offer as the "essential health benefits" (EHB) in individual and small group health plans. The obligation is on the carrier to include these benefits in any nongrandfathered individual or small group health plan they offer.

WAC 284-43-5935 through 284-43-5980, nondiscrimination, these rules specify actions that carriers either must take or are prohibited from taking to ensure that carriers do not discriminate against individuals based upon their race, color, national origin, sex, gender identity, sexual orientation, age, or disability with respect to health insurance plans they offer and how they offer and provide coverage under those plans. The rules are authorized by RCW 48.43.0128, which directs OIC to adopt any rules necessary to implement this section, consistent with federal rules and guidance in effect on January 1, 2017, implementing the Affordable Care Act (ACA). These sections of WAC bring into state rules the federal nondiscrimination rules that were adopted in 2016 to implement section 1557 of the ACA, as they were in effect on January 1, 2017.

WAC 284-43-7000 through 284-43-7120, mental health parity, this rule making updates our current mental health parity rules, which apply to health carriers, consistent with the terms of SHB 2338. They expand the scope of plans that the mental health parity law applies to, to include short-term limited duration medical plans and student health plans. Carriers offering these types of health plans must now comply with OIC mental health parity rules.

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. Cost of Compliance/Minor cost Threshold: The OIC applied a default cost of compliance (**\$100**) when analyzing whether the rules would have a disproportionate impact on small businesses as

defined in RCW 19.85.020(3). Below are calculations for minor cost thresholds across all impacted industries based on the best analogous NAICS types. For these reasons, the pro-

posed rules do not impose more-than-minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	NAICS Code Title	Average Annual Employment	Minor Cost Estimate	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
621111	Offices of Physicians (except Mental Health Specialists)	52,688	20337.1	\$20,337.10 2018 Dataset pulled from USBLS	\$11,406.29 2018 Dataset pulled from DOR
621112	Offices of Physicians; Mental Health Specialists	672	2299.39	\$2,299.39 2018 Dataset pulled from ESD	\$1,113.55 2018 Dataset pulled from DOR
621210	Offices of Dentists	28,203	3853.85	\$3,853.85 2018 Dataset pulled from ESD	\$3,551.76 2018 Dataset pulled from DOR
621310	Office of Chiropractors	5,359	1292.12	\$1,292.12 2018 Dataset pulled from ESD	\$1,124.85 2018 Dataset pulled from DOR
621320	Offices of Optometrists	3,145	2690.05	\$2,420.60 2018 Dataset pulled from ESD	\$2,690.05 2018 Dataset pulled from DOR
621330	Offices of Mental Health Practitioners (except Physicians)	2,095	2718.96	\$2,718.96 2018 Dataset pulled from ESD	\$519.90 2018 Dataset pulled from DOR
621340	Offices of Physical; Occupational and Speech Therapists; and Audiologists	9,965	5640.45	\$5,640.45 2018 Dataset pulled from USBLS	\$1,839.55 2018 Dataset pulled from DOR
621399	Offices of All Other Miscellaneous Health Practitioners	5,245	1552.93	\$1,552.93 2018 Dataset pulled from USBLS	\$826.66 2018 Dataset pulled from DOR
621410	Family Planning Centers	721	8085.25	\$8,085.25 2018 Dataset pulled from USBLS	\$4,347.88 2018 Dataset pulled from DOR
621420	Outpatient Mental Health and Substance Abuse Centers	9,834	16841.11	\$16,841.11 2018 Dataset pulled from USBLS	\$3,444.05 2018 Dataset pulled from DOR
621492	Kidney Dialysis Centers	3,456	81597.4	\$21,492.09 2018 Dataset pulled from USBLS	\$81,597.40 2018 Dataset pulled from DOR
621493	Freestanding Ambulatory Surgical and Emergency Centers	1,904	25083.15	Redacted 2018 Dataset pulled from USBLS	\$25,083.15 2018 Dataset pulled from DOR
621498	All Other Outpatient Care Centers	5,816	33449.04	\$33,449.04 2018 Dataset pulled from USBLS	\$4,682.97 2018 Dataset pulled from DOR
621511	Medical Laboratories	4,328	29239.62	\$15,159.09 2018 Dataset pulled from USBLS	\$29,239.62 2018 Dataset pulled from DOR
621512	Diagnostic Imaging Centers	1,000	12574.14	\$9,448.99 2018 Dataset pulled from USBLS	\$12,574.14 2018 Dataset pulled from DOR
621610	Home Health Care Services	11,822	18215.64	\$18,215.64 2018 Dataset pulled from USBLS	\$9,631.09 2018 Dataset pulled from DOR
621910	Ambulance Services	2,470	26940.84	\$26,940.84 2018 Dataset pulled from USBLS	\$17,939.90 2018 Dataset pulled from DOR
621991	Blood and Organ Banks	2,169	40844.25	\$36,222.80 2018 Dataset pulled from USBLS	\$40,844.25 2018 Dataset pulled from DOR

2017 Industry NAICS Code	NAICS Code Title	Average Annual Employment	Minor Cost Estimate	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
621999	All Other Miscellaneous Ambulatory Health Care Services	472	4901.86	Redacted 2018 Dataset pulled from ESD	\$4,901.86 2018 Dataset pulled from DOR
622110	General Medical and Surgical Hospitals	88,081	6529[.]72	\$652,972.00 2018 Dataset pulled from USBLS	\$585,843.60 2018 Dataset pulled from DOR
622210	Psychiatric and Substance Abuse Hospitals	2,406	48735.86	\$48,735.86 2018 Dataset pulled from USBLS	\$28,916.57 2018 Dataset pulled from DOR
524114	Direct Health and Medical Insurance Carriers	6,777	228929.41	\$88,030.57 2018 Dataset pulled from USBLS	\$228,929.41 2018 Dataset pulled from DOR

October 6, 2020
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 17-12-069, filed 6/5/17, effective 7/6/17)

WAC 284-43-0160 Definitions. Except as defined in other subchapters and unless the context requires otherwise, the following definitions shall apply throughout this chapter.

(1) "Adverse determination" has the same meaning as the definition of adverse benefit determination in RCW 48.43.005, and includes:

(a) The determination includes any decision by a health carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part for the benefit;

(b) The denial, reduction, termination, or failure to provide or make payment, in whole or in part, for a benefit based on a determination by a health carrier or its designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;

(c) Any prospective review or retrospective review determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit;

(d) A rescission of coverage determination; or

(e) A carrier's denial of an application for coverage.

(2) "Authorization" or "certification" means a determination by the carrier that an admission, extension of stay, or other health care service has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness in relation to the applicable health plan.

(3) "Behavioral health agency" means an agency licensed or certified under RCW 71.24.037.

(4) "Clinical review criteria" means the written screens or screening procedures, decision rules, medical protocols, or clinical practice guidelines used by the carrier as an element in the evaluation of medical necessity and appropriateness of

requested admissions, procedures, and services, including prescription drug benefits, under the auspices of the applicable plan. Clinical approval criteria has the same meaning as clinical review criteria.

~~((4))~~ (5) "Covered health condition" means any disease, illness, injury or condition of health risk covered according to the terms of any health plan.

~~((5))~~ (6) "Covered person" or "enrollee" means an individual covered by a health plan including a subscriber, policyholder, or beneficiary of a group plan.

~~((6))~~ (7) "Emergency fill" means a limited dispensed amount of medication that allows time for the processing of a preauthorization request. Emergency fill only applies to those circumstances where a patient presents at a contracted pharmacy with an immediate therapeutic need for a prescribed medication that requires a prior authorization.

~~((7))~~ (8) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain or emotional distress, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical, mental health or substance use disorder treatment attention, if failure to provide medical, mental health or substance use disorder treatment attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

~~((8))~~ (9) "Emergency services" has the meaning set forth in RCW 48.43.005.

~~((9))~~ (10) "Enrollee point-of-service cost-sharing" or "cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

~~((10))~~ (11) "Expedited prior authorization request" means any request by a provider or facility for approval of a service where the passage of time could seriously jeopardize the life or health of the enrollee, seriously jeopardize the enrollee's ability to regain maximum function, or, in the opinion of a provider or facility with knowledge of the enrollee's medical condition, would subject the enrollee to severe pain

that cannot be adequately managed without the service that is the subject of the request.

~~((11))~~ (12) "Facility" means an institution providing health care services~~(s)~~ including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic settings, and as defined in RCW 48.43.005.

~~((12))~~ (13) "Formulary" means a listing of drugs used within a health plan. A formulary must include drugs covered under an enrollee's medical benefit.

~~((13))~~ (14) "Grievance" has the meaning set forth in RCW 48.43.005.

~~((14))~~ (15) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

~~((15))~~ (16) "Health care service" or "health service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

~~((16))~~ (17) "Health carrier" or "carrier" means a disability insurance company regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, and a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in the Patient Protection and Affordable Care Act (P.L. 111-148, as amended (2010)).

~~((17))~~ (18) "Health plan" or "plan" means any individual or group policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

~~((18))~~ (19) "Immediate therapeutic needs" means those needs where passage of time without treatment would result in imminent emergency care, hospital admission or might seriously jeopardize the life or health of the patient or others in contact with the patient.

~~((19))~~ (20) "Indian health care provider" means:

(a) The Indian Health Service, an agency operated by the U.S. Department of Health and Human Services established by the Indian Health Care Improvement Act, Section 601, 25 U.S.C. §1661;

(b) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. §1603(14), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. §450 et seq.;

(c) A tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. §1603(26), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the ISDEAA, 25 U.S.C. §450 et seq.;

(d) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. §1603(14), or tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. §1603(26), that operates a health program with funding provided in whole or part pursuant to 25 U.S.C. §47 (commonly known as the Buy Indian Act); or

(e) An urban Indian organization that operates a health program with funds in whole or part provided by Indian Health Service under a grant or contract awarded pursuant to Title V of the Indian Health Care Improvement Act, Section 4(29), 25 U.S.C. §1603(29).

~~((20))~~ (21) "Managed care plan" means a health plan that coordinates the provision of covered health care services to a covered person through the use of a primary care provider and a network.

~~((21))~~ (22) "Medically necessary" or "medical necessity" in regard to mental health services and pharmacy services is a carrier determination as to whether a health service is a covered benefit because the service is consistent with generally recognized standards within a relevant health profession.

~~((22))~~ (23) "Mental health provider" means a health care provider or a health care facility authorized by state law to provide mental health services.

~~((23))~~ (24) "Mental health services" means in-patient or out-patient treatment~~(s)~~ including, but not limited to, partial hospitalization ~~((or)), residential treatment, out-patient facility-based treatment, intensive outpatient treatment, emergency services, or prescription drugs to manage, stabilize or ameliorate the effects of a mental disorder listed in the most current version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* ~~((H))~~ published by the American Psychiatric Association, ~~((excluding))~~ including diagnoses and treatment~~(s)~~ for substance ~~((abuse, 291.0 through 292.9 and 303.0 through 305.9))~~ use disorder.~~

~~((24))~~ (25) "Network" means the group of participating providers and facilities providing health care services to a particular health plan or line of business (individual, small, or

large group). A health plan network for issuers offering more than one health plan may be smaller in number than the total number of participating providers and facilities for all plans offered by the carrier.

~~((25) "Out-patient therapeutic visit" or "out-patient visit" means a clinical treatment session with a mental health provider of a duration consistent with relevant professional standards used by the carrier to determine medical necessity for the particular service being rendered, as defined in *Physicians Current Procedural Terminology*, published by the American Medical Association.))~~

(26) "Participating provider" and "participating facility" means a facility or provider who, under a contract with the health carrier or with the carrier's contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, from the health carrier rather than from the covered person.

(27) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

(28) "Pharmacy services" means the practice of pharmacy as defined in chapter 18.64 RCW and includes any drugs or devices as defined in chapter 18.64 RCW.

(29) "Predetermination request" means a voluntary request from an enrollee or provider or facility for a carrier or its designated or contracted representative to determine if a service is a benefit, in relation to the applicable plan.

(30) "Preservice requirement" means any requirement that a carrier places on a provider or facility that may limit their ability to deliver a service that requires prior authorization. Examples include limits on the type of provider or facility delivering the service, a service that must be provided before a specific service will be authorized, site of care/place of service, and whether a provider administered medication needs to be obtained from a specialty pharmacy.

(31) "Primary care provider" means a participating provider who supervises, coordinates, or provides initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

(32) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(33) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(34) "Prior authorization" means a mandatory process that a carrier or its designated or contracted representative requires a provider or facility to follow to determine if a service is a benefit and meets the requirements for medical necessity, clinical appropriateness, level of care, or effectiveness in relation to the applicable plan. Prior authorization

occurs before the service is delivered. For purposes of WAC 284-43-2050 and 284-43-2060, any term used by a carrier or its designated or contracted representative to describe this process is prior authorization. For example, prior authorization has also been referred to as "prospective review," "preauthorization," or "precertification."

(35) "Service area" means the geographic area or areas where a specific product is issued, accepts members or enrollees, and covers provided services. A service area must be defined by the county or counties included unless, for good cause, the commissioner permits limitation of a service area by zip code. Good cause includes geographic barriers within a service area, or other conditions that make offering coverage throughout an entire county unreasonable.

(36) "Small group plan" means a health plan issued to a small employer as defined under RCW 48.43.005(33) comprising from one to fifty eligible employees.

(37) "Standard prior authorization request" means a request by a provider or facility for approval of a service where the request is made in advance of the enrollee obtaining a service that is not required to be expedited.

(38) "Step therapy protocol" means a drug utilization management prior authorization protocol or program that establishes the specific sequence in which prescription drugs are covered by a health carrier for a medical condition.

(39) "Substance use disorder" means a substance-related or addictive disorder listed in the most current version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* published by the American Psychiatric Association.

(40) "Substitute drug" means a prescription medication, drug or therapy that a carrier covers based on an exception request. When the exception request is based on therapeutic equivalence, a substitute drug means a therapeutically equivalent substance as defined in chapter 69.41 RCW.

~~((39))~~ (41) "Supplementary pharmacy services" or "other pharmacy services" means pharmacy services involving the provision of drug therapy management and other services not required under state and federal law but that may be rendered in connection with dispensing, or that may be used in disease prevention or disease management.

(42) "Withdrawal management services" means twenty-four hour medically managed or medically monitored detoxification and assessment and treatment referral for adults or adolescents withdrawing from alcohol or drugs, which may include induction of medications for addiction recovery.

AMENDATORY SECTION (Amending WSR 17-12-069, filed 6/5/17, effective 1/1/18)

WAC 284-43-2000 Health care services utilization review—Generally. (1) Unless provided otherwise in this chapter or chapter 284-170 WAC with respect to utilization review of prescription drug services, this section governs issuer utilization review programs.

(2) These definitions apply to this section:

(a) "Concurrent care review request" means:

(i) Any request for an extension of a previously authorized inpatient stay or a previously authorized ongoing outpatient service, e.g., physical therapy, home health, etc.; and

(ii) Any request for authorization of continued withdrawal management or extension of inpatient or residential substance use disorder treatment services, including during the period of time that a behavioral health agency is arranging a transfer to an appropriate facility or lower level of care following an initial period of treatment under RCW 48.43.761.

(b) "Postservice review request" means any request for approval of care or treatment that has already been received by the enrollee.

~~((2))~~ (3) Each issuer must maintain a documented utilization review program description and written clinical review criteria based on reasonable medical evidence. The program must include a method for reviewing and updating criteria. Issuers must make clinical review criteria available upon request to participating providers and facilities. An issuer need not use medical evidence or standards in its utilization review of religious nonmedical treatment or religious non-medical nursing care.

~~((3))~~ (4) The utilization review program must meet accepted national certification standards such as those used by the National Committee for Quality Assurance except as otherwise required by this chapter and must have staff who are properly qualified, trained, supervised, and supported by explicit written clinical review criteria and review procedures.

~~((4))~~ (5) Each issuer when conducting utilization review must:

(a) Accept information from any reasonably reliable source that will assist in the certification process;

(b) Collect only the information necessary to certify the admission, procedure or treatment, length of stay, or frequency or duration of services;

(c) Not routinely require providers or facilities to numerically code diagnoses or procedures to be considered for certification, but may request such codes, if available;

(d) Not routinely request copies of medical records on all enrollees reviewed;

(e) Require only the section(s) of the medical record during concurrent review necessary in that specific case to certify medical necessity or appropriateness of the admission or extension of stay, frequency or duration of service;

(f) For concurrent review, base review determinations solely on the medical information obtained by the issuer at the time of the review determination;

(g) For retrospective review, base review determinations solely on the medical information available to the provider or facility at the time the health service was provided;

(h) Not retrospectively deny coverage for emergency and nonemergency care that had prior authorization under the plan's written policies at the time the care was rendered unless the prior authorization was based upon a material misrepresentation by the provider or facility;

(i) Not retrospectively deny coverage or payment for care based upon standards or protocols not communicated to the provider or facility within a sufficient time period for the provider or facility to modify care in accordance with such standard or protocol; and

(j) Reverse its certification determination only when information provided to the issuer is materially different from

that which was reasonably available at the time of the original determination.

~~((5))~~ (6) Each issuer must reimburse reasonable costs of medical record duplication for reviews.

~~((6))~~ (7) Each issuer must have written procedures to assure that reviews and second opinions are conducted in a timely manner.

(a) Review time frames must be appropriate to the severity of the enrollee condition and the urgency of the need for treatment, as documented in the review request.

(b) If the review request from the provider or facility is not accompanied by all necessary information, the issuer must tell the provider or facility what additional information is needed and the deadline for its submission. Upon the sooner of the receipt of all necessary information or the expiration of the deadline for providing information, the time frames for issuer review determination and notification must be no less favorable than federal Department of Labor standards, as follows. For urgent inpatient services that require concurrent review, the time frame is as soon as possible, taking into account the medical exigencies, and no later than twenty-four hours, provided that the request is made at least twenty-four hours prior to the expiration of previously approved period of time or number of treatments. For post-service review requests, within thirty calendar days.

(c) Notification of the determination must be provided as follows:

(i) Information about whether a request was approved or denied must be made available to the provider or facility, and enrollee. Issuers must at a minimum make the information available on their website or from their call center.

(ii) Whenever there is an adverse determination the issuer must notify the provider or facility and the enrollee. The issuer must inform the parties in advance whether it will provide notification by phone, mail, fax, or other means.

(iii) Whenever the adverse determination relates to a protected individual, as defined in RCW 48.43.005, the issuer must follow RCW 48.43.505.

(d) As appropriate to the type of request, notification must include the number of extended days, the next anticipated review point, the new total number of days or services approved, and the date of admission or onset of services.

(e) The frequency of reviews for the extension of initial determinations must be based on the severity or complexity of the enrollee's condition or on necessary treatment and discharge planning activity.

~~((7))~~ (8) Concurrent care review requests related to authorization for coverage of continued withdrawal management or extension of inpatient or residential substance use disorder treatment services also must adhere to the requirements of RCW 48.43.761. In the event of a conflict between RCW 48.43.761 and the requirements of subsections (4) through (8) of this section, RCW 48.43.761 governs.

(9) No issuer may penalize or threaten a provider or facility with a reduction in future payment or termination of participating provider or participating facility status because the provider or facility disputes the issuer's determination with respect to coverage or payment for health care service.

AMENDATORY SECTION (Amending WSR 20-03-114, filed 1/16/20, effective 2/16/20)

WAC 284-43-5642 Essential health benefit categories. (1) A health benefit plan must cover "ambulatory patient services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "ambulatory patient services" those medically necessary services delivered to enrollees in settings other than a hospital or skilled nursing facility, which are generally recognized and accepted for diagnostic or therapeutic purposes to treat illness or injury.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as ambulatory patient services:

- (i) Home and outpatient dialysis services;
- (ii) Hospice and home health care, including skilled nursing care as an alternative to hospitalization consistent with WAC 284-44-500, 284-46-500, and 284-96-500;
- (iii) Provider office visits and treatments, and associated supplies and services, including therapeutic injections and related supplies;
- (iv) Urgent care center visits, including provider services, facility costs and supplies;
- (v) Ambulatory surgical center professional services, including anesthesiology, professional surgical services, surgical supplies and facility costs;
- (vi) Diagnostic procedures including colonoscopies, cardiovascular testing, pulmonary function studies and neurology/neuromuscular procedures; and
- (vii) Provider contraceptive services and supplies including, but not limited to, vasectomy, tubal ligation and insertion or extraction of FDA-approved contraceptive devices.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the ambulatory category:

- (i) Infertility treatment and reversal of voluntary sterilization;
- (ii) Routine foot care for those that are not diabetic;
- (iii) Coverage of dental services following injury to sound natural teeth. However, health plans must cover oral surgery related to trauma and injury. Therefore, a plan may not exclude services or appliances necessary for or resulting from medical treatment if the service is either emergency in nature or requires extraction of teeth to prepare the jaw for radiation treatments of neoplastic disease;
- (iv) Private duty nursing for hospice care and home health care, to the extent consistent with state and federal law;
- (v) Adult dental care and orthodontia delivered by a dentist or in a dentist's office;
- (vi) Nonskilled care and help with activities of daily living;
- (vii) Hearing care, routine hearing examinations, programs or treatment for hearing loss including, but not limited to, externally worn or surgically implanted hearing aids, and the surgery and services necessary to implant them. However, plans must cover cochlear implants and hearing screen-

ing tests that are required under the preventive services category, unless coverage for these services and devices are required as part of and classified to another essential health benefits category; and

- (viii) Obesity or weight reduction or control other than:
 - (A) Covered nutritional counseling; and
 - (B) Obesity-related services for which the U.S. Preventive Services Task Force for prevention and chronic care has issued A and B recommendations on or before the applicable plan year, which issuers must cover under subsection (9) of this section.

