

WSR 22-06-012
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed February 18, 2022, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-130.

Title of Rule and Other Identifying Information: WAC 388-829-0085 How many hours of continuing education must DDA community residential staff complete each year?, 388-829-0086 When must a direct support professional employed during the COVID-19 public health emergency complete training?, and 388-829-0087 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to direct support professionals employed during the pandemic?

Hearing Location(s): On April 5, 2022, 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 virtually; Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than April 6, 2022.

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. on April 5, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tencza@dshs.wa.gov [tencza@dshs.wa.gov], by 5:00 p.m. on March 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) amended WAC 388-829-0085 to clarify when continuing education credits must be completed. New WAC 388-829-0086 and 388-829-0087 establish training and continuing education requirements for people employed during the COVID-19 public health emergency.

Reasons Supporting Proposal: These amendments are necessary to clarify, and in some circumstances extend, the due dates for providers who are required to complete training and continuing education requirements under chapter 388-829 WAC.

Statutory Authority for Adoption: RCW 71A.12.030, 74.39A.074.

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

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1500; Implementation and Enforcement: Sarah Blanchette, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1540.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1500, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

Is exempt under RCW 19.85.0030 [19.85.030] because the rules do not impose new costs.

Explanation of exemptions: While providers do pay for their staff to attend trainings, continuing education training reimbursement is built into the provider's rate.

February 15, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4897.6

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

WAC 388-829-0085 How many hours of continuing education must DDA community residential staff complete each year? (1) ~~((Effective January 1, 2016, service providers))~~ A direct support professional must complete ~~((twelve))~~ 12 hours of continuing education: ~~((CE))~~

(a) Each calendar year, except in the calendar year they complete ~~((the))~~ one-time basic training ~~((requirement-))~~; or

(b) By their birth date each year if the direct support professional is also a:

(i) Registered nurse;

(ii) Licensed practical nurse;

(iii) Nurse technician;

(iv) Advanced registered nurse practitioner; or

(v) Home care aide certified.

~~((2) Service providers who are not credentialed through the department of health (DOH) must complete their CE by the end of the calendar year.~~

~~((3) Service providers must complete DOH required CE (such as home care aide certification) by their birth date each year.)~~

(2) A direct support professional employed during the COVID-19 public health emergency must complete:

(a) Training according to WAC 388-829-0086; and

(b) Continuing education according to WAC 388-829-0087.

[Statutory Authority: RCW 71A.12.030, 74.39A.074, 74.39A.341, 74.39A.351, and 18.88B.041. WSR 17-14-090, § 388-829-0085, filed 6/30/17, effective 8/1/17.]

NEW SECTION

WAC 388-829-0086 When must a direct support professional employed during the COVID-19 public health emergency complete training?

(1) A direct support professional employed during the COVID-19 public health emergency must complete training as follows:

Worker hired during the time frame of:	Must complete 75-hour new employee training no later than:
8/17/2019 to 9/30/2020	4/30/2022
10/1/2020 to 4/30/2021	6/30/2022
5/1/2021 to 3/31/2022	8/31/2022
After 3/31/2022	As required under WAC 388-829-0015

(2) Nothing in this section prevents a direct support professional hired between 11/17/2019 and 3/31/2022 from completing training in advance of the deadlines in subsection (1) of this section.

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NEW SECTION

WAC 388-829-0087 What continuing education credit is granted to direct support professionals employed during the pandemic and when must continuing education be completed? (1) The department finds that direct support professionals employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training. Direct support professionals received critical, ongoing training in such topics as:

- (a) Donning and doffing personal protective equipment (PPE);
- (b) Hand hygiene;
- (c) Disinfection of high-touch surfaces;
- (d) Managing visitations and physical distancing;
- (e) Responding to newly infected residents;
- (f) Promotion of vaccination;
- (g) Protocols for quarantine;
- (h) Use of cloth face coverings;
- (i) Personal protection outside of the work environment; and
- (j) How to reduce exposure and spread.

(2) This on-the-job training was required of all service providers under WAC 388-829-0005. Instruction included infection control and the availability and distribution of personal protective equipment. Recognition of this training as a valid learning experience, in its various forms, was agreed upon with input from consumer and worker representatives, as the content was based on guidelines established by the Centers for Disease Control (CDC) and other federal, state, and local health care authorities.

(3) During this time, direct support professionals required ongoing critical training because guidance from the CDC, department of labor and industries, and other health authorities changed as more was learned about the SARS-CoV-2 virus. The department finds that this unprecedented on-the-job training comprised of at least 12 hours of continuing education between March 1, 2020, and February 28, 2021, and that this training:

(a) Is not considered to be repeated training as described in WAC 388-829-0100; and

(b) Satisfies the 12 hours of annual continuing education training.

(4) The direct support professional may apply the 12 hours of on-the-job training towards continuing education for either 2020 or 2021.