(c) The base-benchmark plan's visit limitations on services in the ambulatory patient services category include:

- (i) Ten spinal manipulation services per calendar year without referral;
- (ii) Twelve acupuncture services per calendar year without referral;
- (iii) Fourteen days respite care on either an inpatient or outpatient basis for hospice patients, per lifetime; and
- (iv) One hundred thirty visits per calendar year for home health care.

(d) State benefit requirements classified to the ambulatory patient services category are:

- (i) Chiropractic care (RCW 48.44.310);
- (ii) TMJ disorder treatment (RCW 48.21.320, 48.44.460, and 48.46.530); and
- (iii) Diabetes-related care and supplies (RCW 48.20.391, 48.21.143, 48.44.315, and 48.46.272).

(2) A health benefit plan must cover "emergency medical services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as emergency medical services the care and services related to an emergency medical condition.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as emergency services:

- (i) Ambulance transportation to an emergency room and treatment provided as part of the ambulance service;
- (ii) Emergency room and department based services, supplies and treatment, including professional charges, facility costs, and outpatient charges for patient observation and medical screening exams required to stabilize a patient experiencing an emergency medical condition;
- (iii) Prescription medications associated with an emergency medical condition, including those purchased in a foreign country.

(b) The base-benchmark plan does not specifically exclude services classified to the emergency medical services category.

(c) The base-benchmark plan does not establish visit limitations on services in the emergency medical services category.

(d) State benefit requirements classified to the emergency medical services category include services necessary to screen and stabilize a covered person (RCW 48.43.093).

(3) A health benefit plan must cover "hospitalization" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as hospitalization services the medically neces-

sary services delivered in a hospital or skilled nursing setting including, but not limited to, professional services, facility fees, supplies, laboratory, therapy or other types of services delivered on an inpatient basis.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as hospitalization services:

(i) Hospital visits, facility costs, provider and staff services and treatments delivered during an inpatient hospital stay, including inpatient pharmacy services;

(ii) Skilled nursing facility costs, including professional services and pharmacy services and prescriptions filled in the skilled nursing facility pharmacy;

(iii) Transplant services, supplies and treatment for donors and recipients, including the transplant or donor facility fees performed in either a hospital setting or outpatient setting;

(iv) Dialysis services delivered in a hospital;

(v) Artificial organ transplants based on an issuer's medical guidelines and manufacturer recommendations;

(vi) Respite care services delivered on an inpatient basis in a hospital or skilled nursing facility;

(vii) Inpatient hospitalization where mental illness is the primary diagnosis.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the hospitalization category:

(i) Cosmetic or reconstructive services and supplies except in the treatment of a congenital anomaly, to restore a physical bodily function lost as a result of injury or illness, or related to breast reconstruction following a medically necessary mastectomy;

(ii) The following types of surgery:

(A) Bariatric surgery and supplies;

(B) Orthognathic surgery and supplies unless due to temporomandibular joint disorder or injury, sleep apnea or congenital anomaly.

(iii) Reversal of sterilizations; and

(iv) Surgical procedures to correct refractive errors, astigmatism or reversals or revisions of surgical procedures which alter the refractive character of the eye.

(c) The base-benchmark plan establishes specific limitations on services classified to the hospitalization category that conflict with state or federal law as of January 1, 2017. Health plans may not include the base-benchmark plan limitations listed below and must cover all services consistent with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557, including those codified at 81 Fed. Reg. 31375 et seq. (2016), that were in effect on January 1, 2017, RCW 48.30.300, 48.43.0128, 48.43.072, 48.43.073, 49.60.040 and 49.60.178:

(i) The base-benchmark plan allows a waiting period for transplant services;

(ii) The base-benchmark plan excludes coverage for sexual reassignment treatment, surgery, or counseling services; and

(iii) The base-benchmark plan excludes coverage for hospitalization where mental illness or a substance use disorder is the primary diagnosis.

(d) The base-benchmark plan's visit limitations on services in the hospitalization category include:

(i) Sixty inpatient days per calendar year for illness, injury or physical disability in a skilled nursing facility;

(ii) Thirty inpatient rehabilitation service days per calendar year. For purposes of determining actuarial value, this benefit may be classified to the hospitalization category or to the rehabilitation services category, but not to both.

(e) State benefit requirements classified to the hospitalization category are:

(i) General anesthesia and facility charges for dental procedures for those who would be at risk if the service were performed elsewhere and without anesthesia (RCW 48.43.185);

(ii) Reconstructive breast surgery resulting from a mastectomy that resulted from disease, illness or injury (RCW 48.20.395, 48.21.230, 48.44.330, and 48.46.280);

(iii) Coverage for treatment of temporomandibular joint disorder (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iv) Coverage at a long-term care facility following hospitalization (RCW 48.43.125).

(4) A health benefit plan must cover "maternity and newborn services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as maternity and newborn services the medically necessary care and services delivered to women during pregnancy and in relation to delivery and recovery from delivery and to newborn children.

(a) A health benefit plan must cover the following services which are specifically covered by the base-benchmark plan and classify them as maternity and newborn services:

(i) In utero treatment for the fetus;

(ii) Vaginal or cesarean childbirth delivery in a hospital or birthing center, including facility fees;

(iii) Nursery services and supplies for newborns, including newly adopted children;

(iv) Infertility diagnosis;

(v) Prenatal and postnatal care and services, including screening;

(vi) Complications of pregnancy such as, but not limited to, fetal distress, gestational diabetes, and toxemia; and

(vii) Termination of pregnancy (~~Termination of pregnancy may be included in an issuer's essential health benefits package, and be consistent with 42 U.S.C. 18023 (b)(a)(A)(i) and 45 C.F.R. 156.115, as those sections do not require, but do not prohibit, an issuer from offering the benefit. This subsection does not relieve an issuer of requirements of current state law related to coverage for termination of pregnancy~~) coverage that is substantially equivalent to coverage for maternal care or services, as provided in RCW 48.43.073.

(b) A health benefit plan may, but is not required to, include genetic testing of the child's father as part of the EHB-benchmark package. The base-benchmark plan specifically excludes this service. If an issuer covers this benefit, the issuer may not include this benefit in establishing actuarial value for the maternity and newborn category.

(c) The base-benchmark plan's limitations on services in the maternity and newborn services category include cover-

age of home birth by a midwife or nurse midwife only for low risk pregnancy.

(d) State benefit requirements classified to the maternity and newborn services category include:

(i) Maternity services that include diagnosis of pregnancy, prenatal care, delivery, care for complications of pregnancy, physician services, and hospital services (RCW 48.43.041);

(ii) Newborn coverage that is not less than the postnatal coverage for the mother, for no less than three weeks (RCW 48.43.115); and

(iii) Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary (RCW 48.20.430, 48.21.244, 48.44.344, and 48.46.375).

(5) A health benefit plan must cover "mental health and substance use disorder services, including behavioral health treatment" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as mental health and substance use disorder services, including behavioral health treatment, the medically necessary care, treatment and services for mental health conditions and substance use disorders categorized in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* published by the American Psychiatric Association, including behavioral health treatment for those conditions.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as mental health and substance use disorder services, including behavioral health treatment:

(i) Inpatient, residential, and outpatient mental health and substance use disorder treatment, including diagnosis, partial hospital programs or inpatient services;

(ii) Chemical dependency detoxification;

(iii) Behavioral treatment for a DSM category diagnosis;

(iv) Services provided by a licensed behavioral health provider for a covered diagnosis in a skilled nursing facility;

(v) Prescription medication including medications prescribed during an inpatient and residential course of treatment;

(vi) Acupuncture treatment visits without application of the visit limitation requirements, when provided for chemical dependency.

(b) A health benefit plan may, but is not required to, include ~~((the following services))~~ court-ordered mental health treatment that is not medically necessary as part of the EHB-benchmark package. The base-benchmark plan specifically excludes ~~((these))~~ this service(s). If an issuer includes ~~((these))~~ this benefit(s) in a health plan, the issuer may not include ~~((these))~~ this benefit(s) in establishing actuarial value for the category of mental health and substance use disorder services including behavioral health treatment~~((:~~

~~(i) Counseling in the absence of illness, other than family counseling when the patient is a child or adolescent with a covered diagnosis and the family counseling is part of the treatment for mental health services;~~

~~(ii) Mental health treatment for diagnostic codes 302 through 302.9 in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, or for "V code" diagnoses except for medically necessary services for~~

~~parent-child relational problems for children five years of age or younger, neglect or abuse of a child for children five years of age or younger, bereavement for children five years of age or younger, and gender dysphoria consistent with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557, as of January 1, 2017, including those found at 81 Fed. Reg. 31375 et seq. (2016), RCW 48.30.300 and 49.60.040, unless this exclusion is preempted by federal law; and~~

~~(iii) Court-ordered mental health treatment which is not medically necessary)).~~

(c) The base-benchmark plan establishes specific limitations on services classified to the mental health and substance abuse disorder services category that conflict with state or federal law as of January 1, 2017. The state EHB-benchmark plan requirements for these services are: The base-benchmark plan does not provide coverage for mental health services and substance use disorder treatment delivered in a home health setting in parity with medical surgical benefits consistent with state and federal law. Health plans must cover mental health services and substance use disorder treatment that is delivered in parity with medical surgical benefits, consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include court-ordered treatment only when medically necessary.

(e) State benefit requirements classified to this category include:

(i) Mental health services (RCW 48.20.580, 48.21.241, 48.44.341, and 48.46.285);

(ii) Chemical dependency detoxification services (RCW 48.21.180, 48.44.240, 48.44.245, 48.46.350, and 48.46.355); and

(iii) Services delivered pursuant to involuntary commitment proceedings (RCW 48.21.242, 48.44.342, and 48.46.292).

(f) The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) (MHPAEA) applies to a health benefit plan subject to this section. Coverage of mental health and substance use disorder services, along with any scope and duration limits imposed on the benefits, must comply with the MHPAEA, and all rules, regulations and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26) including where state law is silent, or where federal law preempts state law.

(6) A health benefit plan must cover "prescription drug services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as prescription drug services medically necessary prescribed drugs, medication and drug therapies.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as prescription drug services:

(i) Drugs and medications both generic and brand name, including self-administrable prescription medications, consistent with the requirements of (b) through (e) of this subsection;

(ii) Prescribed medical supplies, including diabetic supplies that are not otherwise covered as durable medical equip-

ment under the rehabilitative and habilitative services category, including test strips, glucagon emergency kits, insulin and insulin syringes;

(iii) All FDA-approved contraceptive methods, and prescription-based sterilization procedures;

(iv) Certain preventive medications including, but not limited to, aspirin, fluoride, and iron, and medications for tobacco use cessation, according to, and as recommended by, the United States Preventive Services Task Force, when obtained with a prescription order; and

(v) Medical foods to treat inborn errors of metabolism in accordance with RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services for the prescription drug services category. If an issuer includes these services, the issuer may not include the following benefits in establishing actuarial value for the prescription drug services category:

(i) Insulin pumps and their supplies, which are classified to and covered under the rehabilitation and habilitation services category; and

(ii) Weight loss drugs.

(c) The base-benchmark plan's visit limitations on services in the prescription drug services category include:

(i) Prescriptions for self-administrable injectable medication are limited to thirty day supplies at a time, other than insulin, which may be offered with more than a thirty day supply. This limitation is a floor, and an issuer may permit supplies greater than thirty days as part of its health benefit plan;

(ii) Teaching doses of self-administrable injectable medications are limited to three doses per medication per lifetime.

(d) State benefit requirements classified to the prescription drug services category include:

(i) Medical foods to treat inborn errors of metabolism (RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176);

(ii) Diabetes supplies ordered by the physician (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143). Inclusion of this benefit requirement does not bar issuer variation in diabetic supply manufacturers under its drug formulary;

(iii) Mental health prescription drugs to the extent not covered under the hospitalization or skilled nursing facility services, or mental health and substance use disorders categories (RCW 48.44.341, 48.46.291, 48.20.580, and 48.21.241);

(iv) Reproductive health-related over-the-counter drugs, devices, and products approved by the federal Food and Drug Administration.

(e) An issuer's formulary is part of the prescription drug services category. The formulary filed with the commissioner must be substantially equal to the base-benchmark plan formulary, both as to U.S. Pharmacopoeia therapeutic category and classes covered and number of drugs in each class. If the base-benchmark plan formulary does not cover at least one drug in a category or class, an issuer must include at least one drug in the uncovered category or class.

(i) An issuer must file its formulary quarterly, following the filing instructions defined by the insurance commissioner in WAC 284-44A-040, 284-46A-050, and 284-58-025.

(ii) An issuer's formulary does not have to be substantially equal to the base-benchmark plan formulary in terms of formulary placement.

(iii) An issuer may include over-the-counter medications in its formulary for purposes of establishing quantitative limits and administering the benefit.

(7) A health benefit plan must cover "rehabilitative and habilitative services" in a manner substantially equal to the base-benchmark plan.

(a) For purposes of determining a plan's actuarial value, an issuer must classify as rehabilitative services the medically necessary services that help a person keep, restore or improve skills and function for daily living that have been lost or impaired because a person was sick, hurt or disabled.

(b) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as rehabilitative services:

(i) Cochlear implants;

(ii) Inpatient rehabilitation facilities and professional services delivered in those facilities;

(iii) Outpatient physical therapy, occupational therapy and speech therapy for rehabilitative purposes;

(iv) Braces, splints, prostheses, orthopedic appliances and orthotic devices, supplies or apparatus used to support, align or correct deformities or to improve the function of moving parts; and

(v) Durable medical equipment and mobility enhancing equipment used to serve a medical purpose, including sales tax.

(c) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes the following benefits in a health plan, the issuer may not include these benefits in establishing actuarial value for the rehabilitative and habilitative services category:

(i) Off-the-shelf shoe inserts and orthopedic shoes;

(ii) Exercise equipment for medically necessary conditions;

(iii) Durable medical equipment that serves solely as a comfort or convenience item; and

(iv) Hearing aids other than cochlear implants.

(d) For purposes of determining a plan's actuarial value, an issuer must classify as habilitative services the range of medically necessary health care services and health care devices designed to assist a person to keep, learn or improve skills and functioning for daily living. Examples include services for a child who isn't walking or talking at the expected age, or services to assist with keeping or learning skills and functioning within an individual's environment, or to compensate for a person's progressive physical, cognitive, and emotional illness. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient or outpatient settings.

(i) As a minimum level of coverage, an issuer must establish limitations on habilitative services on parity with

those for rehabilitative services. A health benefit plan may include such limitations only if the limitations take into account the unique needs of the individual and target measurable, and specific treatment goals appropriate for the person's age and physical and mental condition. When habilitative services are delivered to treat a mental health diagnosis categorized in the most recent version of the DSM, the mental health parity requirements apply and supersede any rehabilitative services parity limitations permitted by this subsection.

(ii) A health benefit plan must not limit an enrollee's access to covered services on the basis that some, but not all, of the services in a plan of treatment are provided by a public or government program.

(iii) An issuer may establish utilization review guidelines and practice guidelines for habilitative services that are recognized by the medical community as efficacious. The guidelines must not require a return to a prior level of function.

(iv) Habilitative health care devices may be limited to those that require FDA approval and a prescription to dispense the device.

(v) Consistent with the standards in this subsection, speech therapy, occupational therapy, physical therapy, and aural therapy are habilitative services. Day habilitation services designed to provide training, structured activities and specialized assistance to adults, chore services to assist with basic needs, vocational or custodial services are not classified as habilitative services.

(vi) An issuer must not exclude coverage for habilitative services received at a school-based health care center unless the habilitative services and devices are delivered pursuant to federal Individuals with Disabilities Education Act of 2004 (IDEA) requirements and included in an individual educational plan (IEP).

(e) The base-benchmark plan's visit limitations on services in the rehabilitative and habilitative services category include:

(i) Inpatient rehabilitation facilities and professional services delivered in those facilities are limited to thirty service days per calendar year; and

(ii) Outpatient physical therapy, occupational therapy and speech therapy are limited to twenty-five outpatient visits per calendar year, on a combined basis, for rehabilitative purposes.

(f) State benefit requirements classified to this category include:

(i) State sales tax for durable medical equipment; and

(ii) Coverage of diabetic supplies and equipment (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143).

(g) An issuer must not classify services to the rehabilitative services category if the classification results in a limitation of coverage for therapy that is medically necessary for an enrollee's treatment for cancer, chronic pulmonary or respiratory disease, cardiac disease or other similar chronic conditions or diseases. For purposes of this subsection, an issuer must establish limitations on the number of visits and coverage of the rehabilitation therapy consistent with its medical necessity and utilization review guidelines for medical/surgical benefits. Examples of these are, but are not limited to, breast cancer rehabilitation therapy, respiratory therapy, and

cardiac rehabilitation therapy. Such services may be classified to the ambulatory patient or hospitalization services categories for purposes of determining actuarial value.

(8) A health plan must cover "laboratory services" in a manner substantially equal to the base-benchmark plan. For purposes of determining actuarial value, an issuer must classify as laboratory services the medically necessary laboratory services and testing, including those performed by a licensed provider to determine differential diagnoses, conditions, outcomes and treatment, and including blood and blood services, storage and procurement, and ultrasound, X-ray, MRI, CAT scan and PET scans.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as laboratory services:

(i) Laboratory services, supplies and tests, including genetic testing;

(ii) Radiology services, including X-ray, MRI, CAT scan, PET scan, and ultrasound imaging; and

(iii) Blood, blood products, and blood storage, including the services and supplies of a blood bank.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes procurement and storage of personal blood supplies provided by a member of the enrollee's family when this service is not medically indicated. If an issuer includes this benefit in a health plan, the issuer may not include this benefit in establishing the health plan's actuarial value.

(9) A health plan must cover "preventive and wellness services, including chronic disease management" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as preventive and wellness services, including chronic disease management, the services that identify or prevent the onset or worsening of disease or disease conditions, illness or injury, often asymptomatic; services that assist in the multidisciplinary management and treatment of chronic diseases; and services of particular preventative or early identification of disease or illness of value to specific populations, such as women, children and seniors.

(a) If a plan does not have in its network a provider who can perform the particular service, then the plan must cover the item or service when performed by an out-of-network provider and must not impose cost-sharing with respect to the item or service. In addition, a health plan must not limit sex-specific recommended preventive services based on an individual's sex assigned at birth, gender identity or recorded gender. If a provider determines that a sex-specific recommended preventive service is medically appropriate for an individual, and the individual otherwise satisfies the coverage requirements, the plan must provide coverage without cost-sharing.

(b) A health benefit plan must include the following services as preventive and wellness services, including chronic disease management:

(i) Immunizations recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices;

(ii)(A) Screening and tests for which the U.S. Preventive Services Task Force for Prevention and Chronic Care have issued A and B recommendations on or before the applicable plan year.

(B) To the extent not specified in a recommendation or guideline, a plan may rely on the relevant evidence base and reasonable medical management techniques, based on necessity or appropriateness, to determine the frequency, method, treatment, or setting for the provision of a recommended preventive health service;

(iii) Services, tests and screening contained in the U.S. Health Resources and Services Administration ("HRSA") Bright Futures guidelines as set forth by the American Academy of Pediatricians; and

(iv) Services, tests, screening and supplies recommended in the HRSA women's preventive and wellness services guidelines:

(A) If the plan covers children under the age of nineteen, or covers dependent children age nineteen or over who are on the plan pursuant to RCW 48.44.200, 48.44.210, or 48.46.320, the plan must provide the child with the full range of recommended preventive services suggested under HRSA guidelines for the child's age group without cost-sharing. Services provided in this regard may be combined in one visit as medically appropriate or may be spread over more than one visit, without incurring cost-sharing, as medically appropriate; and

(B) A plan may use reasonable medical management techniques to determine the frequency, method, treatment or setting for a recommended preventive service, including providing multiple prevention and screening services at a single visit or across multiple visits. Medical management techniques may not be used that limit enrollee choice in accessing the full range of contraceptive drugs, devices, or other products approved by the federal Food and Drug Administration.

(v) Chronic disease management services, which typically include, but are not limited to, a treatment plan with regular monitoring, coordination of care between multiple providers and settings, medication management, evidence-based care, measuring care quality and outcomes, and support for patient self-management through education or tools; and

(vi) Wellness services.

(c) The base-benchmark plan establishes specific limitations on services classified to the preventive services category that conflict with state or federal law as of January 1, 2017, and should not be included in essential health benefit plans.

Specifically, the base-benchmark plan excludes coverage for obesity or weight control other than covered nutritional counseling. Health plans must cover certain obesity-related services that are listed as A or B recommendations by the U.S. Preventive Services Task Force, consistent with 42 U.S.C. 300gg-13 (a)(1) and 45 C.F.R. 147.130 (a)(1)(i).

(d) The base-benchmark plan does not establish visit limitations on services in this category. In accordance with Sec. 2713 of the Public Health Service Act (PHS Act) and its implementing regulations relating to coverage of preventive services, the base-benchmark plan does not impose cost-sharing requirements with respect to the preventive services listed

under (b)(i) through (iv) of this subsection that are provided in-network.

(e) State benefit requirements classified in this category are:

(i) Colorectal cancer screening as set forth in RCW 48.43.043;

(ii) Mammogram services, both diagnostic and screening (RCW 48.21.225, 48.44.325, and 48.46.275); and

(iii) Prostate cancer screening (RCW 48.20.392, 48.21.227, 48.44.327, and 48.46.277).