(5) All direct support professionals employed during the dates in subsection (3) of this section are granted 12 hours of DSHS-approved continuing education credit for the training entitled "COVID-19 On-The-Job Training Protocols," bearing the DSHS approval code CE2135218. No physical certificate for this training will be issued or required.

(6) The department recognizes that direct support professionals may not have completed training hours in excess of the 12 hours of CE granted in subsection (4) of this section due to the COVID-19 public health emergency. All direct support professionals have 120 days from the end of the federal public health emergency to complete any additional CE that may have become due while training waivers were in place in excess of the 12 hours of CE granted in subsection (4) of this section.

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WSR 22-06-025
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Naturopathy)
[Filed February 23, 2022, 8:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-030.

Title of Rule and Other Identifying Information: New chapter 246-836A WAC, Colon hydrotherapists, and WAC 246-836-300 and 246-836-310 Naturopathic physicians. The board of naturopathy (board) is proposing a new chapter of rule and two new sections of rule to implement SB 5124 which created the colon hydrotherapist profession. The board is adopting rules to establish the education, training, affiliation relationship, and certification requirements.

Hearing Location(s): On April 2, 2022, at 1:00 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board of naturopathy 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. Register in advance for this webinar <https://attendee.gotowebinar.com/register/4522694167139040781>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: April 8, 2022.

Submit Written Comments to: Susan Gragg, P.O. Box 47852, Olympia, WA 98504-7852, email naturopathy@doh.wa.gov, <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by April 4, 2022.

Assistance for Persons with Disabilities: Contact Susan Gragg, phone 360-236-4941, fax 360-236-2901, TTY 711, email naturopathy@doh.wa.gov, by April 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement SB 5124 (chapter 179, Laws of 2021) which created a new profession in the state of Washington known as colon hydrotherapists. The board is proposing rules that establish the new profession's education and examination requirements, standards for affiliation relationships between colon hydrotherapists and supervising naturopathic physicians, and certification requirements.

Reasons Supporting Proposal: The board proposes these rules to align with the requirements of chapter 18.36A RCW and legislative intent of SB 5124. Rules are needed to establish the regulatory framework for regulating colon hydrotherapists. In addition, the board proposes rules establishing standards for patient referral, the provision of supervision, patient care communication, the use of appropriate equipment, safety and consent procedures, and transfer for patients needing a higher level of care.

Statutory Authority for Adoption: RCW 18.36A.160 and 18.36A.095.

Statute Being Implemented: SB 5124 (chapter 179, Laws of 2021).

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Gragg, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4941.

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 Susan Gragg, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4941, fax 360-236-2901, TTY 711, email naturopathy@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not apply to businesses.

February 23, 2022
Renee Fullerton
Executive Director

OTS-3512.2

NEW SECTION

WAC 246-836-300 Affiliation relationships for colon hydrotherapy. (1) A naturopathic physician must establish an affiliation relationship with a colon hydrotherapist to allow the colon hydrotherapist to perform colon hydrotherapy on a patient of the naturopathic physician. Such affiliation relationships must be registered with the board on forms provided by the board and will remain in effect until rescinded by either practitioner.

(2) A naturopathic physician who has a registered affiliation relationship with a colon hydrotherapist and desires to terminate such relationship must provide a minimum of 60 days' notice prior to submitting documentation to the board rescinding that relationship.

(3) A naturopathic physician may enter into registered affiliation relationships with up to a maximum of 20 colon hydrotherapists but may petition the board for a waiver of this limit.

(4) Affiliation relationships must be fully documented, signed by both practitioners with copies maintained by each practitioner, and available upon request by the board or its designee. Such affiliation relationship documentation must include, at a minimum:

(a) Communication of a patient's plan of care to include the methods and process for shared documentation of treatment;

(b) Standards for patient referral, to include an expiration date of the referral or the total number of colon hydrotherapy treatments to be provided within a specified time frame. Unless otherwise stated, such referral shall not exceed 24 treatments within six months;

(c) Policy and procedures for transfer of patient care in the event a higher level is indicated;

(d) Acknowledgment that contraindications for a patient prohibit performing colon hydrotherapy including, but not limited to:

(i) Gastrointestinal cancer;

(ii) Acute or severe abdominal pain;

(iii) Gastrointestinal bleed within the past six weeks;

(iv) Surgery within the previous six weeks of the following types:

- (A) Abdominal;
- (B) Gastrointestinal;
- (C) Colon;
- (v) History of gastrointestinal hemorrhage or perforation;
- (vi) Complicated abdominal hernia;
- (vii) Severe anemia;
- (viii) Acute diverticulitis;
- (ix) Severe or painful hemorrhoids;
- (x) Severe or painful fissures or fistula;
- (xi) Acute ulcerative colitis;
- (xii) Acute Crohn's disease;
- (xiii) Recent myocardial infarction;
- (xiv) Congestive heart failure;
- (xv) Uncontrolled hypertension;
- (xvi) Vascular or aortic aneurysm;
- (xvii) Kidney failure or renal insufficiency;
- (xviii) Acute cirrhosis; and
- (xix) Pregnancy that is:
 - (A) First trimester;
 - (B) Third trimester;
 - (C) Complicated; or
 - (D) High risk; and

(e) A plan for inspection and maintenance of the colon hydrotherapy equipment, which must be registered FDA equipment and utilize disposable rectal nozzles or speculae. However, if the equipment utilizes reusable materials, such materials must be cleaned and sterilized within manufacturer's specifications. Any disposable materials shall not be reused or repurposed.