(10) Some state benefit requirements are limited to those receiving pediatric services, but are classified to other categories for purposes of determining actuarial value.

(a) These benefits include:

(i) Neurodevelopmental therapy, consisting of physical, occupational and speech therapy and maintenance to restore or improve function based on developmental delay, which cannot be combined with rehabilitative services for the same condition (RCW 48.44.450, 48.46.520, and 48.21.310). This state benefit requirement may be classified to ambulatory patient services or mental health and substance abuse disorder including behavioral health categories; and

(ii) Treatment of congenital anomalies in newborn and dependent children (RCW 48.20.430, 48.21.155, 48.44.212, and 48.46.250). This state benefit requirement may be classified to hospitalization, ambulatory patient services or maternity and newborn categories.

(b) The base-benchmark plan contains limitations or scope restrictions that conflict with state or federal law as of January 1, 2017. Specifically, the plan covers outpatient neurodevelopmental therapy services only for persons age six and under. Health plans must cover medically necessary neurodevelopmental therapy for any DSM diagnosis without blanket exclusions.

(11) Issuers must know and apply relevant guidance, clarifications and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor and the U.S. Department of the Treasury.

(12) Each category of essential health benefits must at a minimum cover services required by current state law and be consistent with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557, including those codified at 81 Fed. Reg. 31375 et seq. (2016), that were in effect on January 1, 2017.

(13) This section applies to health plans that have an effective date of January 1, 2020, or later.

NEW SECTION

WAC 284-43-5935 Definitions. As used in WAC 284-43-5940 through 284-43-5980, the following terms have the following meaning:

(1) Auxiliary aids and services include:

(a) Qualified interpreters on-site or through video remote interpreting (VRI) services, as defined in 28 C.F.R. 35.104 and 36.303(b); note takers; real-time computer-aided tran-

scription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunication products and systems, text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(b) Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs; large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

(c) Acquisition or modification of equipment and devices; and

(d) Other similar services and actions.

(2) Individual with limited-English proficiency means an individual whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English.

(3) Language assistance services may include, but are not limited to:

(a) Oral language assistance, including interpretation in non-English languages provided in-person or remotely by a qualified interpreter for an individual with limited-English proficiency, and the use of qualified bilingual or multilingual staff to communicate directly with individuals with limited-English proficiency;

(b) Written translation, performed by a qualified translator, of written content in paper or electronic form into languages other than English; and

(c) Taglines.

(4) National origin includes, but is not limited to, an individual's, or his or her ancestor's, place of origin (such as country or world region) or an individual's manifestation of the physical, cultural, or linguistic characteristics of a national origin group.

(5) Plan means a nongrandfathered health plan as defined in RCW 48.43.005, a plan deemed by the commissioner to have a short-term limited purpose or duration, or a plan deemed by the commissioner to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular, full-time undergraduate student at an accredited higher education institution.

(6) Qualified bilingual/multilingual staff means a member of an issuer's workforce who is designated by the issuer to provide oral language assistance as part of the individual's current, assigned job responsibilities and who has demonstrated to the issuer that he or she:

(a) Is proficient in speaking and understanding both spoken English and at least one other spoken language, including any necessary specialized vocabulary, terminology and phraseology; and

(b) Is able to effectively, accurately, and impartially communicate directly with individuals with limited-English proficiency in their primary languages.

(7) Qualified interpreter for an individual with a disability means an interpreter who via a remote interpreting service or an on-site appearance:

(a) Adheres to generally accepted interpreter ethics principles, including client confidentiality; and

(b) Is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, terminology and phraseology.

For an individual with a disability, qualified interpreters can include, for example, sign language interpreters, oral transliterators (individuals who represent or spell in the characters of another alphabet), and cued language transliterators (individuals who represent or spell by using a small number of handshapes).

(8) Qualified interpreter for an individual with limited-English proficiency means an interpreter who via a remote interpreting service or an on-site appearance:

(a) Adheres to generally accepted interpreter ethics principles, including client confidentiality;

(b) Has demonstrated proficiency in speaking and understanding both spoken English and at least one other spoken language; and

(c) Is able to interpret effectively, accurately, and impartially, both receptively and expressly, to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

(9) Qualified translator means a translator who:

(a) Adheres to generally accepted translator ethics principles, including client confidentiality;

(b) Has demonstrated proficiency in writing and understanding both written English and at least one other written non-English language; and

(c) Is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

(10) Taglines mean short statements written in non-English languages that indicate the availability of language assistance services free of charge and how to obtain them.

AMENDATORY SECTION (Amending WSR 20-03-114, filed 1/16/20, effective 2/16/20)

WAC 284-43-5940 Nondiscrimination in ~~((individual and small group))~~ health plans, short-term limited duration medical plans and student-only health plans. (1) An issuer offering a ~~((nongrandfathered individual or small group health))~~ plan, and the issuer's officials, employees, agents, or representatives may not:

(a) Design plan benefits, ~~((including formulary design,))~~ or implement its plan benefits, in a manner that results in discrimination against individuals because of their age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions; and

(b) With respect to ~~((health))~~ the plan including, but not limited to, administration, member communication, medical

protocols or criteria for medical necessity or other aspects of ~~(health)~~ plan operations:

(i) Discriminate on the basis of race, color, national origin, sex, gender identity, sexual orientation, age, or disability;

(ii) Deny, cancel, limit, or refuse to issue or renew a ~~(health)~~ plan, or deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, on the basis of race, color, national origin, sex, gender identity, sexual orientation, age, or disability;

(iii) Have or implement marketing practices or benefit designs that discriminate on the basis of race, color, national origin, sex, gender identity, sexual orientation, age, or disability. In reviewing plan design, plan features that attempt to circumvent coverage of medically necessary benefits such as by labeling a benefit as a pediatric service, and thereby excluding adults, or by placing all or most drugs for a specific condition in the highest cost-sharing tier, absent an appropriate reason for the exclusion, are potentially discriminatory. In these or other instances, the commissioner may request a justification for the practice. If requested, issuers must identify an appropriate nondiscriminatory reason that supports their benefit design;

(iv) Deny or limit coverage, deny or limit coverage of a claim, issue automatic denials of coverage or impose additional cost sharing or other limitations or restrictions on coverage, for any health services that are ordinarily or exclusively available to individuals of one sex, ~~((to a transgender individual))~~ based on the fact that an individual's sex assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such health services are ordinarily or exclusively available. For example, a denial of coverage for hormone prescriptions that exceed the dosages typically prescribed for cisgender people would be discriminatory against transgender, nonbinary, gender nonconforming, or intersex individuals;

(v) Have or implement a categorical coverage exclusion or limitation for all medical, surgical, or behavioral health services related to ~~((gender transition))~~ a person's gender identity or sexual orientation; or

(vi) Otherwise deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, for specific medical, surgical, or behavioral health services related to a person's gender ~~((transition))~~ identity or sexual orientation if such denial, limitation, or restriction results in discrimination against a transgender, nonbinary, gender nonconforming or intersex individual.

(2) The enumeration of specific forms of discrimination in subsection (1)(b)(ii) through (vi) of this section does not limit the general applicability of the prohibition in subsection (1)(b)(i) of this section.

(3) Nothing in this section may be construed to prevent an issuer from appropriately utilizing fair and reasonable medical management techniques. Appropriate use of medical management techniques includes use of evidence based criteria for determining whether a service or benefit is medically necessary and clinically appropriate.

(4) An issuer's obligation to comply with these requirements is nondelegable; an issuer is obligated to ensure compliance with WAC 284-43-5935 through 284-43-5980, even

if they use a third-party vendor or subcontracting arrangement. An issuer is not exempt from any of these requirements because it relied upon a third-party vendor or subcontracting arrangement for administration of any aspect of its benefits or services.

(5) The commissioner will determine whether an issuer's actions to comply with this section are consistent with current state law, the legislative intent underlying RCW 48.43.0128 to maintain the enrollee protections of the Affordable Care Act, and the federal regulations and guidance in effect as of January 1, 2017, including, but not limited to, those issued by the U.S. Department of Health and Human Services Office of Civil Rights and federal regulations implementing 42 U.S.C. Sec. 18116 (Sec. 1557 of the Affordable Care Act) as set forth in 81 Fed. Reg. 31375 et seq. (2016).

AMENDATORY SECTION (Amending WSR 20-03-114, filed 1/16/20, effective 2/16/20)

WAC 284-43-5950 Access for individuals with limited-English proficiency and individuals with disabilities. Each issuer offering a ~~((nongrandfathered individual or small group health))~~ plan, and the issuer's officials, employees, agents or representatives must take fair and reasonable steps to provide meaningful access to each enrollee or individual ~~((with))~~ likely to be encountered who has limited-English proficiency ~~((and each individual with))~~ or a disability consistent with federal rules and guidance in effect on January 1, 2017, including those implementing 42 U.S.C. Sec. 18116~~((s))~~ (Sec. 1557~~((, including those))~~ of the Affordable Care Act) as set forth in 81 Fed. Reg. 31375 et seq. (2016)~~((that were in effect on January 1, 2017))~~.

NEW SECTION

WAC 284-43-5960 Meaningful access for individuals with limited-English proficiency. (1) **General requirement.** An issuer offering a plan shall take reasonable steps to provide meaningful access to each enrollee or individual likely to be encountered with limited-English proficiency.

(2) **Evaluation of compliance.** In evaluating whether an issuer has met its obligation under subsection (1) of this section, the commissioner will:

(a) Evaluate, and give substantial weight to, the nature and importance of access to the health services involved and the particular communication at issue, to the individual with limited-English proficiency; and

(b) Take into account other relevant factors, including whether an issuer has developed and implemented an effective written language access plan, that is appropriate to its particular circumstances, to be prepared to meet its obligations under this section.

(3) **Language assistance services requirements.** Language assistance services required under subsection (1) of this section must be provided free of charge, be accurate and timely, and protect the privacy and independence of the individual with limited-English proficiency, regardless of whether an associated health service is provided in person or through telehealth.

(4) **Specific requirements for interpreter and translation services.** Subject to subsection (1) of this section:

(a) An issuer shall offer a qualified interpreter to an individual with limited-English proficiency when oral interpretation is a reasonable step to provide meaningful access for that individual with limited-English proficiency; and

(b) An issuer shall use a qualified translator when translating written content in paper or electronic form.

(5) **Restricted use of certain persons to interpret or facilitate communication.** An issuer shall not:

(a) Require an individual with limited-English proficiency to provide their own interpreter;

(b) Rely on an adult accompanying an individual with limited-English proficiency to interpret or facilitate communication, except:

(i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter for the individual with limited-English proficiency immediately available; or

(ii) Where the individual with limited-English proficiency specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

(c) Rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter for the individual with limited-English proficiency immediately available; or

(d) Rely on staff other than qualified bilingual/multilingual staff to communicate directly with individuals with limited-English proficiency.

(6) **Video remote interpreting services.** An issuer that provides a qualified interpreter for an individual with limited-English proficiency through video remote interpreting services shall provide:

(a) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;

(b) A sharply delineated image that is large enough to display the interpreter's face and the participating individual's face regardless of the individual's body position;

(c) A clear, audible transmission of voices; and

(d) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the video remote interpreting.

(7) **Acceptance of language assistance services is not required.** Nothing in this section shall be construed to require an individual with limited-English proficiency to accept language assistance services.

NEW SECTION

WAC 284-43-5965 Effective communication for people with disabilities. An issuer offering a plan shall:

(1) Take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others with respect to benefits and services, in accordance with the standards found at 28 C.F.R.

35.160 through 35.164. Where the regulatory provisions referenced in this section use the term "public entity," the term "issuer" shall apply in its place.

(2) Provide appropriate auxiliary aids and services to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(3) Ensure that their benefits and services provided through electronic and information technology, including telehealth, are accessible to individuals with disabilities, unless doing so would result in undue financial and administrative burdens or a fundamental alteration in the nature of the health programs or activities. When undue financial and administrative burdens or a fundamental alteration exist, the covered entity shall provide information in a format other than an electronic format that would not result in such undue financial and administrative burdens or a fundamental alteration but would ensure, to the maximum extent possible, that individuals with disabilities receive the benefits or services of the plan that are provided through electronic and information technology.

(4) Ensure that their health programs and activities provided through websites comply with the requirements of Title II of the ADA.

(5) Make reasonable modifications to policies, practices, or procedures when such modifications are necessary to avoid discrimination on the basis of disability, unless the issuer can demonstrate that making the modifications would fundamentally alter the nature of the health program or activity. Reasonable modifications must be interpreted consistent with the term as set forth in the ADA Title II regulation at 28 C.F.R. Sec. 35.230(b)(7).

NEW SECTION

WAC 284-43-5970 Equal program access on the basis of sex. An issuer offering a plan, and the issuer's officials, employees, agents, or representatives shall:

(1) Provide individuals equal access with respect to the plan including, but not limited to, plan administration, member communication, medical protocols or criteria for medical necessity or other aspects of plan operations without discrimination on the basis of sex; and

(2) Treat individuals consistent with their gender identity and sexual orientation, except that an issuer may not deny or limit health services that are ordinarily or exclusively available to individuals of one sex, to a transgender, nonbinary, intersex or gender nonconforming individual based on the fact that the individual's sex assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such health services are ordinarily or exclusively available.

NEW SECTION

WAC 284-43-5975 Designation of responsible employee and adoption of grievance procedures. (1) Each issuer shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under RCW 48.43.0128 and WAC 284-43-5935 through 284-43-5980, including the investigation of any grievance communi-

cated to it alleging noncompliance with RCW 48.43.0128 or WAC 284-43-5935 through 284-43-5980 or alleging any action that would be prohibited by RCW 48.43.0128 or WAC 284-43-5935 through 284-43-5980.

(2) Each issuer shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of grievances alleging any action that would be prohibited by RCW 48.43.-0128 or WAC 284-43-5935 through 284-43-5980. An issuer whose grievance procedures comply with 45 C.F.R. 92.7 as in effect on January 1, 2017, will be deemed compliant with this subsection.

NEW SECTION

WAC 284-43-5980 Notice requirement. (1) An issuer offering a plan shall take appropriate initial and continuing steps to notify enrollees, applicants, and members of the public of the following:

(a) The issuer does not discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation in its benefits and services;

(b) The issuer provides appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities;

(c) The issuer provides language assistance services, including translated documents and oral interpretation, free of charge and in a timely manner, when such services are necessary to provide meaningful access to individuals with limited-English proficiency;

(d) How to obtain the aids and services in (b) and (c) of this subsection;

(e) An identification of, and contact information for, the employee responsible for compliance with RCW 48.43.0128 and WAC 284-43-5935 through 284-43-5980;

(f) How to file a grievance with the issuer related to the issuer's compliance with RCW 48.43.0128 and WAC 284-43-5935 through 284-43-5980; and

(g) How to file a complaint with the commissioner related to the issuer's compliance with RCW 48.43.0128 and WAC 284-43-5935 through this section or with the federal Department of Health and Human Services, Office of Civil Rights related to the issuer's compliance with 42 U.S.C. Sec. 18119 (Sec. 1557 of the Affordable Care Act).

(2) An issuer offering a plan shall:

(a) As described in subsection (7) of this section, post a notice that conveys the information in subsection (1)(a) through (g) of this section; and

(b) As described in subsection (8) of this section, if applicable, post a nondiscrimination statement that conveys the information in subsection (1)(a) of this section.

(3) To satisfy the requirements of this section, issuers may use the sample notices published at 81 Fed. Reg. 31472 through 31473 (May 18, 2016) that convey:

(a) The information in subsection (1)(a) through (g) of this section; and

(b) The information in subsection (1)(a) of this section.

For use beginning January 1, 2022, the notice referenced in (a) of this subsection must be modified to identify the office of the insurance commissioner as the designated entity to file a complaint regarding compliance with RCW 48.43.-0128 and WAC 284-43-5935 through 284-43-5980 and the federal Department of Health and Human Services, Office of Civil Rights as the designated entity to file a complaint regarding compliance related to the issuer's compliance with 42 U.S.C. Sec. 18119 (Sec. 1557 of the Affordable Care Act). Until that date, issuers may continue to use the sample notice published at 81 Fed. Reg. 31472 through 31473 (May 18, 2016).

(4) Except to the extent provided otherwise in subsection (5) of this section, each issuer shall:

(a) As described in subsection (7)(a) of this section, post taglines in at least the top fifteen languages spoken by individuals with limited-English proficiency in Washington state; and

(b) As described in subsection (8)(b) of this section, if applicable, post taglines in at least the top two languages spoken by individuals with limited-English proficiency in Washington state.

(5) Plans deemed by the commissioner to have a short-term limited purpose or duration that are offered in Washington state must come into compliance with the language assistance notice and tagline requirements in this section on or before April 1, 2021.

(6) To satisfy the requirements of this section, issuers may use taglines provided by the federal Department of Health and Human Services pursuant to 45 C.F.R. 92.8, as in effect on January 1, 2017.

(7)(a) Each issuer shall post the notice required by subsection (1) of this section and the taglines required by subsection (4)(a) of this section in a conspicuously visible font size:

(i) In significant publications and significant communications targeted to enrollees, applicants, and members of the public, except for significant publications and significant communications that are small-sized, such as postcards and tri-fold brochures;

(ii) In conspicuous physical locations where the issuer interacts with the public; and

(iii) In a conspicuous location on the issuer's website accessible from the home page of the issuer's website.

(b) An issuer may also post the notice and taglines in additional publications and communications.

(8) Each issuer shall post, in a conspicuously visible font size, in significant publications and significant communications that are small-sized, such as postcards and tri-fold brochures:

(a) The nondiscrimination statement required by subsection (1)(a) of this section; and

(b) The taglines required by subsection (4)(b) of this section.

(9) A covered entity may combine the content of the notice required in subsection (1) of this section with the content of other notices if the combined notice clearly informs individuals of their rights under RCW 48.43.0128 and WAC 284-43-5935 through 284-43-5980 and 42 U.S.C. Sec. 18119 (Sec. 1557 of the Affordable Care Act).

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-7000 Scope and intent—Parity in mental health and substance use disorder benefits. This subchapter applies to ~~((aH))~~:

(1) Health plans;

(2) Plans deemed by the commissioner to have a short-term limited purpose or duration;

(3) Plans deemed by the commissioner to be student-only health plans that are guaranteed renewable while the covered person is enrolled as a regular, full-time undergraduate student at an accredited higher education institution; and

(4) Issuers.

The purpose of this ~~((rule))~~ subchapter is to consolidate existing state mental health and ~~((chemical dependency))~~ substance use disorder regulation with federal mental health and substance use disorder parity requirements into state regulation. This rule also provides health plans, plans deemed by the commissioner to have a short-term limited purpose or duration, or to be student-only health plans that are guaranteed renewable while the covered person is enrolled as a regular, full-time undergraduate student at an accredited higher education institution and issuers with the method of demonstrating compliance with these requirements. A plan or issuer's obligation to comply with these requirements is non-delegable; a plan or issuer is obligated to ensure compliance with WAC 284-43-7000 through 284-43-7120, even if they use a third-party vendor or subcontracting arrangement. A plan or issuer is not exempt from any of these requirements because it relied upon a third-party vendor or subcontracting arrangement for administration of any aspect of its mental health or substance use disorder benefits or services.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-7010 Definitions. Aggregate lifetime limit means a dollar limitation on the total amount of specified benefits that may be paid under a ~~((health))~~ plan (or health insurance coverage offered in connection with a plan) for any coverage unit.

Annual dollar limit means a dollar limitation on the total amount of specified benefits that may be paid in a twelve-month period under a ~~((health))~~ plan (or health insurance coverage offered in connection with a plan) for any coverage unit.

Approved treatment program means a discrete program of ~~((chemical dependency))~~ substance use disorder treatment provided by a treatment program certified by the department of ~~((social and health services))~~ health as meeting standards adopted under chapter ~~((70-96A))~~ 71.24 RCW.

~~((Chemical dependency professional means a person certified as a chemical dependency professional by the Washington state department of health under chapter 18.205 RCW.))~~

Classification of benefits means a group into which all medical/surgical benefits and mental health or substance use disorder benefits offered by a ~~((health))~~ plan must fall. For the purposes of this rule, the only classifications that may be used are: Inpatient, in-network; inpatient, out-of-network;

outpatient, in-network; outpatient, out-of-network; emergency care; and prescription drugs.

Coverage unit means the way in which a ~~((health))~~ plan or issuer groups individuals for purposes of determining benefits, or premiums or contributions. For example, different coverage units include self-only, family, and employee-plus-spouse.

Cumulative financial requirements means financial requirements that determine whether or to what extent benefits are provided based on accumulated amounts and include deductibles and out-of-pocket maximums. Financial requirements do not include aggregate lifetime or annual dollar limits.

Cumulative quantitative treatment limitations means treatment limitations that determine whether or to what extent benefits are provided based on accumulated amounts, such as annual or lifetime day or visit limits.

Emergency condition, for the purpose of this subchapter, means a medical, mental health or substance use disorder condition manifesting itself by acute symptoms of sufficient severity, including severe emotional or physical distress, or a combination of severe emotional and physical distress, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical ~~((or))~~ mental health or substance use disorder treatment attention to result in a condition placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

Essential health benefits (EHBs). EHBs have the same definition as found in WAC 284-43-5600 or 284-43-5602, as appropriate. The definition of EHBs includes mental health and substance use disorder services, including behavioral health treatment. For EHBs, including mental health and substance use disorder benefits, federal and state law prohibit limitations ~~((or))~~ on age, condition, lifetime and annual dollar amounts.