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NEW SECTION

WAC 246-836-310 Training affiliation relationships for colon hydrotherapy. (1) A supervising naturopathic physician providing a colon hydrotherapy training program must establish a training affiliation relationship with a colon hydrotherapist trainee. Such training affiliation relationships must:

- (a) Be registered with the board on forms provided by the board; and
- (b) Include a training schedule for the trainee to complete a colon hydrotherapy practicum component. The trainee must successfully complete a minimum of 30 colon hydrotherapy procedures within six months. If the colon hydrotherapist trainee is unable to successfully complete the full training program requirements within six months, the training is null and void and a new training affiliation relationship must be initiated and registered with the board. The supervising naturopathic physician shall be allowed to register the same colon hydrotherapy trainee for a total of two training programs.

(2) The supervising naturopathic physician is responsible for ensuring the competency of the trainee in the performance of colon hydrotherapy procedures. Such competency must also include successful completion of education in:

- (a) The history, theory, and practice of colon hydrotherapy to include risks and contraindications;
- (b) Anatomy and physiology, a portion of which must include the anatomy and physiology of the alimentary tract as well as the function and disfunction of intestinal health;
- (c) Professional ethics and patient boundaries;
- (d) Business ethics and office procedures; and
- (e) Equipment safety, infection prevention and control, and the handling and disposal of used equipment.
- (3) For purposes of this section, "licensed supervising naturopathic physicians" has the same meaning as that term is defined in WAC 246-836A-010.

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OTS-3513.2

Chapter 246-836A WAC COLON HYDROTHERAPIST

NEW SECTION

WAC 246-836A-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Affiliation relationship" means documentation of affiliation between a colon hydrotherapist and a naturopathic physician as set forth in WAC 246-836-300.
- (2) "Board" means the board of naturopathy.
- (3) "Colon hydrotherapist" means a person certified under chapter 18.36A RCW and this chapter to perform colon hydrotherapy pursuant to an affiliation relationship with one or more naturopathic physicians.
- (4) "Colon hydrotherapy" means the performance of enemas or colonic irrigation.
- (5) "Department" means the department of health.
- (6) "Direct visual supervision" means the supervising naturopathic physician is physically present and within visual range of the colon hydrotherapist.
- (7) "GPACT" means the global professional association for colon hydrotherapy.
- (8) "I-ACT" means the international association for colon hydrotherapy.
- (9) "Licensed supervising naturopathic physicians" means a naturopathic physician licensed under chapter 18.36A RCW that enters into a training affiliation relationship with a colon hydrotherapist trainee for purposes of fulfilling the education and training requirements in WAC 246-836A-020.
- (10) "NBCHT" means the national board for colon hydrotherapy.

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NEW SECTION**WAC 246-836A-020 Colon hydrotherapist—Education and training.**

An applicant for a colon hydrotherapy credential must successfully complete a colon hydrotherapy training program approved by the board.

(1) The colon hydrotherapy training program must be administered by a licensed supervising naturopathic physician under a training affiliation relationship. Such training affiliation relationship must also meet the requirements in WAC 246-836-310 (1)(a) through (c). The supervising naturopathic physician is responsible for verifying the content of the training and for ascertaining the proficiency of the trainee.

(a) The colon hydrotherapy training program must provide evaluation and assessment of knowledge and skills in the following areas:

(i) The history, theory, and practice of colon hydrotherapy to include risks and contraindications;

(ii) Anatomy and physiology, a portion of which must include the anatomy and physiology of the alimentary tract as well as the function and disfunction of intestinal health;

(iii) Professional ethics and patient boundaries;

(iv) Business ethics and office procedures; and

(v) Equipment safety, infection prevention and control, and the handling and disposal of used equipment.

(b) The colon hydrotherapy training program must include a colon hydrotherapy practicum component for which the supervising naturopathic physician shall provide direct visual supervision to the trainee. Such practicum must include at a minimum 30 colon hydrotherapy procedures performed by the trainee within six months.

(c) The supervising naturopathic physician is responsible for ensuring the competency of the trainee in the performance of colon hydrotherapy procedures.