Financial requirements means cost sharing measures such as deductibles, copayments, coinsurance, and out-of-pocket maximums. Financial requirements do not include aggregate lifetime or annual dollar limits.

Health carrier or issuer has the same meaning as RCW 48.43.005(25).

Health plan has the same meaning as RCW 48.43.005(26).

Medical/surgical benefits means benefits with respect to items or services for medical conditions or surgical procedures, as defined under the terms of the plan or health insurance coverage and in accordance with applicable federal and state law, but does not include mental health or substance use disorder benefits. Any condition defined by the plan or coverage as being ~~((or as not being))~~ a medical/surgical condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the *International Classification of Diseases* (ICD) or state guidelines).

Medically necessary or medical necessity:

(a) With regard to ~~((chemical dependency and))~~ substance use disorder is defined by the most recent version of *The ASAM Criteria, Treatment Criteria for Addictive, Sub-*

stance Related, and Co-Occurring Conditions as published by the American Society of Addiction Medicine (ASAM).

(b) With regard to mental health services, pharmacy services, and any substance use disorder benefits not governed by ASAM, is a carrier determination as to whether a health service is a covered benefit because the service is consistent with generally recognized standards within a relevant health profession.

Mental health benefits means benefits with respect to items or services for mental health and substance use disorder conditions, as defined under the terms of the plan or health insurance coverage and in accordance with applicable federal and state law. Any condition defined by the plan or coverage as being ((or as not being)) a mental health condition must be defined to be consistent with ((generally recognized independent standards of current medical practice (for example,)) the most current version of the *Diagnostic and Statistical Manual of Mental Disorders* ((DSM), the most current version of the *International Classification of Diseases* (ICD), or state guidelines)), as published by the American Psychiatric Association.

Nonquantitative treatment limitations (NQTL) means processes, strategies, or evidentiary standards, or other factors that are not expressed numerically, but otherwise limit the scope or duration of benefits for treatment. NQTLs include, but are not limited to:

(a) Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;

(b) Formulary design for prescription drugs;

(c) For plans with multiple network tiers (such as preferred providers and participating providers), network tier design;

(d) Standards for provider admission to participate in a network, including reimbursement rates;

(e) Plan methods for determining usual, customary, and reasonable charges;

(f) Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols);

(g) Exclusions based on failure to complete a course of treatment; and

(h) Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage.

Plan means a health plan, a short-term limited duration medical plan or a student-only health plan.

Predominant level: If a type of financial requirement or quantitative treatment limitation applies to substantially all medical surgical benefits in a classification, the predominant level is the level that applies to more than one-half of the medical/surgical benefits in that classification subject to the financial requirement or quantitative treatment limitation.

Quantitative parity analysis means a mathematical test by which plans and issuers determine what level of a financial requirement or quantitative treatment limitation, if any, is the most restrictive level that could be imposed on mental

health or substance use disorder benefits within a classification.

Quantitative treatment limitations means types of objectively quantifiable treatment limitations such as frequency of treatments, number of visits, days of coverage, days in a waiting period or other similar limits on the scope or duration of treatment.

Short-term limited duration medical plan means a plan deemed by the commissioner to have a short-term limited purpose or duration.

Student-only health plan means a health plan that is guaranteed renewable while the covered person is enrolled as a regular, full-time undergraduate student at an accredited higher education institution.

Substance use disorder ((includes illness characterized by a physiological or psychological dependency, or both, on a controlled substance regulated under chapter 69.50 RCW and/or alcoholic beverages. It is further characterized by a frequent or intense pattern of pathological use to the extent the user exhibits a loss of self-control over the amount and circumstances of use; develops symptoms of tolerance or physiological and/or psychological withdrawal if use of the controlled substance or alcoholic beverage is reduced or discontinued; and the user's health is substantially impaired or endangered or his or her social or economic function is substantially disrupted. Any disorder defined by the plan as being or as not being a substance use disorder must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the DSM, the most current version of the ICD, or state guidelines))) means a substance-related or addictive disorder listed in the most current version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* published by the American Psychiatric Association.

Substance use disorder benefits means benefits with respect to items or services for substance use disorders, as defined under the terms of the plan or health insurance coverage and in accordance with applicable federal and state law. Substance use disorder benefits must include payment for reasonable charges for medically necessary treatment and supporting service rendered to an enrollee either within an approved treatment program or by a health care professional that meets the requirements of RCW 18.205.040(2), as part of the approved treatment plan.

Substantially all: A type of financial requirement or quantitative treatment limitation considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification as determined by WAC 284-43-7040 (2)(a).

Treatment limitations means limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations, which are expressed numerically (such as fifty outpatient visits per year), and non-quantitative treatment limitations, which otherwise limit the scope or duration of benefits for treatment under a plan or coverage. A permanent exclusion of all benefits for a partic-

ular condition or disorder, however, is not a treatment limitation for purposes of this section.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-7020 Classification of benefits. (1) A ((health)) plan providing mental health or substance use disorder benefits, must provide mental health or substance use disorder benefits in every classification in which medical/surgical benefits are provided.

(2) Parity requirements must be applied to the following six classifications of benefits: Inpatient, in-network; inpatient, out-of-network; outpatient, in-network; outpatient, out-of-network; emergency care; and prescription drugs. These are the only classifications of benefits that can be used.

(a) **Inpatient, in-network.** Benefits furnished on an inpatient basis and within a network of providers established or recognized under a plan or health insurance coverage.

(b) **Inpatient, out-of-network.** Benefits furnished on an inpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes inpatient benefits under a plan (or health insurance coverage) that has no network of providers.

(c) **Outpatient, in-network.** Benefits furnished on an outpatient basis and within a network of providers established or recognized under a plan or health insurance coverage.

(d) **Outpatient, out-of-network.** Benefits furnished on an outpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes outpatient benefits under a plan (or health insurance coverage) that has no network of providers.

(e) **Emergency care.** Benefits for treatment of an emergency condition related to a mental health or substance use disorder. Such benefits must comply with the requirements for emergency medical services in RCW 48.43.093. Medically necessary detoxification must be covered as an emergency medical condition according to RCW 48.43.093, and may be provided in hospitals licensed under chapter 70.41 RCW. Medically necessary detoxification services must not require prenotification.

(f) **Prescription drugs.** Benefits for prescription drugs.

(3) In determining the classification in which a particular benefit belongs, a plan must apply the same standards to medical/surgical benefits as applied to mental health or substance use disorder benefits.

An issuer or ((health)) plan must assign covered intermediate mental health/substance use disorder benefits such as residential treatment, partial hospitalization, and intensive outpatient treatment, to the existing six classifications in the same way that they assign comparable intermediate medical/surgical benefits to these classifications. For example, if a ((health)) plan classifies medical care in skilled nursing facilities as inpatient benefits, then it must also treat covered mental health care in residential treatment facilities as inpatient benefits. If a ((health)) plan or issuer treats home health care as an outpatient benefit, then any covered intensive outpatient

mental health or substance use disorder services and partial hospitalization must be considered outpatient benefits as well.

(4) A ((health)) plan or issuer may not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits that is more restrictive than the predominant financial requirement or treatment limitation applied to medical/surgical benefits. This parity analysis must be ~~((done on a classification-by-classification basis))~~ calculated for each type of financial requirement or treatment limitation within a coverage unit for each classification of services.

(5) Medical/surgical benefits and mental health or substance use disorder benefits cannot be categorized as being offered outside of these six classifications and therefore not subject to the parity analysis.

(a) A ((health)) plan or issuer must treat the least restrictive level of the financial requirement or quantitative treatment limitation that applies to at least two-thirds of medical/surgical benefits across all provider tiers in a classification as the predominant level that it may apply to mental health or substance use disorder benefits in the same classification.

(b) If a ((health)) plan or issuer classifies providers into tiers, and varies cost-sharing based on the different tiers, the criteria for classification must be applied to generalists and specialists providing mental health or substance use disorder services no more restrictively than such criteria are applied to medical/surgical benefit providers.

(6) Permitted subclassifications:

(a) A ((health)) plan or issuer is permitted to divide benefits furnished on an outpatient basis into two subclassifications:

(i) Office visits; and

(ii) All other outpatient items and services.

(b) A ((health)) plan or issuer may divide its benefits furnished on an in-network basis into subclassifications that reflect network tiers, if the tiering is based on reasonable factors and without regard to whether a provider is a mental health or substance use disorder provider or a medical/surgical provider.

(c) After network tiers are established, the ((health)) plan or issuer may not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in any tier that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in that tier.

(d) If a ((health)) plan applies different levels of financial requirements to different tiers of prescription drug benefits based on reasonable factors and without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health/substance use disorder benefits, the ((health)) plan satisfies the parity requirements with respect to prescription drug benefits. Reasonable factors include: Cost, efficacy, generic versus brand name, and mail order versus pharmacy pick-up.

(e) A parity analysis applying the financial requirement and treatment rules found in WAC 284-43-7040 and 284-43-7060 must be performed ~~((within each subclassification))~~ for each type of financial requirement or quantitative treatment

limitation within a coverage unit for each subclassification of services.

(7) **Prohibited subclassifications:** All subclassifications other than the permitted subclassification listed in subsection (6) of this section are specifically prohibited. For example, a plan is prohibited from basing a subclassification on generalists and specialists.

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-7040 Measuring ((health)) plan benefits—Financial requirements and quantitative treatment limitations. (1) Classification of benefits must be measured as follows:

(a) By type and level of financial requirement or treatment limitation.

(i) A financial requirement or treatment limitation type includes deductibles, copayments, coinsurance, and out-of-pocket maximums. Types of quantitative treatment limitations include annual, episode, and lifetime day and visit limits.

(ii) A financial requirement or treatment limitation level includes the amount of the financial requirement or treatment limitation type. For example, different levels of coinsurance include twenty percent and thirty percent; different levels of a copayment include fifteen dollars and twenty dollars; different levels of a deductible include two hundred fifty dollars and five hundred dollars; and different levels of an episode limit include twenty-one inpatient days per episode and thirty inpatient days per episode.

(b) A ((health)) plan or issuer may not apply any financial requirement or quantitative treatment limitation to mental health/substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or quantitative treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification. Whether a financial requirement or treatment limitation is a predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in a classification is determined separately for each type of financial requirement or treatment limitation.

(c) The determination of the portion of medical/surgical benefits in a classification of benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation) is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the ((health)) plan for the plan year.

(i) The dollar amount of plan payments is based on the amount the plan allows (before enrollee cost sharing) rather than the amount the plan pays (after enrollee cost sharing) because payment based on the allowed amount covers the full scope of the benefits being provided.

(ii) A reasonable actuarial method must be used to determine the dollar amount expected to be paid under a plan for medical/surgical benefits subject to a financial requirement or quantitative treatment limitation.

(d) Clarifications for certain threshold requirements when performing "substantially all" and "predominant" tests.

(i) For any deductible, the dollar amount of plan payments includes all plan payments with respect to claims that would be subject to the deductible if it had not been satisfied.

(ii) For any out-of-pocket maximum, the dollar amount of plan payments includes all plan payments associated with out-of-pocket payments that are taken into account towards the out-of-pocket maximum as well as all plan payments associated with out-of-pocket payments that would have been made towards the out-of-pocket maximum if it had not been satisfied.

(iii) Similar rules apply for any other thresholds at which the rate of plan payment changes.

(2) Application to different coverage units. If a ((health)) plan or insurer applies different levels of a financial requirement or quantitative treatment limitation to different coverage units in a classification of medical/surgical benefits, the "predominant" level that applies to "substantially all" medical/surgical benefits in the classification is determined separately for each coverage unit.

(a) Determining "substantially all": A type of financial requirement or quantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification.

(i) Benefits subject to a zero level for a type of financial requirement are treated as benefits not subject to that type of financial requirement. Benefits with no quantitative treatment limitations are treated as benefits not subject to that type of quantitative treatment limitation.

(ii) If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, the financial requirement or quantitative treatment limitation of that type cannot be applied to mental health or substance use disorder benefits in that classification.

(b) Determining "predominant":

(i) If a type of financial requirement or quantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in a classification as determined under (a) of this subsection, the level of the financial requirement or quantitative treatment limitation that applies to more than one-half of medical/surgical benefits in that classification subject to the financial requirement or quantitative treatment limitation is the predominant level of that type in a classification of benefits.

(ii) If a type of financial requirement or quantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in a classification and there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to the financial requirement or quantitative treatment limitation, the ((health)) plan or issuer must combine levels until the combination of levels applies to more than one-half of medical/surgical benefits subject to the financial requirement or quantitative treatment limitation in the classification.

(iii) The least restrictive level within the combination is considered the predominant level of that type in the classification. (For this purpose, a ((health)) plan must combine the

most restrictive levels first, with each less restrictive level added to the combination until the combination applies to more than one-half of the benefits subject to the financial requirement or treatment limitation.)

(3) Cumulative financial requirements and cumulative quantitative treatment limitations.

(a) A ((health)) plan or issuer may not apply cumulative financial requirements (such as deductibles and out-of-pocket maximums) or cumulative quantitative treatment limitations (such as annual or lifetime day or visit limits) for mental health or substance use disorder benefits in a classification that accumulate separately from any cumulative requirement or limitation established for medical/surgical benefits in the same classification.

(b) Cumulative requirements and limitation must also satisfy the quantitative parity analysis.

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-7060 Measuring ((health)) plan benefits—Nonquantitative treatment limitations. (1) A ((health)) plan or issuer may not impose an NQTL with respect to mental health or substance use disorder in any classification unless, under the terms of the ((health)) plan as written and in operation, any processes, strategies, evidentiary standards or other factors used in applying the NQTL to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the same classification.

(2) All ((health)) plan standards, such as in-and-out-of-network geographic limitations, limitations on inpatient services for situations where the ((participant)) enrollee is a threat to self or others, exclusions for court-ordered and involuntary holds, experimental treatment limitations, service coding, exclusions for services provided by clinical social workers, and network adequacy, while not specifically enumerated in the illustrative list of NQTLs must be applied in a manner that complies with this subsection.

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-7080 Prohibited exclusions. (1) Benefits for actual treatment and services rendered may not be denied solely because a course of treatment was interrupted or was not completed.

(2) If a service is prescribed for a mental health condition and is medically necessary, it may not be denied solely on the basis that it is part of a category of services or benefits that is excluded by the terms of the contract.

(3) Benefits for mental health services and substance use disorder may not be limited or denied based solely on age or condition.

(4) Nothing in this section relieves a ((health)) plan or an issuer from its obligations to pay for a court ordered substance use disorder benefit or mental health benefit when it is medically necessary.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-7100 Required disclosures. (1) ((Health)) Plans and issuers must provide reasonable access to and copies of all documents, records, and other information relevant to an individual's claim. ((Health))

(a) Plans and issuers must provide disclosures consistent with WAC 284-43-4040, 284-43-3070, 284-43-3110, and 284-43-2000(~~(, within a reasonable time)~~). For any other disclosures related to an individual's claim, the plan or issuer must provide disclosures within thirty days.

(b) When a claim relates to a protected individual, as defined in RCW 48.43.005, the health carrier must comply with RCW 48.43.505.

(2) ((Health)) Plans and issuers must provide the criteria, processes, strategies, evidentiary standards and other factors used to make medical necessity determinations of mental health or substance use disorder benefits. These must be made available free of charge by the ((health)) plan issuer to any current or potential ((participant)) enrollee, beneficiary, or contracting provider upon request, within a reasonable time in compliance with WAC 284-43-2000, and in a manner that provides reasonable access to the requestor. This requirement includes information on the processes, strategies, evidentiary standards, and other factors used to apply an NQTL with respect to medical/surgical and mental health or substance use disorder benefits under the ((health)) plan.

(3) The reason for any adverse benefit decision for mental health or substance use disorder benefits must be provided with the notification of the adverse benefit decision. When an adverse benefit decision relates to a protected individual, as defined in RCW 48.43.005, the health carrier must comply with RCW 48.43.505.

(4) Compliance with these disclosure requirements is not determinative of compliance with any other provisions of applicable federal or state law.

(5) If a ((health)) plan is subject to ERISA, it must provide the reason for the claim denial in a form and manner consistent with the requirements of 29 C.F.R. 2560.503-1.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-7120 Compliance and reporting of quantitative parity analysis. (1) ((Health)) Plans and issuers must file a justification demonstrating the analysis of each plan's financial requirements and quantitative treatment limitations as required under WAC 284-43-7040.

(2) Filing of this justification is subject to the requirements of chapters 284-44A, 284-46A, and 284-58 WAC and may be rejected and closed if it does not comply.

**WSR 20-20-119
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2020-08—Filed October 6, 2020, 11:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-12-084.

Title of Rule and Other Identifying Information: Change of insurance, offset of expenses of group policyholder (SHB 1075).

Hearing Location(s): On November 17, 2020, at 10:00 a.m. Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner (OIC) website here: <https://www.insurance.wa.gov/change-insurance-offset-expenses-group-policyholder-r-2020-08>. Due to the COVID-19 public health emergency, this hearing will be held via Zoom.

Date of Intended Adoption: November 18, 2020.

Submit Written Comments to: Scott Bird, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by November 16, 2020.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-701[7013], fax 360-586-2023, TTY 360-586-0241, email MelanieW@oic.wa.gov, by November 16, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner proposes amending one current regulation and creating a new regulation to provide guidance on the limitations and use of implementation credits. The amended regulation is WAC 284-30-320 concerning definitions in trade practices and the new regulation is WAC 284-30-595 concerning unfair trade practices in the use of implementation credits. The anticipated effect of the proposed rules is to provide reference and guidance to insurers and implement the legislative amendments made to RCW 48.30.140 and 48.30.150 through passage of SHB 1075.

Reasons Supporting Proposal: The legislature passed SHB 1075 during the 2019 legislative session. The bill established that the insurance code's prohibition on offering rebates or inducements does not prohibit an insurer from issuing payment to offset documented expenses incurred by a group policy holder in changing coverage from one insurer to another or for implementing new insurance coverage. Based on this legislation, the OIC has developed rules to provide

guidance for companies to use and apply implementation credits.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, and 48.46.200.

Statute Being Implemented: SHB 1075 (chapter 253, Laws of 2019, effective date July 1, 2020).

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Bird, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7036; Implementation: Melanie Anderson, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000; and Enforcement: Toni Hood, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000.

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 Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, fax 360-586-3109, TTY 360-586-0241, email bodem@oic.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 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; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW [no information supplied by agency].

Explanation of exemptions: The domestic insurers that are affected by this rule are large, interstate insurers and are not small businesses as defined in RCW 19.85.020(3).

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.

Section 1 - Rule groups and their status relative to Regulatory Fairness Act analysis:

Rule Group	Content	WAC	SBEIS Exemption
Subsection (4) [(5)] "Documented expenses" means specific incurred expenses which are either paid by the group policyholder or paid on behalf of the group policyholder and for which documentation is obtained by the insurer. Such documented expenses include, but are not limited to, training, marketing, consumer awareness, information technology and computer programming and operations and administration.	add text	WAC 284-30-320	RCW 34.05.310 (4)(c) (Incorporation by reference). This is a required definition that is part of the new legislation and is necessary to define for implementing the new law.
Subsection (8) "Group policyholder" means an insured or policy owner under a group policy or a single contract which provides coverage to an entire group of fifty-one or more individuals.	add text	WAC 284-30-320	RCW 34.05.310 (4)(c) (Incorporation by reference). This is a required definition that is part of the new legislation and is necessary to define for implementing the new law.

Rule Group	Content	WAC	SBEIS Exemption
Subsection (16) "Shall describe any such payment" means the specific expenses that are described in the group policyholder's contract or subsequent contract addendum with the insurer and which establish the limits of acceptable expenses under the contract.	add text	WAC 284-30-320	RCW 34.05.310 (4)(c) (Incorporation by reference). This definition is necessary to implement the new law.
Subsection (1) Under RCW 48.30.140 and [48.30].150, an insurer may issue payment to offset a documented expense that is incurred by a group policy holder while transferring from one policy to another policy provided that the insurer maintains evidence of the documented expense for three years from the date of the expense. An insurer will describe in the policy or in any such filing with the commissioner that the payment made to the group policy holder will not exceed the amount of the documented expenses.	add text	WAC 284-30-595	RCW 34.05.310 (4)(e) (Dictated by statute). This definition is necessary to implement the new law.
Subsection (a) The failure to maintain and document an expense incurred by a group policy holder constitutes an unfair trade practice and is a violation of this chapter.	add text	WAC 284-30-595	RCW 34.05.310 (4)(e) (Dictated by statute). This definition is necessary to implement the new law.
Subsection (b) Upon the commissioner's request, the insurer must provide proof of a documented expense in the form of paper or electronic copy.	add text	WAC 284-30-595	RCW 34.05.310 (4)(e) (Dictated by statute). This definition is necessary to implement the new law.

Section 2 - Cost of compliance/minor cost threshold: The domestic insurers that are affected by this rule are large, interstate insurers and are not small businesses as defined in RCW 19.85.020(3). The OIC applied a default cost of compliance (\$100) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in

RCW 19.85.020(3). Below are calculations for minor cost thresholds across all impacted industries based on the best analogous NAICS types. For these reasons, the proposed rules do not impose more than minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	Average Annual Employment	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
524113	Direct Life Insurance Carriers	25599.65	2,787	\$25,599.65 2018 Dataset pulled from USBLS	\$3,520.62 2018 Dataset pulled from DOR
524114	Direct Health and Medical Insurance Carriers	228929.41	6,777	\$88,030.57 2018 Dataset pulled from USBLS	\$228,929.41 2018 Dataset pulled from DOR
524126	Direct Property and Casualty Insurance Carriers	33951.09	6,393	\$33,951.09 2018 Dataset pulled from USBLS	\$2,571.20 2018 Dataset pulled from DOR
524127	Direct Title Insurance Carriers	21078.9	2,646	\$12,947.98 2018 Dataset pulled from USBLS	\$21,078.90 2018 Dataset pulled from DOR
524128	Other Direct Insurance (except Life; Health; and Medical) Carriers	6357.56	118	\$6,357.56 2018 Dataset pulled from ESD	\$5,264.55 2018 Dataset pulled from DOR
524130	Reinsurance Carriers	8724.18	94	\$8,724.18 2018 Dataset pulled from USBLS	\$5,532.67 2018 Dataset pulled from DOR
524210	Insurance Agencies and Brokerages	4879.47	15,498	\$4,879.47 2018 Dataset pulled from USBLS	\$2,407.22 2018 Dataset pulled from DOR
524291	Claims Adjusting	4302.81	530	\$4,302.81 2018 Dataset pulled from USBLS	\$2,779.17 2018 Dataset pulled from DOR
524292	Third Party Administration of Insurance and Pension Funds	23596.65	3,108	\$23,596.65 2018 Dataset pulled from ESD	\$15,044.80 2018 Dataset pulled from DOR
524298	All Other Insurance Related Activities	10871.62	1,243	\$10,871.62 2018 Dataset pulled from USBLS	\$4,340.77 2018 Dataset pulled from DOR

Section 3:

(a) Reducing, modifying, or eliminating substantive regulatory requirements: There are no new substantive regulatory requirements as part of the new rule expect [except] for one three-year recordkeeping requirement of documented expenses.

(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements: There is one three-year record-

keeping requirement for documented expenses in the new rule.

(c) Reducing the frequency of inspections: There is an inspection requirement concerning documented expenses in the new rule.

October 6, 2020
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 09-11-129, filed 5/20/09, effective 8/21/09)

WAC 284-30-320 Definitions. When used in this regulation, WAC 284-30-300 through 284-30-400:

(1) "Actual cash value" means the fair market value of the loss vehicle immediately prior to the loss.

(2) "Claimant" means, depending upon the circumstance, either a first party claimant, a third-party claimant, or both and includes a claimant's designated legal representative and a member of the claimant's immediate family designated by the claimant.

(3) "Comparable motor vehicle" means a vehicle that is the same make and model, of the same or newer model year, similar body style, with similar options and mileage as the loss vehicle and in similar overall condition, as established by current data. To achieve comparability, deductions or additions for options, mileage or condition may be made if they are itemized and appropriate in dollar amount.

(4) "Current data" means data within ninety days prior to or after the date of loss.

(5) "Documented expenses" means specific incurred expenses which are either paid by the group policyholder or paid on behalf of the group policyholder and for which documentation is obtained by the insurer. Such documented expenses include, but are not limited to, training, marketing, consumer awareness, information technology and computer programming and operations and administration. Such expenses must be specifically disbursed and actually incurred within the limits set forth in the policy or policy addendum.

(6) "File" means a record in any retrievable format, and unless otherwise specified, includes paper and electronic formats.

~~((6))~~ (7) "First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right as a covered person to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by a policy or contract.

~~((7))~~ (8) "Group policyholder" means a policy owner under a group policy which provides coverage to an entire group of fifty-one or more individuals.

(9) "Insurance policy" or "insurance contract" mean any contract of insurance, indemnity, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any insurer.

~~((8))~~ (10) "Insurer" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, ~~(Lloyds insurer,)~~ fraternal mutual insurer, fraternal mutual life insurer, and any other legal entity engaged in the business of insurance, authorized or licensed to issue or who issues any insurance policy or insurance contract in this state. "Insurer" does not include health care service contractors, as defined in RCW 48.44.010, and health maintenance organizations, as defined in RCW 48.46.020.

~~((9))~~ (11) "Investigation" means all activities of the insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.

~~((10))~~ (12) "Loss vehicle" means the damaged motor vehicle or a motor vehicle that the insurer determines is a "total loss."

~~((11))~~ (13) "Motor vehicle" means any vehicle subject to registration under chapter 46.16 RCW.

~~((12))~~ (14) "Notification of claim" means any notification, whether in writing or other means acceptable under the terms of an insurance policy or insurance contract, to the insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim.

~~((13))~~ (15) "Principally garaged area" means the place where the loss vehicle is normally kept, consistent with the applicable policy of insurance.

~~((14))~~ (16) "Shall describe any such payment" means the specific expenses that are described in the group policyholder's contract or subsequent contract addendum with the insurer and which establish the limits of acceptable expenses under the contract.

(17) "Third-party claimant" means any individual, corporation, association, partnership or other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract of the insurer.

~~((15))~~ (18) "Total loss" means that the insurer has determined that the cost of parts and labor, plus the salvage value, meets or exceeds, or is likely to meet or exceed, the "actual cash value" of the loss vehicle. Other factors may be considered in reaching the total loss determination, such as the existence of a biohazard or a death in the vehicle resulting from the loss.

~~((16))~~ (19) "Written" or "in writing" means any retrievable method of recording an agreement or document, and, unless otherwise specified, includes paper and electronic formats.

NEW SECTION

WAC 284-30-595 Unfair practices regarding documented expenses for implementation credits. Under RCW 48.30.140 and 48.30.150, an insurer may issue payment to offset a documented expense that is incurred by a group policy holder while transferring from one policy to another policy provided that the insurer maintains evidence of the documented expense for three years from the date of the expense. An insurer will describe in the policy or in any such filing with the commissioner that the payment made to the group policy holder will not exceed the amount of the documented expenses.

(1) The failure to maintain and document an expense incurred by a group policy holder constitutes an unfair trade practice and is a violation of this chapter.

(2) Upon the commissioner's request, the insurer must provide proof of a documented expense in the form of paper or electronic copy.

WSR 20-20-120
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed October 6, 2020, 11:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-17-028.

Title of Rule and Other Identifying Information: Proposed amendments to the electrical rules in WAC 296-46B-940 Electrician/certificate of competency required.

Hearing Location(s): On November 10, 2020, at 9:00 a.m. Telephonic hearing only. Please call 1-866-715-6499. When prompted for the passcode, enter 9862128073# (pound sign must be entered). The telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: November 17, 2020.

Submit Written Comments to: Alicia Curry, Department of Labor and Industries (L&I), Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax 360-902-5292, by November 10, 2020.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, by October 27, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to amend the general journey level electrician and specialty electrician certification qualifications for reciprocity under WAC 296-46B-940 Electrician/certificate of competency required. L&I received a petition for rule making requesting the proposed amendments to allow for reciprocal licensing of electricians between Washington state and Oregon. The proposed amendments will:

- Remove the minimum one-year waiting period for electricians licensed in a reciprocal state to apply for a Washington state reciprocal certificate;
- Amend the language that excludes individuals from qualifying for a reciprocal certificate if they previously failed the Washington state electrical examination by allowing eligibility two years after failing the examination; and
- Remove the provision that a person does not qualify for a reciprocal certificate if they were a Washington state resident at the time of examination in a reciprocal state.

This rule making does not change requirements that reciprocal agreements can only be made with states that have equivalent qualifications as Washington.

Reasons Supporting Proposal: L&I received a petition for rule-making requesting the proposed changes. On August 7, 2020, an emergency rule (WSR 20-17-029) was filed to enact the proposed changes and to expedite a reciprocal agreement with Oregon. A CR-101 (WSR 20-17-028) was filed simultaneously to initiate the permanent rule-making process.

A reciprocal agreement with Oregon has now been implemented. This rule making proposes the adoption of a permanent rule and is necessary to continue the reciprocal agreement under the same conditions. The proposed amend-

ments and resulting reciprocal agreement help to alleviate the shortage of journey level electricians in the state and provide more access to qualified electricians working near the border between Washington and Oregon.

Statutory Authority for Adoption: Chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.010 and 19.28.031.

Statute Being Implemented: Chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.010 and 19.28.031.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Wayne Molesworth, Program Manager, Tumwater, Washington, 360-902-6234; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Alicia Curry, L&I, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.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. While the proposed rule impacts individual applicants for electrical licensing rather than businesses, the proposed amendments do not increase costs as the changes eliminate current requirements and will result in a cost savings over current practice or the baseline. As such, the proposed rule does not impose more-than-minor costs.

October 6, 2020

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 20-11-053 and 20-14-083, filed 5/19/20 and 6/30/20, effective 10/29/20)

WAC 296-46B-940 Electrician/certificate of competency required.

General.

(1) The department will deny application, renewal, reinstatement, or issuance of a certificate or permit if an individual owes money as a result of an outstanding final judgment(s) under chapter 19.28 RCW.

(2) The scope of work for electricians is described in WAC 296-46B-920.

Electrician - Certificate of competency required.

(3) To work in the electrical construction trade, an individual must possess, wear, and visibly display on the front of the upper body, a current valid:

(a) Master journey level electrician certificate of competency issued by the department;

(b) Journey level electrician certificate of competency issued by the department;

(c) Master specialty electrician certificate of competency issued by the department;

(d) Specialty electrician certificate of competency issued by the department; or

(e) Electrical training certificate, learning the trade in the proper ratio, per RCW 19.28.161, under the supervision of a certified master journey level electrician, journey level electrician, master specialty electrician working in their specialty, or specialty electrician working in their specialty.

The certificate may be worn inside the outer layer of clothing when outer protective clothing (e.g., rain gear when outside in the rain, arc flash, welding gear, etc.) is required. The certificate must be worn inside the protective clothing so that when the protective clothing is removed, the certificate is visible. A cold weather jacket or similar apparel is not protective clothing.

The certificate may be worn inside the outer layer of clothing when working in an attic or crawl space or when operating equipment (e.g., drill motor, conduit threading machine, etc.) where wearing the certificate may pose an unsafe condition for the individual.

The certificate must be immediately available for examination at all times.

When working as a certified electrician, the electrician must not display a training certificate.

When supervising a trainee(s), the supervising electrician's certificate must be appropriate for the work being performed by the trainee(s). For the purposes of this section, supervising a trainee is considered to be working in the electrical construction trade.

Any person working as an electrician or trainee must also possess a government issued photo identification and immediately present that identification when requested by the inspector.

(4) The department issues master electrician and electrician certificates of competency in the following areas of electrical work:

- (a) General journey level **(01)**;
- (b) Specialties:
 - (i) Residential **(02)**;
 - (ii) Pump and irrigation **(03)**;
 - (iii) Domestic pump **(03A)**;
 - (iv) Signs **(04)**;
 - (v) Limited energy system **(06)**;
 - (vi) HVAC/refrigeration **(06A)**;
 - (vii) HVAC/refrigeration - Restricted **(06B)**;
 - (viii) Nonresidential maintenance **(07)**;
 - (ix) Nonresidential lighting maintenance and lighting retrofit **(07A)**;
 - (x) Residential maintenance **(07B)**;
 - (xi) Restricted nonresidential maintenance **(07C)**;
 - (xii) Appliance repair **(07D)**;
 - (xiii) Equipment repair **(07E)**; and
 - (xiv) Door, gate, and similar systems **(10)**.

Original certificates of competency.

(5) The department will issue an original certificate of competency to master, journey level, or specialty electricians who meet the eligibility requirements listed in:

(a) RCW 19.28.191 (1)(a) or (b) and chapter 19.28 RCW; and

(i) Submit an application for an original master electrician certificate including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909;

(b) RCW 19.28.191 (1)(d) and (e);

(i) Submit an original master electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909; or

(c) RCW 19.28.191 (1)(f) through (g);

(i) Submit an original electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909.

(6) An individual's original electrician certificate of competency will expire on their birth date at least two years, and not more than three years, from the date of original issue.

Renewal - Master electrician, journey level, and specialty electrician certificates of competency.

(7) An individual must apply for renewal of their electrician certificate of competency on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years.

(8) An individual may renew their certificate of competency within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(9) All applications for renewal received more than ninety days after the expiration date of the certificate of competency require that the electrician pass the appropriate competency examination before being recertified.

(10) All applicants for certificate of competency renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees; and

(c) Complete the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed.

Continuing education for pump and irrigation **(03)** and domestic pump **(03A)** electricians may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(11) An individual who has not completed the required hours of continuing education can renew a certificate of competency if the individual applies for renewal before the certificate of competency expires and pays the appropriate renewal fee. However, the certificate of competency will be placed in an inactive status. The inactive certificate of competency will be returned to current status upon validation, by the department, of the required continuing education. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(12) An individual may renew a suspended certificate of competency by submitting a complete renewal application including obtaining and submitting the continuing education

required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period. Before the suspended certificate of competency can be activated, the holder must pass the appropriate electrician or master electrician competency examination in accordance with RCW 19.28.211(2).

(13) An individual may not renew a revoked certificate of competency.

Exemptions - Lineworker.

(14) When performing the work described and allowed in WAC 296-46B-925 (18)(a) or (b)(i), when employed by the serving utility or its contractor or subcontractor(s), a lineworker is exempt from the requirements of chapter 19.28 RCW.

(15) When performing the work described and allowed in WAC 296-46B-925 (18)(b)(ii) or (c), when employed by the serving utility or its licensed electrical contractor or subcontractor(s), a lineworker must meet the requirements of RCW 19.28.261 (5)(b) or be an appropriately certified electrician. See the definition of a lineworker in WAC 296-46B-100.

Exemptions - Plumbers.

(16) Coincidental electrical/plumbing work. See RCW 19.28.091(8) for the plumber exemption. For the purposes of RCW 19.28.091(8), the like-in-kind replacement includes the appliance or any component part of the appliance such as, but not limited to, the thermostat in a water heater.

Exemptions - Submersible well pump installers.

(17) When performing the work described and allowed in WAC 296-46B-925(28), regular employees of well drillers or pump installers registered under chapter 18.27 RCW are exempt from the electrician certification requirements of chapter 19.28 RCW.

Reciprocal agreements between Washington and other states.

(18) The department may negotiate reciprocal agreements with states that have equivalent requirements for certification of journey level or specialty electricians. These agreements allow electricians from those reciprocal states to become certified in the state of Washington without examination and allow Washington certified electricians to become certified in the other states without taking competency examinations. An individual may only apply for reciprocity from another state(s) one time in Washington.

(19) An individual will be issued a reciprocal electrician certificate of competency if all the following conditions are met:

(a) The department has a valid reciprocal agreement with the other state in the journey level or specialty category requested;

(b) The individual makes a complete application for a reciprocal certificate on the form provided by the department. A complete application includes:

- (i) Application for reciprocal certificate of competency;
- (ii) Evidence that the individual meets the eligibility requirements listed in RCW 19.28.191, by presenting a current, valid journey person or specialty electrician certificate or

certified letter from the issuing state attesting to possession of such certificate by the applicant:

(A) Evidence from an apprenticeship training director that any journey level category applicant has successfully completed an apprenticeship program that is equivalent to an apprenticeship program approved under chapter 49.04 RCW approved by the department for the electrical construction trade in which the applicant worked in the electrical construction trade for a minimum of eight thousand hours; or

(B) Evidence that any journey level category applicant has worked in the electrical construction trade for a minimum of sixteen thousand hours.

(iii) All appropriate fees as listed in WAC 296-46B-909.

(c) The individual obtained the reciprocal state's certificate of competency as a journey level or specialty electrician by examination ((and the individual held the reciprocal state's certificate for a period of at least one year)).

(20) An individual is not eligible for a reciprocal electrician certificate of competency if the individual:

(a) Has failed to renew a similar Washington electrician certificate of competency as required in RCW 19.28.211; or

(b) Has a similar Washington electrician certificate of competency in suspended, revoked, or inactive status under this chapter; or

(c) Owes money as a result of an outstanding final judgment(s) to the department; or

(d) Has ((~~ever~~)) taken and failed a Washington exam for the certificate being applied for((~~or~~

~~(e) Was a resident of the state of Washington at the time the examination was taken in the other state)) within the past two years.~~

WSR 20-20-121

PROPOSED RULES

OFFICE OF THE

INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2020-11—Filed October 6, 2020, 11:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-115-130 [20-15-130].

Title of Rule and Other Identifying Information: Prompt response requirement.

Hearing Location(s): On November 10, 2020, at 10:00 a.m. Remote access information for public testimony will be made available at the webpage linked here: <https://www.insurance.wa.gov/prompt-response-requirement-r-2020-11>. Due to the COVID-19 public health emergency, this hearing will be held via Zoom.

Date of Intended Adoption: November 11, 2020.

Submit Written Comments to: Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by November 12, 2020.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241 or 360-725-7087, email MelanieW@oic.wa.gov, by November 9, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will seek to clarify/amend WAC 284-30-650. These rules will also seek to explicitly clarify that the changes apply to all other regulated entities that have to comply with chapter 48.30 RCW.

Reasons Supporting Proposal: Prompt responses are required to all office of the insurance commissioner (OIC) division inquiries, regardless of line of business or coverage and extend to all forms of delivery to OIC. Not all OIC inquiries and responses are complaint driven and channeled through the commissioner's electronic response system. The rule change would offer guidance to all respondents using any method of response and restores the original regulation prior to January 1, 2014, while retaining the electronic response system when appropriate.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, 48.46.200, and 48.30.010.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7041; Implementation: Melanie Anderson, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7156; and Enforcement: Toni Hood, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7264.

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 Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7041, fax 360-586-3109, TTY 360-586-0241, email bodem@oic.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and 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 34.05.310 (4)(g); WAC 284-30-650.

Explanation of exemptions: Correct or clarify language in WAC 284-30-650 and update agency process.

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.

Section 1 - Background: Prompt responses are required to any OIC division inquiry. Not all OIC inquiries and responses are channeled through the commissioner's electronic response system. The rule change would offer guidance to all respondents using any method of response.

Section 2 - Rule groups and their status relative to RFA analysis:

Rule Group	Content	WAC	Exemption Category
	Add text	WAC 284-30-650	RCW 34.05.310 (4)(g)(i) (relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)
((and submitted using the commissioner's electronic company complaint system))	Delete text	WAC 284-30-650	RCW 34.05.310 (4)(d) (correct or clarify language)

Section 3 - Cost of compliance/minor cost threshold: The Washington insurers, health care service contractors and health maintenance organizations (HMO) that are affected by this rule are not small businesses as defined in RCW 19.85.-020(3). The OIC applied a default cost of compliance (**\$100**) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). Below are calculations for minor cost thresholds across all impacted industries based on the best analogous NAICS types. For these reasons, the proposed rules do not impose more than minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	Average Annual Employment	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
524113	Direct Life Insurance Carriers	25599.65	2,787	\$25,599.65 2018 Dataset pulled from USBLS	\$3,520.62 2018 Dataset pulled from DOR
524114	Direct Health and Medical Insurance Carriers	228929.41	6,777	\$88,030.57 2018 Dataset pulled from USBLS	\$228,929.41 2018 Dataset pulled from DOR
524126	Direct Property and Casualty Insurance Carriers	33951.09	6,393	\$33,951.09 2018 Dataset pulled from USBLS	\$2,571.20 2018 Dataset pulled from DOR
524127	Direct Title Insurance Carriers	21078.9	2,646	\$12,947.98 2018 Dataset pulled from USBLS	\$21,078.90 2018 Dataset pulled from DOR