(2) Documentation of all colon hydrotherapy training, duties, and responsibilities of the trainee must be completed, signed by the supervising naturopathic physician and the trainee, and placed in the trainee's file. Such documentation must be retained for two years.

(3) Training programs that meet the requirements described in subsection (1) of this section are approved by the board.

(4) A trainee must submit their completed application, with a copy of the documentation required in subsection (2) of this section, and all required fees, to the board within 90 days of completing the colon hydrotherapy training program to be approved to sit for the state colon hydrotherapy examination as set forth in WAC 246-836A-030.

(5) A colon hydrotherapist who is currently certified, registered, or otherwise credentialed by GPACT, I-ACT, or NBCHT is considered to have met the education and training requirements in this section.

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NEW SECTION

WAC 246-836A-030 Colon hydrotherapist—Examination. (1) Applicants for a colon hydrotherapist credential shall successfully pass the state board examination administered by the NBCHT, unless they are

currently certified under subsection (3) of this section. Applicants taking the state examination must meet the education and training requirements in WAC 246-836A-020 and submit the application, supporting documentation, and application fee set in WAC 246-836A-990 to the department for approval prior to being authorized to take the examination. Once authorized, applicants then contact the NBCHT to be scheduled for the Washington state examination and pay the examination fee set by NBCHT directly to NBCHT. The examinations shall be conducted in accordance with the NBCHT security measures and contract.

(2) Examination candidates shall be advised of the results of their examination in writing by the NBCHT.

(3) A colon hydrotherapist who is currently certified, registered, or otherwise credentialed by GPACT, I-ACT, or NBCHT is considered to have met the examination requirement in this section.

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NEW SECTION

WAC 246-836A-040 Colon hydrotherapist—Application. An applicant for a colon hydrotherapist credential shall submit the following to the board:

- (1) Completed application on forms provided by the department;
- (2) Proof of successful completion of education, training, and examination required in WAC 246-836A-020;
- (3) Proof of an affiliation relationship with a naturopathic physician as required in WAC 246-836-300;
- (4) Proof of current certification in cardiopulmonary resuscitation (CPR);
- (5) Any fee required in WAC 246-836A-990; and
- (6) Fingerprint cards for national fingerprint-based background check pursuant to RCW 18.130.064(2), if requested by the department; and
- (7) Any additional documentation or information requested by the board.

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NEW SECTION

WAC 246-836A-050 Colon hydrotherapist—Affiliation relationships. (1) A colon hydrotherapist may perform colon hydrotherapy only under an affiliation relationship with a naturopathic physician as required in WAC 246-836-300. Such affiliation relationships must be registered with the board before a colon hydrotherapist may perform colon hydrotherapy services on patients referred from that naturopathic physician. A registered affiliation relationship will remain in effect until rescinded by either practitioner.

(2) A colon hydrotherapist who has a registered affiliation relationship with a naturopathic physician and desires to terminate such relationship must provide a minimum of 60 days' notice to that naturo-

pathic physician prior to submitting documentation to the board rescinding that relationship.

(3) If a colon hydrotherapist desires to become affiliated with additional naturopathic physicians, he or she must enter into an additional affiliation relationship with each naturopathic physician as set forth in WAC 246-836-300. Such additional affiliation relationships must also be registered with the board before a colon hydrotherapist may perform colon hydrotherapy services on patients referred to them from the additional naturopathic physicians.

(4) There is no limit to the number of affiliation relationships a colon hydrotherapist may have with naturopathic physicians.

(5) A colon hydrotherapist's certification is considered inoperable when there is no registered affiliation relationship on file with the board.

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NEW SECTION

WAC 246-836A-060 Colon hydrotherapist—Activities allowed or prohibited. A colon hydrotherapist is authorized to perform colon hydrotherapy services. Such services shall only include the administration of substances ordered or prescribed by the referring naturopathic physician for the specific patient receiving the colon hydrotherapy procedure. A colon hydrotherapist is prohibited from administering any controlled substance or experimental medication.

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NEW SECTION

WAC 246-836A-070 Minimum standards of practice for colon hydrotherapy. (1) A colon hydrotherapist shall:

- (a) Allow a patient privacy to dress or undress except as may be necessary in emergencies or custodial situations; and
- (b) Always provide the patient a gown or draping except as may be necessary in emergencies.

(2) A colon hydrotherapist shall use safe, functional, and hygienic coverage and draping practices during the practice of colon hydrotherapy when the patient is disrobed. Safe, functional, and hygienic coverage and draping means:

- (a) The colon hydrotherapist explains and maintains coverage and draping boundaries; and
- (b) Movement of the body does not expose the patient's gluteal cleft and perineum beyond that needed to perform the colon hydrotherapy procedure.

(3) The colon hydrotherapist shall use hygienic, safe, and sanitary practices, including:

- (a) Wearing gloves during insertion of the speculae;
- (b) Using fresh gloves for every patient during insertion;
- (c) Being physically present with the patient during insertion;
- (d) Not reusing or repurposing disposable materials; and

(e) Cleaning and sterilizing any reusable materials within manufacturer's specifications.