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	Average Annual Employment	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
524128	Other Direct Insurance (except Life; Health; and Medical) Carriers	6357.56	118	\$6,357.56 2018 Dataset pulled from ESD	\$5,264.55 2018 Dataset pulled from DOR
524130	Reinsurance Carriers	8724.18	94	\$8,724.18 2018 Dataset pulled from USBLS	\$5,532.67 2018 Dataset pulled from DOR
524210	Insurance Agencies and Brokerages	4879.47	15,498	\$4,879.47 2018 Dataset pulled from USBLS	\$2,407.22 2018 Dataset pulled from DOR
524291	Claims Adjusting	4302.81	530	\$4,302.81 2018 Dataset pulled from USBLS	\$2,779.17 2018 Dataset pulled from DOR
524292	Third Party Administration of Insurance and Pension Funds	23596.65	3,108	\$23,596.65 2018 Dataset pulled from ESD	\$15,044.80 2018 Dataset pulled from DOR
524298	All Other Insurance Related Activities	10871.62	1,243	\$10,871.62 2018 Dataset pulled from USBLS	\$4,340.77 2018 Dataset pulled from DOR
621111	Offices of Physicians (except Mental Health Specialists)	26877.38	52,688	\$26,877.38 2018 Dataset pulled from ESD	\$11,406.29 2018 Dataset pulled from DOR
621112	Offices of Physicians; Mental Health Specialists	2299.39	672	\$2,299.39 2018 Dataset pulled from ESD	\$1,113.55 2018 Dataset pulled from DOR
621210	Offices of Dentists	3853.85	28,203	\$3,853.85 2018 Dataset pulled from ESD	\$3,551.76 2018 Dataset pulled from DOR
621310	Offices of Chiropractors	1292.12	5,359	\$1,292.12 2018 Dataset pulled from ESD	\$1,124.85 2018 Dataset pulled from DOR
621320	Offices of Optometrists	2690.05	3,145	\$2,420.60 2018 Dataset pulled from ESD	\$2,690.05 2018 Dataset pulled from DOR
621330	Offices of Mental Health Practitioners (Except Physicians)	2718.96	2,095	\$2,718.96 2018 Dataset pulled from ESD	\$519.90 2018 Dataset pulled from DOR
621340	Offices of Physical; Occupational and Speech Therapists; and Audiologists	6532.95	9,965	\$6,532.95 2018 Dataset pulled from ESD	\$1,839.55 2018 Dataset pulled from DOR
621391	Offices of Podiatrists	1674.73	*	\$1,669.92 2018 Dataset pulled from ESD	\$1,674.73 2018 Dataset pulled from DOR
621399	Offices of All Other Miscellaneous Health Practitioners	1623.22	5,245	\$1,623.22 2018 Dataset pulled from ESD	\$826.66 2018 Dataset pulled from DOR
621410	Family Planning Centers	19316.98	721	\$19,316.98 2018 Dataset pulled from ESD	\$4,347.88 2018 Dataset pulled from DOR
621420	Outpatient Mental Health and Substance Abuse Centers	22672.95	9,834	\$22,627.95 2018 Dataset pulled from ESD	\$3,444.05 2018 Dataset pulled from DOR
621491	HMO Medical Center	99243.89	*	Redacted 2018 Dataset pulled from ESD	\$99,243.89 2018 Dataset pulled from DOR
621492	Kidney Dialysis Centers	139253.36	3,456	\$139,253.36 2018 Dataset pulled from ESD	\$81,597.40 2018 Dataset pulled from DOR
621493	Freestanding Ambulatory Surgical and Emergency Centers	37919.63	1,904	\$37,919.63 2018 Dataset pulled from ESD	\$25,083.15 2018 Dataset pulled from DOR
621498	All Other Outpatient Care Centers	59983.13	5,816	\$59,983.13 2018 Dataset pulled from ESD	\$4,682.97 2018 Dataset pulled from DOR
621511	Medical Laboratories	29239.62	4,328	\$20,374.41 2018 Dataset pulled from ESD	\$29,239.62 2018 Dataset pulled from DOR
621512	Diagnostic Imaging Centers	12574.14	1,000	\$11,672.26 2018 Dataset pulled from ESD	\$12,574.14 2018 Dataset pulled from DOR
621610	Home Health Care Services	27694.67	11,822	\$27,694.67 2018 Dataset pulled from ESD	\$9,631.09 2018 Dataset pulled from DOR
621910	Ambulance Services	32606.95	2,470	\$32,606.95 2018 Dataset pulled from ESD	\$17,939.90 2018 Dataset pulled from DOR
621991	Blood and Organ Banks	64849.95	2,169	\$64,849.95 2018 Dataset pulled from ESD	\$40,844.25 2018 Dataset pulled from DOR

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	Average Annual Employment	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
622110	General Medical and Surgical Hospitals	1323310.72	88,081	\$1,323,310.72 2018 Dataset pulled from ESD	\$585,843.60 2018 Dataset pulled from DOR
622210	Psychiatric and Substance Abuse Hospitals	82560.45	2,406	\$82,560.45 2018 Dataset pulled from ESD	\$28,916.57 2018 Dataset pulled from DOR
622310	Specialty (Except Psychiatric and Substance Abuse) Hospitals	303210.02	2,072	\$303,210.02 2018 Dataset pulled from ESD	\$40,368.29 2018 Dataset pulled from DOR
623110	Nursing Care Facilities (Skilled Nursing Facilities)	38281.56	21,141	\$38,281.56 2018 Dataset pulled from ESD	\$18,640.19 2018 Dataset pulled from DOR
623210	Residential Intellectual and Developmental Disability Facilities	17438.07	4,376	\$17,438.07 2018 Dataset pulled from ESD	\$5,515.79 2018 Dataset pulled from DOR
623220	Residential Mental Health and Substance Abuse Facilities	28073.51	4,200	\$28,073.51 2018 Dataset pulled from ESD	\$21,981.10 2018 Dataset pulled from DOR
623311	Continuing Care Retirement Communities	31393.25	13,242	\$31,393.25 2018 Dataset pulled from ESD	\$12,837.77 2018 Dataset pulled from DOR
623312	Assisted Living Facilities for the Elderly	6276.02	17,970	\$3,140.52 2018 Dataset pulled from ESD	\$6,276.02 2018 Dataset pulled from DOR
623990	Other Residential Care Facilities	13676.48	1,673	\$11,708.07 2018 Dataset pulled from ESD	\$13,676.48 2018 Dataset pulled from DOR
624110	Child and Youth Services	5847.59	3,955	\$5,847.59 2018 Dataset pulled from ESD	\$1,733.54 2018 Dataset pulled from DOR
624120	Services For the Elderly and Persons With Disabilities	3186.57	64,498	\$338.52 2018 Dataset pulled from ESD	\$3,186.57 2018 Dataset pulled from DOR
624190	Other Individual and Family Services	6856.93	15,883	\$6,856.93 2018 Dataset pulled from ESD	\$1,027.00 2018 Dataset pulled from DOR
624210	Community Food Services	3854.23	1,079	\$3,854.23 2018 Dataset pulled from ESD	\$1,869.92 2018 Dataset pulled from DOR
624221	Temporary Shelters	10504.79	2,382	\$10,504.79 2018 Dataset pulled from ESD	\$8,611.36 2018 Dataset pulled from DOR
624229	Other Community Housing Services	36016.14	884	\$6,133.87 2018 Dataset pulled from ESD	\$36,016.14 2018 Dataset pulled from DOR
624230	Emergency and Other Relief Services	9580.3	674	\$9,580.30 2018 Dataset pulled from ESD	\$1,783.48 2018 Dataset pulled from DOR
624310	Vocational Rehabilitation Services	15953.81	7,648	\$15,953.81 2018 Dataset pulled from ESD	\$7,557.41 2018 Dataset pulled from DOR
624410	Child Day Care Services	3075.58	20,507	\$3,075.58 2018 Dataset pulled from ESD	\$1,163.71 2018 Dataset pulled from DOR

October 6, 2020
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 13-12-079, filed 6/5/13, effective 1/1/14)

WAC 284-30-650 Prompt responses required. It is an unfair practice for an insurer, and a prohibited practice for a health care service contractor or a health maintenance organization, to fail to respond promptly to any inquiry from the insurance commissioner relative to the business of insurance. A lack of response within fifteen business days from receipt of an inquiry will be considered untimely. A response must be in writing ~~((and submitted using the commissioner's electronic company complaint system))~~, unless otherwise indicated in the inquiry. If the inquiry originates from the com-

missioner's electronic company complaint system, the response must be in writing and submitted using that same system. This rule also applies to any other entity or person subject to the requirements of chapter 48.30 RCW.

WSR 20-20-123
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2020-12—Filed October 6, 2020, 11:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-129.

Title of Rule and Other Identifying Information: Health coverage supplementing Medicare Part D provided through a federally authorized employer group waiver plan.

Hearing Location(s): On November 10, 2020, at 9:00 a.m. Remote access information for public testimony will be made available at https://www.insurance.wa.gov/medicare-part-d-r-2020-12. Due to the COVID-19 public health emergency, this hearing will be held via Zoom.

Date of Intended Adoption: November 11, 2020.

Submit Written Comments to: Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by November 10, 2020.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241 or 360-725-7087, email MelanieW@oic.wa.gov, by November 9, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will seek to define product requirements and filing submission requirements for these new plans.

Reasons Supporting Proposal: The legislature recently passed SSB 6051 that permits insurers to offer Medicare Part D wrap-around coverage, which is a new type of plan in the market.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, 48.46.200, 48.44.020 (2)(d), 48.44.022, 48.44.023, 48.46.060 (3)(d) and (5), 48.46.064, 48.46.066.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7041; Implementation: Melanie Anderson, P.O. Box 40255, Olympia, WA 98504-0255, 360-425-7156; and Enforcement: Toni Hood, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7264.

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 Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7041, fax 360-586-2023, TTY 360-725-7087, email bodem@oic.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act (RFA) 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 fil-

ing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 34.05.310 (4)(e), WAC 284-43-6560.

Explanation of exemptions: WAC 284-43-6560 adopts the requirements as dictated by SSB 6051.

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.

Section 1 - Background: An EGWP, or "Egg Whip" as it is called, is a form of Medicare Advantage (MA) plan offered by very large employers and allows their group retirees to receive their MA benefits through the group. Part of this EGWP will generally include the Medicare Part D prescription drug component, which has a variety of cost-sharing limitations. The plans which are the subject of this rule making are stand-alone prescription drug plans which supplement this EGWP Part D coverage and pay for some or all of the remaining cost sharing. These plans are relatively rare in the marketplace.

Section 2 - Rule groups and their status relative to RFA analysis:

Table with 4 columns: Rule Group, Content, WAC, Exemption Category. Row 1: (6) All stand-alone prescription drug plans which exclusively supplement a Medicare Part D employer group waiver plan and modification of a contract form or rate must be filed before the contract form is offered for sale to the public and before the rate schedule is used. Add text. WAC 284-43-6560. RCW 34.05.310 (4)(e) (dictated by statute). This definition is necessary to implement the new law. RCW 34.05.310 (4)(g)(i) (relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit).

Section 3 - Cost of compliance/minor cost threshold: The insurers that are affected by this rule are not small businesses as defined in RCW 19.85.020(3). The OIC applied a default cost of compliance (\$100) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). Below are calculations for minor cost thresholds across all impacted industries based on the best analogous NAICS types. For these reasons, the proposed rules do not impose more than minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	Average annual employment	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
524113	Direct life insurance carriers	25599.65	2,787	\$25,599.65 2018 Dataset pulled from USBLS	\$3,520.62 2018 Dataset pulled from DOR
524114	Direct health and medical insurance carriers	228929.41	6,777	\$88,030.57 2018 Dataset pulled from USBLS	\$228,929.41 2018 Dataset pulled from DOR
524126	Direct property and casualty insurance carriers	33951.09	6,393	\$33,951.09 2018 Dataset pulled from USBLS	\$2,571.20 2018 Dataset pulled from DOR
524127	Direct title insurance carriers	21078.9	2,646	\$12,947.98 2018 Dataset pulled from USBLS	\$21,078.90 2018 Dataset pulled from DOR
524128	Other direct insurance (except life; health; and medical) carriers	6357.56	118	\$6,357.56 2018 Dataset pulled from ESD	\$5,264.55 2018 Dataset pulled from DOR
524130	Reinsurance carriers	8724.18	94	\$8,724.18 2018 Dataset pulled from USBLS	\$5,532.67 2018 Dataset pulled from DOR
524210	Insurance agencies and brokerages	4879.47	15,498	\$4,879.47 2018 Dataset pulled from USBLS	\$2,407.22 2018 Dataset pulled from DOR
524291	Claims adjusting	4302.81	530	\$4,302.81 2018 Dataset pulled from USBLS	\$2,779.17 2018 Dataset pulled from DOR
524292	Third party administration of insurance and pension funds	23596.65	3,108	\$23,596.65 2018 Dataset pulled from ESD	\$15,044.80 2018 Dataset pulled from DOR
524298	All other insurance related activities	10871.62	1,243	\$10,871.62 2018 Dataset pulled from USBLS	\$4,340.77 2018 Dataset pulled from DOR

October 6, 2020

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-03-018, filed 1/8/16, effective 1/8/16)

WAC 284-43-6560 When a carrier is required to file.

(1) All rates and forms of group health benefit plans other than small group plans and all stand-alone dental and stand-alone vision plans offered by a health carrier or limited health care service contractor as defined in RCW 48.44.035 and modification of a contract form or rate must be filed before the contract form is offered for sale to the public and before the rate schedule is used.

(2) Filings of negotiated contract forms for groups other than small groups, and applicable rate schedules, that are placed into effect at time of negotiation or that have a retroactive effective date are not required to be filed in accordance with subsection (1) of this section, but must be filed within thirty working days after the earlier of:

(a) The date group contract negotiations are completed;

or

(b) The date renewal premiums are implemented.

(3) When a carrier submits a late filing, the carrier must include an explanation on the filing document describing why the carrier submitted the filing late.

(4) The negotiated policy form and associated rate schedule must otherwise comply with state and federal laws governing the content and schedule of rates for the negotiated plans.

(5) Stand-alone dental plans and stand-alone vision plans offered by a disability insurer to out-of-state groups specified by RCW 48.21.010(2) may be negotiated, but may not be

offered in this state before the commissioner finds that the stand-alone dental plan or stand-alone vision plan otherwise meets the standards set forth in RCW 48.21.010 (2)(a) and (b).

(6) All stand-alone prescription drug plans which exclusively supplements a medicare Part D employer group waiver plan and modification of a contract form or rate must be filed before the contract form is offered for sale to the public and before the rate schedule is used.

WSR 20-20-126

PROPOSED RULES

NOXIOUS WEED

CONTROL BOARD

[Filed October 6, 2020, 1:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-11-059.

Title of Rule and Other Identifying Information: Chapter 16-750 WAC, State noxious weed list and schedule of monetary penalties, the Washington state noxious weed control board (WSNWCB) is proposing to amend the state noxious weed list for 2021.

Hearing Location(s): On November 10, 2020, at 11:00 a.m. WebEx, phone 1(415)-655-0001, Toll Free 1(855)-929-3239, Meeting Access Code 133 374 0485. Due to the man-

dated social distancing requirements in place during the current COVID-19 pandemic, the public hearings will be held solely over video and teleconference.

Date of Intended Adoption: November 26, 2020.

Submit Written Comments to: Mary Fee, WSNWCB, P.O. Box 42560, Olympia, WA 98504-2560, email mfee@agr.wa.gov or noxiousweeds@agr.wa.gov, fax 360-902-2053, by November 9, 2020.

Assistance for Persons with Disabilities: Contact Deanna Painter, phone 360-902-2061, TTY 800-833-6388, email dpainter@agr.wa.gov, by November 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state noxious weed list provides the basis for noxious weed control efforts for county noxious weed control boards and other entities. It also provides guidelines for the state noxious weed control board. This proposal amends WAC 16-750-005 and 16-750-011. Specifically, the board is proposing:

1. WAC 16-750-005, two proposed Class A additions - Turkish thistle, *Carduus Cinereus*, and hanging sedge, *Carex pendula*.

2. WAC 16-750-011, proposed Class B designation changes -

- Un-designating hawkweeds: All nonnative species and hybrids of the Wall subgenus, *Hieracium*, in Snohomish County of region 2.

- Designate Ravenna grass, *Tripidium ravennae*, in Chelan County of region 4.

- Designate saltcedar, *Tamarix ramosissima*, in Benton and Franklin counties of region 6.

- Designate spurge laurel, *Daphne laureola*, in Skamania County of region 3.

- Designate spurge, myrtle, *Euphorbia myrsinites*, in Stevens County of region 4.

- Designate tansy ragwort, *Jacobaea vulgaris*, in Klickitat County of region 5.

- Designate velvetleaf, *Abutilon theophrasti*, in Franklin County of region 6.

- Designate wild chervil, *Anthriscus sylvestris*, in Island County of region 2 and Clark, Cowlitz, and Skamania counties of region 3.

- Designate water primrose, *Ludwigia hexapetala*, in Cowlitz County of region 3.

- Designate white bryony, *Bryonia alba*, in Garfield County of region 6.

- Designate yellow archangel, *Lamiastrum galeobdolon*, in Cowlitz County of region 3.

- Designate yellow floating heart, *Nymphoides peltata*, in Cowlitz County of region 3.

3. Updating the scientific name of ten noxious weeds.

Reasons Supporting Proposal: Under RCW 17.10.080, WSNWCB is charged with updating the state noxious weed list on an annual basis to ensure it accurately reflects the noxious weed control priorities and noxious weed distribution. Under RCW 17.10.070, WSNWCB is charged with adopting, amending, or repealing rules, pursuant to the Administrative Procedure Act, chapter 34.05 RCW, as may be necessary to carry out the duties and authorities assigned to the board by chapter 17.10 RCW.

The proposed addition of Turkish thistle, *Carduus Cinereus*, and hanging sedge, *Carex pendula*, as Class A noxious weeds, is intended to keep them from spreading from their very limited distribution to new locations within Washington state. Noxious weeds are very invasive species that when left uncontrolled outcompete agricultural crops and native species. Noxious weed infestations negatively impact both terrestrial and aquatic habitats [habitats] as well as farming and grazing lands.

Designation changes of twelve Class B noxious weeds are intended to better match the distribution/threat of these noxious weeds. Class B noxious weeds are generally designated where they are absent, limited, or pose a serious threat to health, agriculture, or natural areas so the economic impact is not unreasonable.

The scientific name of ten noxious weed species will be updated to improve consistency with national taxonomic standards.

Statutory Authority for Adoption: RCW 17.10.070, 17.10.080.

Statute Being Implemented: Chapter 17.10 RCW.

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

Name of Proponent: WSNWCB, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mary Fee, 1111 Washington Street S.E., Olympia, WA 98504, 360-561-4428.

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. WSNWCB is not one of the agencies listed in this section.

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. Approximately two hundred businesses responded to an online survey emailed to licensed nurseries and agricultural industry associations. Only one business reported selling Class A proposed addition Turkish thistle. However, Turkish thistle is not known to be an ornamental plant nor are there any known ornamental plantings in Washington. This report may have been made by a misidentification of the plant. Three businesses reported carrying hanging sedge. All four reported that these two Class A additions would not cause an anticipated loss in sales or revenue.

This rule would require the eradication of infestations of these two species. Currently the only known infestations of hanging sedge are in King, Whatcom, Skamania, and Mason counties. Skamania County has one possible ornamental planting with less than twenty-four square feet. Whatcom County has six documented sites with a total less than two hundred square feet. There is little to no documentation on possible infestations in King and Mason counties. Turkish thistle has been found in both Oregon and Idaho. There are no known infestations in Washington state at this time. Typically county noxious weed control boards offer financial assistance for eradicating Class A noxious weeds either in the form of a cost share program or providing control through their program.

Participating businesses do not appear to carry eleven of the twelve Class B noxious weeds that have proposed designation changes, eight of which are already on WSDA's quarantine list (chapter 16-752 WAC). Of the four species that are not already on the quarantine list, only Ravenna grass is known for being [an] ornamental species, and it is currently undergoing rule making by WSDA to be added to the quarantine list. An analysis of the direct economic effects of the proposed rule amendments indicates that costs to businesses would be negligible or none at all. The twelve Class B noxious weeds are being designated for control in counties where they are either absent or limited in distribution, business in these counties should not be faced with more than minor costs to control those noxious weeds. Limited distribution is typically defined as less than one hundred infested acres within a county.

Based upon the above analysis, WSNWCB concludes that direct minor costs, if any, imposed would affect less than ten percent of businesses and would not exceed \$100 in cost to comply as a direct result of these proposed rule-making changes. Nor would any of these amendments to the noxious weed list directly cause the creation of or loss of any jobs. WSNWCB concludes that the proposed rule changes will not impose more-than-minor cost on businesses. Therefore, we conclude that a formal small business economic impact statement is not required.

A copy of the detailed cost calculations may be obtained by contacting Mary Fee, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-561-4428, fax 360-902-2094, TTY 800-833-6388, email mfee@agr.wa.gov.

October 5, 2020
 Mary Fee
 Executive Secretary

AMENDATORY SECTION (Amending WSR 19-24-052, filed 11/26/19, effective 1/1/20)

WAC 16-750-005 State noxious weed list—Class A noxious weeds.

Common Name	Scientific Name
broom, French	<i>Genista monspessulana</i>
broom, Spanish	<i>Spartium junceum</i>
common crupina	<i>Crupina vulgaris</i>
cordgrass, common	<i>Spartina anglica</i>
cordgrass, dense-flowered	<i>Spartina densiflora</i>
cordgrass, salt meadow	<i>Spartina patens</i>
cordgrass, smooth	<i>Spartina alterniflora</i>

AMENDATORY SECTION (Amending WSR 19-24-052, filed 11/26/19, effective 1/1/20)

WAC 16-750-011 State noxious weed list—Class B noxious weeds.

Name	Will be a "Class B designate" in all lands lying within:
(1) blueweed, <i>Echium vulgare</i>	(a) regions 1, 2, 3, 4, 6

Common Name	Scientific Name
dyer's woad	<i>Isatis tinctoria</i>
eggleaf spurge	<i>Euphorbia oblongata</i>
false brome	<i>Brachypodium sylvaticum</i>
floating primrose-willow	<i>Ludwigia peploides</i>
flowering rush	<i>Butomus umbellatus</i>
garlic mustard	<i>Alliaria petiolata</i>
giant hogweed	<i>Heracleum mantegazzianum</i>
goatsrue	<i>Galega officinalis</i>
<u>hanging sedge</u>	<u><i>Carex pendula</i></u>
hydrilla	<i>Hydrilla verticillata</i>
Johnsongrass	<i>Sorghum halepense</i>
knapweed, bighead	<i>Centaurea macrocephala</i>
knapweed, Vochin	<i>Centaurea nigrescens</i>
kudzu	<i>Pueraria montana</i> var. <i>lobata</i>
meadow clary	<i>Salvia pratensis</i>
oriental clematis	<i>Clematis orientalis</i>
purple starthistle	<i>Centaurea calcitrapa</i>
reed sweetgrass	<i>Glyceria maxima</i>
ricefield bulrush	<i>Schoenoplectus mucronatus</i>
sage, clary	<i>Salvia sclarea</i>
sage, Mediterranean	<i>Salvia aethiops</i>
silverleaf nightshade	<i>Solanum elaeagnifolium</i>
small-flowered jewelweed	<i>Impatiens parviflora</i>
South American sponge-plant	<i>Limnobium laevigatum</i>
Syrian bean-caper	<i>Zygophyllum fabago</i>
Texas blueweed	<i>Helianthus ciliaris</i>
thistle, Italian	<i>Carduus pycnocephalus</i>
thistle, milk	<i>Silybum marianum</i>
thistle, slenderflower	<i>Carduus tenuiflorus</i>
<u>thistle, Turkish</u>	<u><i>Carduus cinereus</i></u>
variable-leaf milfoil	<i>Myriophyllum heterophyllum</i>
wild four o'clock	<i>Mirabilis nyctaginea</i>

Name		Will be a "Class B designate" in all lands lying within:
(2)	Brazilian elodea, <i>Egeria densa</i>	(b) region 5, except Spokane County
		(a) region 1, except Grays Harbor County
		(b) region 2, except Kitsap County
		(c) King County of region 2, except lakes Dolloff, Fenwick, Union, Washington, and Sammamish, and the Sammamish River
		(d) region 3, except Wahkiakum County
(3)	bugloss, annual, <i>Anchusa arvensis</i>	(e) regions 4, 5, and 6
		(a) regions 1, 2, 3, 4, and 6
(4)	bugloss, common, (<i>Anchusa</i>) <i>Lycopsis officinalis</i>	(b) region 5, except Spokane County
		(a) regions 1, 2, 3, and 6
(5)	butterfly bush, <i>Buddleja davidii</i>	(b) All of region 4 except those areas lying within the Entiat River Valley between the Columbia River confluence and Stormy Creek in Chelan County
		(c) region 5, except Spokane County
		(a) Grays Harbor County of region 1
(6)	camelthorn, <i>Alhagi maurorum</i>	(b) San Juan County of region 2
		(c) Cowlitz County of region 3
(7)	common fennel, <i>Foeniculum vulgare</i> (except bulbing fennel, <i>F. vulgare</i> var. <i>azoricum</i>)	(a) regions 1, 2, 3, 4, 5, and 6
		(a) region 1, except Jefferson County
(8)	common reed, <i>Phragmites australis</i> (nonnative genotypes only)	(b) region 2, except King and Skagit counties
		(c) region 3, except Clark County
		(d) regions 4, 5, and 6
(9)	Dalmatian toadflax, <i>Linaria dalmatica</i> ssp. <i>dalmatica</i>	(a) regions 1, 2, 3, and 4
		(b) region 5, except Grant County
(10)	Eurasian watermilfoil, <i>Myriophyllum spicatum</i>	(c) Asotin, Columbia, and Garfield counties of region 6
		(a) regions 1, 2, and 3
		(b) Adams, Kittitas, and Lincoln counties of region 5
(11)	European coltsfoot, <i>Tussilago farfara</i>	(c) Benton, Franklin, and Walla Walla counties of region 6
		(a) region 1, except Pacific County
		(b) Island, Kitsap, and San Juan counties of region 2
		(c) Clark and Cowlitz counties of region 3
		(d) Chelan and Okanogan counties, and all lakes with public boat launches except Fan Lake in Pend Oreille County of region 4
(12)	fanwort, <i>Cabomba caroliniana</i>	(e) Adams, Kittitas, Lincoln, and Whitman counties of region 5
		(f) Asotin, Columbia, and Garfield counties of region 6
(13)	gorse, <i>Ulex europaeus</i>	(a) regions 1, 2, 3, 4, 5, and 6
		(b) region 3, except Cowlitz County
		(a) region 1, except Grays Harbor and Pacific counties
		(b) regions 2, 3, 4, 5, 6

Name		Will be a "Class B designate" in all lands lying within:	
(14)	grass-leaved arrowhead, <i>Sagittaria graminea</i>	(a)	region 1
		(b)	region 2, except Snohomish County
		(c)	regions 3, 4, 5, and 6
(15)	hairy willow-herb, <i>Epilobium hirsutum</i>	(a)	regions 1, 3, and 4
		(b)	region 2, except Thurston and Whatcom counties
		(c)	region 5, except Klickitat County
		(d)	region 6, except Benton and Franklin counties
(16)	hawkweed oxtongue, <i>Picris hieracioides</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Skamania County
(17)	hawkweed, orange, <i>Hieracium aurantiacum</i>	(a)	regions 1, 3, and 6
		(b)	region 2, except Whatcom County
		(c)	region 4, except Pend Oreille and Stevens counties
		(d)	region 5, except Kittitas and Spokane counties
(18)	hawkweeds: All nonnative species and hybrids of the Meadow subgenus (<i>Pilosella</i>), including, but not limited to, mouseear (<i>Hieracium pilosella</i>), pale (<i>H. lactucella</i>), queen-devil (<i>H. glomeratum</i>), tall (<i>H. piloselloides</i>), whiplash (<i>H. flagellare</i>), yellow (<i>H. caespitosum</i>), and yellow-devil (<i>H. x floribundum</i>)	(a)	region 1
		(b)	region 2, except Thurston County
		(c)	region 3, except Cowlitz County
		(d)	region 4, except Pend Oreille and Stevens counties
		(e)	region 5, except Klickitat and Spokane counties
		(f)	region 6
(19)	hawkweeds: All nonnative species and hybrids of the Wall subgenus (<i>Hieracium</i>), including, but not limited to, common (<i>Hieracium lachenalii</i>), European (<i>H. sabaudum</i>), polar (<i>H. atratum</i>), smooth (<i>H. laevigatum</i>), spotted (<i>H. maculatum</i>), and wall (<i>H. murorum</i>)	(a)	regions 1, 3, 5, and 6
		(b)	region 2, except King, Skagit, <u>Snohomish</u> , and Whatcom counties
		(c)	region 4, except Stevens County
(20)	herb-Robert, <i>Geranium robertianum</i>	(a)	regions 4, 5, and 6
(21)	hoary alyssum, <i>Berteroa incana</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Pend Oreille and Ferry counties
		(c)	region 5, except Klickitat County
(22)	houndstongue, <i>Cynoglossum officinale</i>	(a)	regions 1, 2, and 3
		(b)	Chelan and Douglas counties of region 4
		(c)	Yakima, Grant and Adams counties of region 5
		(d)	Benton and Franklin counties of region 6
(23)	indigobush, <i>Amorpha fruticosa</i>	(a)	regions 1, 2, and 4
		(b)	Lewis County of region 3
		(c)	region 5, except Klickitat County
(24)	knapweed, black, <i>Centaurea nigra</i>	(a)	regions 1, 2, 3, 4, 5, and 6

Name		Will be a "Class B designate" in all lands lying within:	
(25)	knapweed, brown, <i>Centaurea jacea</i>	(a)	regions 1, 2, 3, 4, 5, and 6
(26)	knapweed, diffuse, <i>Centaurea diffusa</i>	(a)	region 1
		(b)	region 2
		(c)	region 3, except Cowlitz County
		(d)	Adams County of region 5
(27)	knapweed, meadow, <i>Centaurea x ((moncktonii)) gerstlaueri</i>	(a)	regions 1 and 4
		(b)	region 2, except Whatcom County
		(c)	Thurston County of region 2, except below the ordinary high-water mark of the Nisqually River
		(d)	Lewis and Wahkiakum counties of region 3
		(e)	region 5, except Kittitas and Klickitat counties
		(f)	region 6, except Franklin and Walla Walla counties
(28)	knapweed, Russian, <i>Rhaponticum repens</i>	(a)	regions 1, 2, and 3
		(b)	Ferry and Pend Oreille counties of region 4
		(c)	Lincoln, Spokane, and Whitman counties of region 5
		(d)	Adams County of region 5, except for the area west of Highway 17 and north of Highway 26
		(e)	Asotin and Garfield counties of region 6
(29)	knapweed, spotted, <i>Centaurea stoebe</i>	(a)	region 1, except Grays Harbor
		(b)	region 2, except Whatcom County
		(c)	Clark, Lewis, and Wahkiakum counties of region 3
		(d)	Ferry County of region 4
		(e)	Adams, Grant and Yakima counties of region 5
		(f)	region 6, except Columbia and Walla Walla counties
(30)	knotweed, Bohemian, (<i>Polygonum x bohemicum</i>) <i>Fallopia x bohémica</i>	(a)	Island and San Juan counties of region 2
		(b)	Skamania County of region 3
		(c)	region 4, 5, and 6
(31)	knotweed, giant, (<i>Polygonum sachalinense</i>) <i>Fallopia sachalinensis</i>	(a)	region 2, except King, Pierce, and Snohomish counties
		(b)	region 3, except Cowlitz and Lewis counties
		(c)	regions 4, 5, and 6
(32)	knotweed, Himalayan, <i>Persicaria wallichii</i>	(a)	region 1, except Pacific County
		(b)	region 2, except King and Pierce counties
		(c)	region 3, except Wahkiakum County
		(d)	region 4, 5, and 6
(33)	knotweed, Japanese, (<i>Polygonum cuspidatum</i>) <i>Fallopia japonica</i>	(a)	Island, San Juan, and Whatcom counties of region 2
		(b)	Skamania County of region 3
		(c)	region 4, except Okanogan County
		(d)	region 5, except Spokane County
		(e)	region 6
(34)	kochia, <i>Bassia scoparia</i>	(a)	regions 1, 2, and 3
		(b)	Stevens and Pend Oreille counties of region 4

Name		Will be a "Class B designate" in all lands lying within:	
(35)	lesser celandine, <i>Ficaria verna</i>	(c)	Adams County of region 5
		(a)	region 1, 3, 4, 5, and 6
		(b)	region 2, except King and Whatcom counties
(36)	loosestrife, garden, <i>Lysimachia vulgaris</i>	(a)	regions 1, 2, 3, 4, 5, 6
(37)	loosestrife, purple, <i>Lythrum salicaria</i>	(a)	Clallam, Jefferson, and Mason counties of region 1
		(b)	region 2, except Kitsap, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties
		(f)	region 6, except Asotin and Franklin counties
(38)	loosestrife, wand, <i>Lythrum virgatum</i>	(a)	Clallam, Jefferson, and Mason counties of region 1
		(b)	region 2, except Kitsap, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties
		(f)	region 6, except Asotin and Franklin counties
(39)	Malta starthistle, <i>Centaurea melitensis</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road in Stevens County
		(c)	region 5, except Klickitat and Whitman counties
(40)	parrotfeather, <i>Myriophyllum aquaticum</i>	(a)	region 1, except Pacific County
		(b)	regions 2, 4, 5, and 6
		(c)	Clark and Skamania counties of region 3
(41)	perennial pepperweed, <i>Lepidium latifolium</i>	(a)	regions 1, 2, and 4
		(b)	region 3, except Clark and Cowlitz counties
		(c)	Kittitas, Lincoln and Spokane counties of region 5
		(d)	Columbia and Garfield counties of region 6
(42)	poison hemlock, <i>Conium maculatum</i>	(a)	Clallam, Mason, and Pacific counties of region 1
		(b)	region 2, except King, Skagit, and Whatcom counties
		(c)	Clark and Skamania counties of region 3
		(d)	Chelan, Douglas, and Pend Oreille counties of region 4
		(e)	Grant, Kittitas and Lincoln counties of region 5
(43)	policeman's helmet, <i>Impatiens glandulifera</i>	(a)	region 1, 3, 4, 5, and 6
		(b)	region 2, except Thurston and Whatcom counties
(44)	puncturevine, <i>Tribulus terrestris</i>	(a)	regions 1, 2, and 3
		(b)	Ferry, Pend Oreille, and Stevens counties of region 4
		(c)	region 5, except Grant, Klickitat, and Yakima counties
(45)	Ravenna grass, ((<i>Saccharum</i>)) <i>Tripidium ravennae</i>	(a)	Cowlitz County of region 3
		(b)	region 4((, except Chelan County))
		(c)	region 5, except Yakima County
		(d)	region 6, except Benton County

Name		Will be a "Class B designate" in all lands lying within:	
(46)	rush skeletonweed, <i>Chondrilla juncea</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except all areas of Stevens County south of Township 29
		(c)	Kittitas and Yakima counties of region 5, and Adams County, except those areas lying east of Sage Road, the western border of Range 36
		(d)	Asotin County of region 6
(47)	saltcedar, <i>Tamarix ramosissima</i> (unless intentionally planted prior to 2004)	(a)	regions 1, 3, 4, ((and)) <u>5, and 6</u>
		(b)	region 2, except King and Thurston counties
		((c))	region 6, except Benton and Franklin counties))
(48)	Scotch broom, <i>Cytisus scoparius</i>	(a)	regions 4 and 6
		(b)	region 5, except Klickitat County
(49)	shiny geranium, <i>Geranium lucidum</i>	(a)	regions 1, 4, 5, and 6
		(b)	regions 2, except Thurston County
		(c)	region 3, except Clark County
(50)	spurge flax, <i>Thymelaea passerina</i>	(a)	region 4, except Okanogan County
		(b)	regions 5 and 6
(51)	spurge laurel, <i>Daphne laureola</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, and Pierce counties
		(c)	region 3 ((, except Skamania County))
		(d)	regions 4, 5, and 6
(52)	spurge, leafy, <i>Euphorbia virgata</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Spokane County
		(c)	region 6, except Columbia County
(53)	spurge, myrtle, <i>Euphorbia myrsinites</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, Pierce, and Whatcom counties
		(c)	regions 3, 5, and 6
		(d)	region 4, except Okanogan ((and Stevens counties)) <u>County</u>
(54)	sulfur cinquefoil, <i>Potentilla recta</i>	(a)	region 1
		(b)	region 2, except Pierce and Thurston counties
		(c)	region 3, except Lewis and Skamania counties
		(d)	Adams, Grant, Lincoln, and Whitman counties of region 5
		(e)	region 6, except Asotin County
(55)	tansy ragwort, <i>Jacobaea vulgaris</i>	(a)	Island and San Juan counties of region 2
		(b)	Clark and Wahkiakum counties of region 3
		(c)	regions 4, <u>5</u> , and 6
		((d))	region 5, except Klickitat County))
(56)	thistle, musk, <i>Carduus nutans</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Douglas and Ferry counties
		(c)	region 5, except Kittitas County
(57)	thistle, plumeless, <i>Carduus acanthoides</i>	(a)	regions 1, 2, 3, 5, 6
		(b)	region 4, except those areas north of State Highway 20 in Stevens County

Name		Will be a "Class B designate" in all lands lying within:	
(58)	thistle, Scotch, <i>Onopordum acanthium</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except Douglas County
		(c)	region 5, except Spokane and Whitman counties
(59)	velvetleaf, <i>Abutilon theophrasti</i>	(a)	regions 1, 2, 3, ((and)) 4, and 6
		(b)	region 5, except Yakima County
		((c))	region 6, except Franklin County
(60)	water primrose, <i>Ludwigia hexapetala</i>	(a)	regions 1, 2, <u>3</u> , 4, 5, and 6
		((b))	region 3, except Cowlitz County
(61)	white bryony, <i>Bryonia alba</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Whitman County
		(c)	Benton ((County)) and Garfield counties of region 6
(62)	wild chervil, <i>Anthriscus sylvestris</i>	(a)	regions 1, <u>3</u> , 4, and 6
		(b)	region 2, except ((Island and)) Whatcom ((counties)) County
		(c)	((Wahkiakum and Lewis counties of region 3
		((d))	region 5, except Whitman County
(63)	yellow archangel, <i>Lamiastrum galeobdolon</i>	(a)	Clallam County of region 1
		(b)	Island, San Juan, Skagit, and Whatcom counties of region 2
		(c)	<u>Cowlitz</u> , Skamania, and Wahkiakum counties of region 3
		(d)	regions 4, 5, and 6
(64)	yellow floating heart, <i>Nymphoides peltata</i>	(a)	regions 1, 2, <u>3</u> , and 6
		(b)	((region 3, except Cowlitz County
		((e))	region 4, except Stevens County
		((d)) (c)	region 5, except Spokane County
(65)	yellow nutsedge, <i>Cyperus esculentus</i>	(a)	regions 1 and 4
		(b)	region 2, except Skagit and Thurston counties
		(c)	region 3, except Clark County
		(d)	region 5, except Klickitat and Yakima counties
		(e)	region 6, except Franklin and Walla Walla counties
(66)	yellow starthistle, <i>Centaurea solstitialis</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road in Stevens County
		(c)	region 5, except Klickitat, and Whitman counties

AMENDATORY SECTION (Amending WSR 17-24-035, filed 11/29/17, effective 1/1/18)

WAC 16-750-015 State noxious weed list—Class C noxious weeds.

Common Name	Scientific Name
absinth wormwood	<i>Artemisia absinthium</i>
Austrian fieldcress	<i>Rorippa austriaca</i>
babysbreath	<i>Gypsophila paniculata</i>
black henbane	<i>Hyoscyamus niger</i>

Common Name	Scientific Name
blackberry, evergreen	<i>Rubus laciniatus</i>
blackberry, Himalayan	<i>Rubus</i> ((armeniaceus)) <i>bifrons</i>
blackgrass	<i>Alopecurus myosuroides</i>
buffalobur	<i>Solanum rostratum</i>
cereal rye	<i>Secale cereale</i>
common barberry	<i>Berberis vulgaris</i>
common catsear	<i>Hypochaeris radicata</i>

Common Name	Scientific Name	Common Name	Scientific Name
common groundsel	<i>Senecio vulgaris</i>	thistle, Canada	<i>Cirsium arvense</i>
common St. Johnswort	<i>Hypericum perforatum</i>	tree-of-heaven	<i>Ailanthus altissima</i>
common tansy	<i>Tanacetum vulgare</i>	ventenata	<i>Ventenata dubia</i>
common teasel	<i>Dipsacus fullonum</i>	white cockle	<i>Silene latifolia</i> ((ssp. alba))
curly-leaf pondweed	<i>Potamogeton crispus</i>	wild carrot (except where commercially grown)	<i>Daucus carota</i>
English hawthorn	<i>Crataegus monogyna</i>	yellow flag iris	<i>Iris pseudacorus</i>
English ivy 4 cultivars only:	<i>Hedera hibernica</i> 'Hibernica'	yellow toadflax	<i>Linaria vulgaris</i>
	<i>Hedera helix</i> 'Baltica'		
	<i>Hedera helix</i> 'Pittsburgh'		
	<i>Hedera helix</i> 'Star'		
Eurasian watermilfoil hybrid	<i>Myriophyllum spicatum</i> x <i>M. sibiricum</i>		
field bindweed	<i>Convolvulus arvensis</i>		
fragrant water lily	<i>Nymphaea odorata</i>		
hairy whitetop	<i>Lepidium appelianum</i>		
hoary cress	<i>Lepidium draba</i>		
Italian arum	<i>Arum italicum</i>		
Japanese eelgrass	((<i>Zostera</i>)) <i>Nanozostera japonica</i>		
jointed goatgrass	<i>Aegilops cylindrica</i>		
jubata grass	<i>Cortaderia jubata</i>		
lawnweed	<i>Soliva sessilis</i>		
longspine sandbur	<i>Cenchrus longispinus</i>		
Medusahead	<i>Taeniatherum caput-medusae</i>		
nonnative cattail species and hybrids	Including, but not limited to, <i>Typha angustifolia</i> , <i>T. domingensis</i> and <i>T. x glauca</i>		
old man's beard	<i>Clematis vitalba</i>		
oxeye daisy	<i>Leucanthemum vulgare</i>		
pampas grass	<i>Cortaderia selloana</i>		
perennial sowthistle	<i>Sonchus arvensis</i> ssp. <i>arvensis</i>		
reed canarygrass	<i>Phalaris arundinacea</i>		
Russian olive	<i>Elaeagnus angustifolia</i>		
scentless mayweed	((<i>Matricaria perforata</i>)) <i>Tripleurospermum inodorum</i>		
smoothseed alfalfa dodder	<i>Cuscuta approximata</i>		
spikeweed	<i>Centromadia pungens</i>		
spiny cocklebur	<i>Xanthium spinosum</i>		
spotted jewelweed	<i>Impatiens capensis</i>		
Swainsonpea	<i>Sphaerophysa salsula</i>		
thistle, bull	<i>Cirsium vulgare</i>		

WSR 20-20-128
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed October 6, 2020, 3:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-094.

Title of Rule and Other Identifying Information: WAC 246-10-501 and 246-10-502, application of and preliminary record in brief adjudicative proceedings (BAP). The department of health (department) is proposing amending these rules to: (1) Add categories that qualify for the use of brief adjudicative proceedings, including matters involving vital statistics and coordinated quality improvement program (CQIP); (2) implement legislation; and (3) update existing citations and make other housekeeping changes.

Hearing Location(s): On November 10, 2020, at 1:00 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Please register at: <https://attendee.gotowebinar.com/register/7297776842501066508>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: November 17, 2020.

Submit Written Comments to: Tami Thompson, P.O. Box 47890, Olympia, WA 98504-7890, email <https://fortress.wa.gov/doh/policyreview>, by November 10, 2020.

Assistance for Persons with Disabilities: Contact Tami Thompson, phone 360-628-0096, TTY 711, email tami.thompson@doh.wa.gov, by November 3, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments add new categories to the existing list of specific types of cases a BAP may be requested to be heard before the department. Specifically, the department is proposing adding new categories for the CQIP and matters pertaining to vital statistics. WAC 246-10-502 is being amended to identify the corresponding preliminary records to be used in BAPs for these two new categories.

Existing citations related to specific types of environmental health matters that qualify to be heard as a BAP are

revised to reflect changes in statute as dictated by HB [SHB] 2246.