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NEW SECTION

WAC 246-836A-080 Recordkeeping and retention. (1) Documentation. A colon hydrotherapist providing colon hydrotherapy services to a patient must document services provided. Documentation should be in sufficient detail to support and enable anticipated continuity of care. The documentation must include:

(a) Patient name and contact information or name and contact information of a parent or guardian if a patient is under 18 years of age;

(b) Age of patient;

(c) Date the colon hydrotherapy service is provided;

(d) Written informed consent to treat, which is considered valid for the duration of the treatment referral or one year unless revoked; and

(e) For colon hydrotherapy where the focus is on treating a health condition, the documentation must also include symptoms and expected outcome measures as reported by the referring naturopathic physician and the treatment plan for future sessions, if applicable.

(2) Patient records.

(a) Colon hydrotherapist records for patients shall comply with record retention requirements and be secured with properly limited access consistent with chapter 70.02 RCW and the Health Insurance Portability and Accountability Act (HIPAA).

(b) A colon hydrotherapist shall ensure the patient record is legible, permanent, and recorded within 24 hours of treatment. Documentation that is not recorded on the date of service must designate both the date of service and the date of the chart note entry.

(c) The colon hydrotherapist shall retain in the patient record correspondence relating to any referrals by a naturopathic physician concerning the diagnosis, evaluation, or treatment of the patient.

(d) Patient records should clearly identify the referring naturopathic physician and the colon hydrotherapist providing the colon hydrotherapy service.

(e) Records for clients or patients 18 years of age and older must be retained by or be otherwise accessible to the colon hydrotherapist for at least three years from the date of last treatment, or for patients under the age of 18 years old, at least three years after the patient reaches 18 years old.

(f) After the retention period, records may be disposed of pursuant to this subsection. Disposal must be done in a secure and confidential manner in compliance with chapter 70.02 RCW and HIPAA and must include, as appropriate:

(i) Shredding;

(ii) Deleting, erasing, or reformatting electronic media; or

(iii) Rendering other readable forms of media unusable or unreadable.

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NEW SECTION

WAC 246-836A-100 Mandatory reporting. Mandatory reporting requirements under chapter 246-16 WAC apply to a person who holds a colon hydrotherapist credential.

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NEW SECTION

WAC 246-836A-110 Sexual misconduct. The sexual misconduct rules under WAC 246-836-500 and 246-836-510 apply to a person who holds a colon hydrotherapist credential.

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WSR 22-06-039

PROPOSED RULES

BOARD OF TAX APPEALS

[Filed February 24, 2022, 8:48 a.m.]

Continuance of WSR 22-01-155.

Preproposal statement of inquiry was filed as WSR 21-17-074.

Title of Rule and Other Identifying Information: Chapter 456-12 WAC, Administrative processes.

Hearing Location(s): On April 8, 2022, at 10:00 a.m., electronic meeting via Teams, information on agency website.

Date of Intended Adoption: April 15, 2022.

Submit Written Comments to: Keri Lamb, 360-586-9020, email bta@bta.wa.gov, fax 360-586-9020, by January 21, 2022.

Assistance for Persons with Disabilities: Contact Keri Lamb, phone 360-753-5446, fax 360-586-9020, TTY 360-753-5446, email bta@bta.wa.gov, by January 21, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is threefold. First, this section was edited for clarity and flow. Second, provisions from other of the board's WAC sections have been relocated here if they pertain to the board's administrative functions. Third, the sections pertaining to the Public Records Act have been expanded and edited to reflect current law. These changes are anticipated to improve the public's comprehension of the rules, and to outline a detailed process for public records requests.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 82.03.170.

Statute Being Implemented: Chapters 42.30 and 42.56 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board itself has drafted the proposed changes, and therefore recommends them in full. The board implements and enforces its own rules, so the proposed changes have no fiscal impact.

Name of Proponent: Washington state board of tax appeals, governmental.

Name of Agency Personnel Responsible for Drafting: Andrea Vingo, Board of tax appeals, 360-753-5446; Implementation and Enforcement: Board of tax appeals, 360-753-5446.

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. Changes have no fiscal impact.

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.

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. No changes in the board's administrative process.

February 24, 2022
Andrea Vingo
Tax Referee

OTS-3408.2

AMENDATORY SECTION (Amending WSR 19-21-045, filed 10/9/19, effective 11/9/19)

WAC 456-12-015 Purpose of this chapter. The purpose of this chapter is to ~~((set forth rules on))~~ outline the organization and administration of the board of tax appeals (board), and to set forth rules that comply with the Open Public Meetings Act, chapter 42.30 RCW, ((regarding open public meetings,)) and the Public Records Act, chapter 42.56 RCW((, regarding public records)).

[Statutory Authority: RCW 82.03.170. WSR 19-21-045, § 456-12-015, filed 10/9/19, effective 11/9/19; WSR 99-13-098, § 456-12-015, filed 6/15/99, effective 7/16/99.]

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-035 Description of the board. (1) ~~((As an independent state agency,))~~ The board is an independent state agency that reviews, holds hearings on, and decides state tax appeals filed by taxpayers and taxing authorities. The board consists of three members, an executive director, tax referees, and staff ~~((hired by the board))~~. The three members of the board serve on a full-time basis, and are appointed by the governor, with the consent of the senate, for a term of six years.

(2) The executive director is the board's chief executive officer and is responsible for implementing board directions and for directing the board's staff.

~~((3) The board holds regular meetings at 10:00 a.m. on the second Thursday of each March, June, September, and December. The meetings are held at the board's office at 910 5th Avenue S.E., Olympia, WA 98504-0915.))~~

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-035, filed 6/15/99, effective 7/16/99.]

NEW SECTION

WAC 456-12-037 Communication and contact with the board. (1) The board's office is located at 1110 Capitol Way South, Suite 307, Olympia, WA 98501. The board's mailing address is P.O. Box 40915, Olympia, WA 98504-0915. The board's telephone number is 360-753-5446. The board's fax number is 360-586-9020. The board's email address is bta@bta.wa.gov, and the board's website is bta.wa.gov.

(2) The board's primary method of communication is by electronic mail.

(3) Decisions and other correspondence will be sent by electronic mail unless an individual or party has made prior arrangements with the board.

[]

NEW SECTION

WAC 456-12-038 Pro tem. The chair may select an individual to serve as a pro tem when a member of the board has or may have a conflict of interest, cannot otherwise hear and consider a particular case set for full board review, or to respond to workload variations. The pro tem is limited to participating in, and issuing orders and decisions in the case or cases to which the pro tem has been selected, and must be agreed upon in by the parties. Pro tems will be selected from those individuals currently employed by the board as hearings officers or the equivalent.

[]

PUBLIC MEETINGSNEW SECTION

WAC 456-12-039 Meetings and quorums. (1) The board holds regular meetings at 9:30 a.m. on the third Friday of each month. The meetings are held at the board's office.

(2) All meetings of the board are open to the public. Anyone is allowed to attend except as limited by the Open Public Meetings Act, chapter 42.30 RCW.

(3) Two members of the board constitute a quorum for the purpose of making orders or decisions, or for promulgating rules and regulations relating to the board's procedures. A quorum of the board may act even though one position is vacant.

[]

NEW SECTION

WAC 456-12-041 Meeting agendas and minutes. (1) The agenda for a board meeting is available at least 24 hours in advance of the meeting, and is posted on the board's website at bta.wa.gov.

(2) The minutes of any meeting are available for public inspection as provided in RCW 42.30.035. Meeting minutes are available by emailing the clerk of the board at bta@bta.wa.gov.

[]

PUBLIC RECORDS

NEW SECTION

WAC 456-12-043 Purpose and intent. (1) These rules provide information to those who want to request access to public records of the board, and to establish processes for both requestors and the board. They are designed to best assist members of the public in obtaining such access.

(2) The board will respond promptly to requests for records made under chapter 42.56 RCW, Public Records Act.

[]

AMENDATORY SECTION (Amending WSR 19-17-042, filed 8/15/19, effective 9/15/19)

WAC 456-12-045 (~~(Public records available.)~~) Hours for inspection and copying. (~~(Unless exempt under chapter 42.17 RCW or other law, all public records and indexes of the board are available for public inspection and copying at the board's main office during customary office hours.)~~) Public records of the board are available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays and the days the board is closed.

[Statutory Authority: RCW 82.03.170. WSR 19-17-042, § 456-12-045, filed 8/15/19, effective 9/15/19. Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-045, filed 6/15/99, effective 7/16/99.]

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-055 Public records officer. (1) The board's executive director is (~~(identified as)~~) the board's public records officer and is responsible for reviewing requests for public records.

(2) The public records officer will oversee compliance with the act, but a designee may process a request. The public records officer or designee and the board will provide the fullest assistance to requestors; ensure that public records are protected from damage or disorganization; and prevent the fulfilling of public records requests to cause excessive interference with the essential functions of the board.

(3) The board encourages communication with the public records officer if a requestor has not received a response in writing or has questions or concerns about a records request.

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-055, filed 6/15/99, effective 7/16/99.]

NEW SECTION

WAC 456-12-073 Public Records Act requests to the board. (1) **Website records.** Before submitting a records request, those seeking public records of the board are strongly encouraged to first review the board's website at bta.wa.gov. This website includes the board's decisions from 1967 to the present, board policies, and public meeting schedules, and agendas. These are free for viewing and downloading at any time, and are accessible without making a Public Records Act request.

(2) **Public Records Act requests.** Public Records Act requests must be sent or submitted to the public records officer in one of the following ways:

(a) Online: <http://www.bta.wa.gov>

(b) Email: bta@bta.wa.gov with subject line indicating "public records request"

(c) U.S. Mail or Delivery: Public Records Officer
Washington State Board of Tax Appeals
P.O. Box 40915

Olympia, WA 98504-0915

(d) In person: 1110 Capitol Way South, Suite 307
Olympia, WA 98501

Communications that seek the board's records, but which are sent or provided to unauthorized addresses or staff, will not be accepted or processed as Public Records Act requests. The board will instead process such communications as general informal inquiries, general correspondence, or general requests for information.

(3) **Manner of requests.** Requestors are strongly encouraged to make requests in writing. If the board receives an oral request, the board will reduce the request to writing and verify with the requestor in writing that it correctly memorializes the request. Requestors are also urged to include a description of the records requested by docket number, appellant name, subject matter, suggested search terms, or other means that will allow the public records officer or designee to identify the requested records. The board accepts in-person requests at its office during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and days the board's office is closed.

[]

NEW SECTION

WAC 456-12-078 Response to Public Records Act requests.

(1) Within five business days of receiving a Public Records Act request, the board will assign the request a tracking number and log it. The public records officer or designee will evaluate the request according to the nature of the request, clarity, volume, and availability of requested records.

(2) Following the initial evaluation of the request, and within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying including:

(i) Providing an internet address and link on the website to specific records requested if copies are available on the office's website;

(ii) Sending copies to the requestor, if requested and where a payment or a deposit has been made, if any, or other terms of payment are agreed upon and have been satisfied.

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available. The public records officer or designee may revise the estimate.

(c) Acknowledge receipt of the request and ask the requestor to provide clarification for all or part of a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of time the board will need to respond to the unclear request or unclear part of a request if it is not clarified.

(i) Clarification may be requested and provided by phone and memorialized in writing, or by email or letter;

(ii) If the requestor fails to respond to a request for clarification within 30 calendar days and the entire request is unclear, the office need not respond to it. The board will only respond to those portions of a request that are clear.

(d) Deny the request.

(3) The board may request additional time to respond to a request because of the need to clarify the request, locate and assemble the records requested, notify third persons or agencies affected by the request, or determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(4) The board will provide an estimate of the time required to respond to a request, and may provide an estimate of copying costs specific to a request seeking an estimate of cost. If the requestor believes the amount of time or estimated costs are not reasonable, the requestor may petition the board for review as outlined in WAC 456-12-115(2).

[]

NEW SECTION

WAC 456-12-083 Providing responsive records to a Public Records Act request. (1) **Inspecting records.** Consistent with other demands, the board will provide space to inspect public records at a designated location. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor must indicate which documents he or she wishes the office to copy.

(a) The requestor must claim or review the assembled records within 30 days of the board's notification that the records are available for inspection or copying. The board will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the board to make arrangements to claim or review the records.

(b) If the requestor fails to claim or review the records within the 30-day period or make other arrangements, the board may close the request and refile the assembled records.

(2) **Providing copies of records.** After inspection is complete and the requestor asks for copies of some or all of the inspected records, or where copies are otherwise requested, the public records officer or designee will make the requested copies or arrange for copying.

(a) If the board charges for copies, the requestor must pay for the copies before the copies are provided.

(b) Electronic records will be provided as a link to the records if the records are located on the website, or in a format used by the board which is generally commercially available to the public. Records will generally not be provided by email for records responses with multiple records, or where records may not be successfully delivered or received via the board's or the requestor's email systems.

(3) **Providing records in installments.** When a request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within 30 days, the requestor fails to inspect or pay for the entire set of records or for one or more of the installments, the public records officer or designee may stop searching for or producing the remaining records and close the request.

(4) **Multiple requests.** Multiple public records requests from the same requestor will be processed in a manner so as not to interfere with essential agency functions including processing records requests from other requestors. The board may process such requests in the order received, and may complete one request before searching for records for a subsequent request.

(5) **Completion of inspection.** When the review of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the board has completed a reasonable search for the requested records and made any located nonexempt records available for inspection.

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AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-085 Costs and fees. (1) No fee will be charged for inspecting the board's public records.

(2) ~~The board ((will charge ten cents per page for copies of requested public records. Payment will be made by check payable to the board. The board may require that all charges be paid before the copies are released. The executive director may decide that no fee will be charged for the copies if the expense of processing the payment is greater than the cost of providing the copies.))~~ does not calculate all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The board does not have the resources to conduct a study to determine all its actual copying costs; and

(b) Conducting such a study would interfere with other essential agency functions.

(3) The board will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2) (b) and (c). The board may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The board may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4).

(4) The board requires requestors to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests. The public records officer has the discretion to waive fees when:

(a) All of the records responsive to an entire request are paper copies and are 25 or fewer pages; or

(b) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(c) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of 10 percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds \$25.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The board will notify the requestor of when payment is due.

(7) Payment should be made by check or money order to the board. The board prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The board will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-085, filed 6/15/99, effective 7/16/99.]

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-105 Exemptions and denying requests for public records. (1) The board may determine that all or part of a requested public record is exempt under the Public Records Act, chapter 42.17 RCW, or other law and may not be inspected or copied.

(2) ~~((All denials of a request for public records will contain a written statement from the executive director stating the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.))~~ If the board believes that a record or part of a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief written explanation as to why it is being withheld. If only a portion of a record is exempt from disclosure, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

~~(3) ((The board may remove identifying details when it makes available or publishes any public record when there is reason to believe that revealing such details would be an invasion of personal privacy protected by chapter 42.17 RCW.)) If the requested records contain information that may affect the rights of others, the public records officer or designee may give notice to those whose rights may be affected by the disclosure under RCW 42.56.540 before providing the records. Notice should be given to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.~~

~~(4) The board is prohibited by statute from disclosing lists of individuals for commercial purposes.~~

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-105, filed 6/15/99, effective 7/16/99.]

NEW SECTION

WAC 456-12-112 Closing a request for public records. (1) When the requestor either withdraws a request, or fails to clarify an entirely unclear request, or fails to fulfill his or her obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make a final payment for the requested copies, the public records officer or designee will close the request and, unless the board has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to the requestor that the office has closed the request.

(2) If, after the board has informed the requestor that it has provided all available records, the board becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor.

[]

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-115 Reviewing denials of requests for public records, estimates of time, and estimates of cost. ~~((1) Any person objecting to a denial of a request for public records may submit a written request for review to the board.~~

~~(2) Upon receiving the written request for review, the executive director will call a meeting of the board to review the denial.~~

~~(3) The board will issue a written decision within two business days of receiving the request for review.~~

~~(4) The board's written decision regarding the request for review will be the final action by the agency.)~~ (1) Requestors are encouraged to communicate with the public records officer or assigned designee about denials of public records requests, estimates of time, or estimates of costs. If unsatisfied, a requestor may seek review of the issue.

(2) Any person who objects to the board's denial or partial denial of a request for public records or contends an estimate of time to provide records or copying costs to provide records is not reasonable, may petition for prompt review of the decision by submitting a written request to the executive director for a review by the board.

(3) The written request for review must specifically refer to the written statement by the public records officer or designee which accompanied the denial or estimate.

(4) Within two business days of receiving a written request for review, the executive director will schedule a meeting of the board to review the denial.

(5) The board will issue a written decision or order within two business days of the board's meeting where the request for review is considered. The board will affirm, reverse, or amend the denial or estimate.

(6) The board's written decision regarding a request for review will be the final action by the board.

(7) The board will have concluded a public record is exempt from disclosure for purposes of WAC 44-06-160 only after the review conducted under this section has been completed.

[Statutory Authority: [RCW 82.03.170.] WSR 99-13-098, § 456-12-115, filed 6/15/99, effective 7/16/99.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 456-12-025	Definitions.
WAC 456-12-065	Communications with the board.
WAC 456-12-075	Records indexes.
WAC 456-12-095	Requesting public records.
WAC 456-12-125	Electronic correspondence.

WSR 22-06-045

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed February 24, 2022, 10:51 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: Chapter 246-231 WAC, Packaging and transportation of radioactive material; chapter 246-236 WAC, Licenses and radiation safety requirements for irradiators; chapter 246-237 WAC, Radiation protection—Physical protection of category 1 and category 2 quantities of radioactive material; chapter 246-243 WAC, Radiation protection—Industrial radiography; and chapter 246-244 WAC, Radiation protection—Wireline services. The department of health (department) is proposing to revise these chapters to be consistent with the United States Nuclear Regulatory Commission's (NRC) rules and to make nonsubstantive miscellaneous corrections and editorial changes.

Hearing Location(s): On April 12, 2022, 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 is 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. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_mG4_gk66RCCod3-7vvlgyg. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: April 19, 2022.

Submit Written Comments to: Nina Helpling, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, radruleupdates@doh.wa.gov, by April 12, 2022.

Assistance for Persons with Disabilities: Contact Nina Helpling, phone 360-236-3065, TTY 711, email nina.helpling@doh.wa.gov, by April 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule making amends five chapters of rules to adopt federally required rule changes without material change related to licensing radioactive materials. This rule making adopts the following NRC rule changes that are identified by NRC Regulation Amendments Tracking System (RATS) numbers as follows:

(a) 2018-2 Miscellaneous Correction - Organizational Changes - 83 F.R. 58721: Amends rules to make miscellaneous corrections that are nonsubstantive changes, such as updating titles.