Other updates to existing citations, including repealing citations that no longer exist and adding relevant citations that were missing, are proposed to ensure that WAC 246-10-501 and 246-10-502 are current.

Reasons Supporting Proposal: The Administrative Procedure Act, chapter 34.05 RCW, allows agencies to conduct adjudicative proceedings within the agency's jurisdiction, and to provide forms and adopt procedures in rule, including procedures for BAP. ESSB 5332 authorizes the department to include proceedings involving vital statistics to be heard as a BAP. The department determined that decisions to deny an application for approval or to revoke approval of a CQIP may also qualify to be heard as a BAP. A BAP is intended to serve as an inexpensive and efficient alternative where the issues can be decided by reference to writings and other documents without a full, formal hearing. This can be a benefit to all parties involved.

HB [SHB] 2246 reorganizes the environmental health laws to Title 70A RCW. Specific types of environmental health matters qualify to be heard as a BAP and therefore existing citations within the rules have been updated to reflect the change in statute.

Existing rules must be updated to reflect current and accurate references.

Statutory Authority for Adoption: RCW 43.70.040, 34.0[5].413.

Statute Being Implemented: RCW 34.05.410, 18.130.050; ESSB 5332 (chapter 148, Laws of 2019), and HB [SHB] 2246 (chapter 20, Laws of 2020).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tami Thompson, 101 Israel Road S.E., Tumwater, WA 98501, 360-628-0096.

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. By definition the proposed amendments are not considered "significant legislative rule" amendments as defined by RCW 34.05.328 (5)(c)(iii). The proposed changes are considered "procedural rule" changes under RCW 34.05.328 (5)(c)(i)(A), a rule that amends any procedure, practice, or requirement relating to any agency hearings.

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

October 6, 2020
Jessica Todorovich
Chief of Staff
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 18-18-049, filed 8/29/18, effective 9/29/18)

WAC 246-10-501 Application of brief adjudicative proceedings. (1) If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(a) A determination whether an applicant for a professional, business, or facility license meets the minimum criteria for an unrestricted license and the department proposes to deny such a license or to issue a restricted license;

(b) An application to approve a water system plan under WAC 246-290-100;

(c) An application to approve a project report under WAC 246-290-110;

(d) An application for source approval under WAC 246-290-130;

(e) An application to approve construction documents under WAC 246-290-120;

(f) An application to approve an existing Group A water system under WAC 246-290-140;

(g) An application for source approval under WAC ((246-291-100 or 246-291-110)) 246-291-125;

(h) An application to approve a design report under WAC 246-291-120;

(i) An application to approve an existing Group B water system under WAC ((246-291-130)) 246-291-280;

(j) An application to approve a water system plan under WAC 246-291-140;

(k) A decision under WAC 246-293-190;

(l) A decision with respect to service area conflicts under WAC 246-293-401, 246-293-420, and 246-293-430;

(m) An application for approval as a satellite management agency under WAC 246-295-040;

(n) A civil penalty imposed under RCW ((70-119A-040)) 70A.125.040 when the amount of the civil penalty does not exceed two thousand five hundred dollars;

(o) A request to bank nursing home beds under RCW 70.38.111((~~8~~) and ~~70.38.115(13)~~) (9);

(p) A determination as to whether a person is in compliance with the terms and conditions of a final order previously issued by the department, except final orders under RCW 18.130.110;

(q) Any approval of a school or curriculum when such approval by the department is required or authorized by statute or rule;

(r) A determination whether a license holder requesting renewal has submitted all required information and meets minimum criteria for license renewal;

(s) A decision to deny, modify, or impose conditions upon an operating permit under WAC 246-294-050;

(t) A decision to deny or revoke certification as a home care aide when a long-term care worker is disqualified from working with vulnerable persons under chapter 74.39A RCW;

(u) A civil penalty imposed against a health carrier or third-party administrator under RCW 70.290.060;

(v) A decision to deny or revoke a credential under RCW 18.108.085(3);

(w) An action to suspend a credential under RCW ((~~18.130.125 or~~) 18.130.127;

(x) Issuance of written citation and assessment of a fine under RCW 18.130.230;

(y) An action to invalidate a credential that was issued to a person who failed to meet credentialing requirements;

(z) A decision to withdraw a credential issued in error. For the purposes of this rule, "credential issued in error" means a credential issued to an individual who did not fully complete the application process or meet the credentialing requirements yet was inadvertently granted a credential; ~~((o))~~

(aa) A decision to deny a request for a list of applicants for professional licenses or of professional licensees for commercial purposes under RCW 42.56.070(8);

(bb) A decision to deny or revoke registration of a report or application for an amendment, or withhold or deny issuance of a certification under RCW 70.58A.040 (1)(f);

(cc) A decision to deny a request for data under RCW 70.58A.520; or

(dd) A decision to deny an application for approval of a coordinated quality improvement program, or to revoke approval of a coordinated quality improvement program under RCW 43.70.510.

(2) If an adjudicative proceeding is requested, in a matter not listed in subsection (1) of this section, a brief adjudicative proceeding may be conducted in the discretion of the presiding officer when it appears that protection of the public interest does not require that the department provide notice and an opportunity to participate to persons other than the parties and:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 18-18-049, filed 8/29/18, effective 9/29/18)

WAC 246-10-502 Preliminary record in brief adjudicative proceedings. (1) The preliminary record with respect to an application for a professional, business, or facility license, or for approval of a school or curriculum must consist of:

(a) The application for the license or approval and all associated documents;

(b) All documents relied on by the program in proposing to deny the application;

(c) All correspondence between the applicant for license or approval and the program regarding the application.

(2) Preliminary record.

(a) The preliminary record with respect to decisions made under WAC 246-290-100, 246-290-110, 246-290-120, 246-290-130, 246-290-140, 246-291-120, 246-291-125, 246-291-280, and 246-291-140 must consist of the decision document, all documents constituting the applicant's submittal and such other documents as the applicant or the department may wish to include in the preliminary record.

(b) The preliminary record with respect to decisions made under WAC 246-293-190.

(i) If proceedings are required and have been conducted by local agencies under the applicable coordinated water sys-

tem plan, the preliminary record shall consist of the record submitted to the department under WAC 246-10-124(3).

(ii) If hearings are not required or have not been conducted by local agencies under the applicable coordinated water system plan or if the external boundaries of the coordination act area have been approved but a coordinated water system plan has not been adopted, then the preliminary record shall consist of such documents as the presiding officer may solicit from the affected parties.

(c) The preliminary record with respect to a decision made under WAC 246-293-401, 246-293-420, and 246-293-430 shall consist of the record submitted to the presiding officer under WAC 246-10-124(4).

(d) The preliminary record with respect to a decision under WAC 246-294-050 shall consist of:

(i) The permit, if any;

(ii) All documents relied upon by the program in proposing to deny, modify, or impose conditions upon the permit; and

(iii) The decision document.

(e) The preliminary record with respect to decisions made under WAC 246-295-040 shall consist of the decision document, all documents constituting the applicant's submittal, comments submitted by the county, and such other documents as the applicant or the department may wish to include in the preliminary record.

(f) The preliminary record with respect to civil penalties imposed under RCW 70.119A.040 shall consist of the notice of imposition of penalties, the departmental order, if any, all documentation of communication between the program and the person or persons incurring the civil penalties regarding the violation or violations for which the civil penalties were imposed, and such other documents as the person or persons incurring the civil penalties or the department may wish to include in the preliminary record.

(g) The preliminary record with respect to an action to deny or revoke a credential under RCW 18.108.085(3) shall consist of a certified copy of the court documents reflecting a conviction, any documentation regarding a certification of restoration of opportunity under RCW 9.97.020, and such other documents as the person making the request and the department may wish to include in the preliminary record which are relevant to the issue of the applicant's or licensee's identity.

(h) The preliminary record with respect to an action to suspend a credential under RCW ~~((18.130.125-0))~~ 18.130.127 shall consist of the report from the lending agency to the department of the licensee's nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship, and such other documents as the person making the request and the department may wish to include in the preliminary record.

(i) The preliminary record with respect to the issuance of a written citation and assessment of a fine under RCW 18.130.230 shall consist of the citation, as described in RCW 18.130.230(2), the request by the disciplining authority to produce documents, records, or other items within the licensee's control, the licensee's request for extension of time and the disciplining authority's response if a request for extension of time was made, and such other documents as the

licensee or disciplining authority may wish to include in the preliminary record with respect to whether or not the licensee timely provided the items requested.

(j) The preliminary record with respect to a decision to withdraw a credential issued in error shall consist of the application for credential and any associated documents, all documents relied on by the program in proposing to withdraw the credential, and all correspondence between the person to whom the credential was issued in error and the program regarding the application or credential.

(k) The preliminary record with respect to a decision to deny a request for a list of applicants for professional licenses or of professional licensees for commercial purposes shall consist of the written request for the list, any other documents relied on by the program in proposing to deny the request, all correspondence regarding the request between the person making the request and the department, and such other documents as the person making the request and the department may wish to include in the preliminary record.

(l) The preliminary record with respect to a decision to deny or revoke registration of a report or application for an amendment, or withhold or deny issuance of a certification under RCW 70.58A.040 (1)(f) shall consist of the application to amend any correspondence between the person who made the request and such other documents as the applicant or the department may wish to include in the preliminary record.

(m) The preliminary record with respect to a decision to withhold or deny certification of a vital record under RCW 70.58A.530 shall consist of request for certification, any correspondence between the person who made the request and the program, all documents relied on by the program in proposing to deny the request, and such other documents as the applicant or the department may wish to include in the preliminary record.

(n) The preliminary record with respect to a decision to deny an application or revoke an approved plan under RCW 43.70.510 and chapter 246-50 WAC shall consist of:

(i) For initial approval all documents required in WAC 246-50-030;

(ii) For modification of an approved plan all documents required in WAC 246-50-035(1);

(iii) For alternative programs all documents required in WAC 246-50-040; and

(iv) Any correspondence between the applicant and the program, all documents relied on by the program in proposing to deny the request, and such other documents as the applicant or the department may wish to include in the preliminary record.

(3) The preliminary record with respect to compliance with prior department orders shall consist of:

(a) The official department file of the proceeding in which the order was issued;

(b) All matters submitted by the person to whom the order is directed purporting to demonstrate compliance with the order;

(c) All documents relied on by the department in asserting noncompliance; and

(d) All correspondence between the department and the person to whom the order is directed respecting compliance.

(4) The preliminary record with respect to matters submitted to a brief adjudicative proceeding under WAC 246-10-501(2) shall be as agreed by the parties.

(5) For the purposes of this section, "decision document" shall mean one or more documents that provide notice to the affected party of the department's action, and that contain(s) the information provided by an initiating document.

WSR 20-20-130

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed October 6, 2020, 3:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-17-140.

Title of Rule and Other Identifying Information: Chapter 446-16 WAC, identification section.

Hearing Location(s): On December 9, 2020, at 10:00 a.m. Call-in: 1-253-215-8782, Passcode: 198930.

Date of Intended Adoption: December 10, 2020.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email wsprules@wsp.wa.gov, by December 7, 2020.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, agency rules coordinator, phone 360-596-4017, email wsprules@wsp.wa.gov, by December 7, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes will provide clean-up and clarification to the existing language to ensure the rules reference and comply with current laws in the state of Washington.

Reasons Supporting Proposal: Updates are to provide clarity and clean up existing language.

Statutory Authority for Adoption: Chapter 10.97 and 43.43 RCW.

Statute Being Implemented: Chapter 10.97 and 43.43 RCW.

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

Name of Proponent: Washington state patrol, governmental.

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, Olympia, Washington, 360-596-4017; Implementation: Becky Miner, Olympia, Washington, 360-534-2111; and Enforcement: Washington State Patrol, Olympia, Washington, 360-534-2111.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt pursuant to RCW 34.05.328 (5)(b)(v).

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

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

October 5, 2020

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-010 Definitions. For the purposes of these rules, the following words and phrases will have the following meanings:

(1) "Criminal history record information" includes, and will be restricted to identifying data and ~~((public record))~~ information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal history record information" will not include intelligence, analytical or investigative reports and files.

(2) "Criminal justice agencies" are those public agencies within or outside the state which perform, as a principal function, activities directly relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

(3) "Disposition" means ~~((that result which is reached at a determination))~~ the formal conclusion of a criminal proceeding ~~((s against an individual at any))~~ at whatever stage it occurs in the criminal justice system ~~((and resulting in the culmination or final disposal of the criminal charge))~~.

(4) "~~((Section))~~ Division" means the ~~((identification and criminal history section))~~ criminal records division of the Washington state patrol.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-020 Scope of the rules. Criminal ~~((offender))~~ history record information will not be released or inspected except in accordance with RCW 43.43.700 et seq., RCW 10.97.050, and these rules.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-025 Deletion of arrest records. (1) A person desiring the destruction of his or her fingerprints and/or other identifying data, pursuant to RCW 43.43.730, must make his or her request on a form furnished by the ~~((section))~~ division.

(2) The request must be completed, signed by the person whose record is sought to be deleted and his or her signature witnessed. It must include the address of the applicant, the printed name and the address of the witness to the applicant's signature and such other information requested on the application as identifies the applicant and the offense for which the request of deletion is made.

(3) The request must include ~~((reasonable))~~ proof that the person making the request for deletion is the same person whose fingerprints or other identifying data are sought to be deleted. Such proof must include fingerprints of the applicant ~~((if requested by the section))~~.

(4) The request must include the information necessary for the ~~((section))~~ division to determine whether the request is consistent with RCW 10.97.060 including all details pertaining to the decision not to prosecute, dismissal, or acquittal

of the offense for which the fingerprints or other identifying data were taken.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-060 Disposition reports—When required. In every case where a fingerprint record ~~((or other report))~~ of the arrest of an individual on criminal charges has been submitted to the ~~((section))~~ division, the agency which makes the final determination of such criminal charges or in whose jurisdiction the final determination is made must report the disposition of such charges to the ~~((section))~~ division at whatever stage it occurs in the criminal justice system.

AMENDATORY SECTION (Amending WSR 16-21-024, filed 10/10/16, effective 11/10/16)

WAC 446-16-070 Report contents—General. The report of disposition must be made on forms provided or approved by the ~~((section))~~ division or shall be transferred electronically on forms approved by the ~~((section))~~ division. The disposition report must include all arrest details as they appeared on the fingerprint card ~~((or arrest record previously))~~ forwarded to the ~~((section))~~ division. The state identification number ~~((and))~~, process control number (PCN), and/or the transaction control number (TCN) must be indicated, if known, on the disposition report ~~((if fingerprints were taken))~~.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-080 Report time limitations. All of the information requested on the disposition report must be completed and the report mailed or electronically transferred to the ~~((section))~~ division, within ten days of the date that a disposition becomes ~~((effective))~~ final.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-090 Law enforcement agencies—Reporting responsibilities. (1) If the disposition of criminal charges is made by the arresting agency, as where the individual is released without charge, the arresting agency shall fill in and complete the disposition report and submit same to the ~~((section))~~ division. If the disposition is known at the time of the arrest ~~((record or fingerprint card is submitted to the section))~~, this information should be noted ~~((thereon))~~ on the fingerprint card or submitted electronically through livescan with the arrest information. In this case, it will be unnecessary to forward a disposition report.

(2) In all cases where the arresting agency does not make the final disposition, it shall initiate the preparation of a disposition report by recording the name of the individual arrested, the charges on which ~~((he was))~~ they were arrested, the name of the contributor of the ~~((arrest or))~~ fingerprint record, the process control and/or transaction control number, the arrest number and any other information that may identify the individual. At this stage the disposition of charges will be

left blank (~~(, but the agency will note the action that it has taken, e.g., referred to the prosecutor)~~). The partially completed disposition report must then be included as part of the individual's case file and must be forwarded with other information concerning the charges against the individual to the prosecutor or other agency to which the arresting agency forwards the case.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-100 Prosecutorial agencies—Reporting responsibilities. The prosecutor (~~(or county clerk)~~) must promptly transmit the completed disposition information to the (~~(section)~~) division if the prosecutor determines not to file charges or the case is not otherwise acted upon by a judicial body. In such cases, the prosecutor (~~(or county clerk)~~) must mail or transfer the completed disposition report to the (~~(section)~~) division within ten days from the date that it is determined no further judicial action will be taken on the charges.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-110 Courts—Reporting responsibilities. Where the disposition of criminal charges occurs as a result of action taken by or within the jurisdiction of any court in the state of Washington, the disposition of such charges must be submitted electronically to the WSP via the electronic data exchange between the administrative office of the courts (AOC) and WSP or promptly reported to the (~~(section pursuant to rules of the supreme court of the state of Washington on forms approved by the supreme court and supplied by the section. However, in a county where the judicial information system or other secure method of electronic transfer of information has been implemented between the court and the section, the court may electronically provide the disposition information to the section)~~) division on a disposition report form or judgment and sentence.

Date of Intended Adoption: December 3, 2020.

Submit Written Comments to: Sean Flynn, P.O. Box 40908, email pdc@pdc.wa.gov.

Assistance for Persons with Disabilities: Contact Jana Greer, phone 360-753-1111, email pdc@pdc.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are being adopted in order to implement the provisions of SSB 6152, chapter 152, Laws of 2020.

Reasons Supporting Proposal: New sections must be added to chapter 390-16 WAC to include the requirements and processes authorized under SSB 6152.

Statutory Authority for Adoption: RCW 42.17A.110, 42.17A.240, 42.17A.250, 42.17A.255, 42.17A.260, 42.17A.-265, and 42.17A.305.

Statute Being Implemented: SSB 6152, chapter 152, Laws of 2020.

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

Name of Proponent: Public disclosure commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sean Flynn, 711 Capitol Way South, Suite 206, Olympia, Washington, 360-753-1111; and Enforcement: Barbara Sandahl, 711 Capitol Way South, Suite 206, Olympia, Washington, 360-753-1111.

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

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

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

Is exempt under RCW 19.85.025(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.

October 6, 2020

Sean Flynn

General Counsel

WSR 20-20-133

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed October 7, 2020, 8:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-10-042.

Title of Rule and Other Identifying Information: Compliance with SSB 6152, chapter 152, Laws of 2020, relating to certification concerning the level of foreign national ownership and control of entities that participate in Washington state elections.

Hearing Location(s): On December 3, 2020, at 9:45 a.m., at 711 Capitol Way South, Suite 206, Olympia, WA 98504. Due to COVID-19 protocol the hearing will [be] conducted remotely and streamed live at <https://www.youtube.com/user/WASTPDC/live>. To provide public comment via conference line during this time please call 1-360-522-2372.

NEW SECTION

WAC 390-16-330 Prohibited financing and involvement by foreign nationals. (1) Prohibited financing by foreign nationals.

(a) For purposes of RCW 42.17A.417, a contribution, expenditure, political advertising, or electioneering communication is "financed in any part by a foreign national" if the person making the contribution or expenditure, or sponsoring the advertisement or communication, uses a funding source that includes, in whole or in part, anything of value received from a foreign national for less than full consideration. Such value may include, but is not limited to, a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds, or goods and services.

(b) Anything of value received from a foreign national for less than full consideration must be segregated, using rea-

sonable accounting methods, from the funding source used by the entity to finance a contribution, expenditure, advertisement, or communication. Funding from a foreign national may not be used to supplant, replace, or replenish the funding source or any of the resources or activities funded by that source.

(2) Prohibited decision-making involvement by foreign nationals.

(a) For purposes of RCW 42.17A.417, a foreign national is "involved in making decisions regarding the contribution, expenditure, political advertising, or electioneering communication in any way" if the foreign national directs, dictates, controls, or directly or indirectly participates in the decision-making process regarding any such contribution, expenditure, advertisement, or communication.

(b) If any entity is a subsidiary, branch, unit, or division of a foreign national, or otherwise established, financed, maintained or controlled by a foreign national, under the criteria provided in WAC 390-16-309(3), the decision-making authority of such entity regarding the contribution, expenditure, advertisement, or communication, must be clearly established to be comprised exclusively of United States citizens or legal permanent residents, in order to exclude involvement by any foreign national.

NEW SECTION

WAC 390-16-335 Certification for contributions from entities—Prohibited activity by foreign nationals.

(1) The certification required for a candidate or political committee to accept each contribution from a partnership, association, corporation, organization, or other combination of persons must be received in writing, either:

(a) By the date the report including the contribution is due, or within ten business days, whichever is later; or

(b) Within thirty days from the date the contribution is received, so long as the candidate or committee separates uncertified contributions using reasonable accounting methods, to prevent commingling with other contributions, until the certification is received.

(2) Any uncertified contribution must be refunded or returned by the applicable deadline in subsection (1) of this section. The failure to timely refund or return an uncertified contribution constitutes a violation of chapter 42.17A RCW.

(3) Entities may use a certification that conforms to the suggested format below or provide a different format, so long as it provides the following information:

(a) The name of the entity making the contribution and the authorized agent;

(b) A statement that the entity is not a foreign national, as defined in RCW 42.17A.005(24);

(c) A statement that the contribution is not financed in any part by a foreign national;

(d) A statement that foreign nationals were not involved in making decisions regarding the contribution in any way;

(e) The amount of the contribution and the date it was made; and

(f) The date the certification was submitted.

Certification that Contribution Is Not From a Foreign National

I certify that the entity _____
(name of entity) making this contribution is not organized under the laws of, and does not have its principal place of business in, a foreign country. This contribution is not financed in any part by a foreign national, and foreign nationals were not involved in making decisions regarding the contribution in any way.

Amount of Contribution:

Date of Contribution:

Name of Authorized Agent:

Date Submitted: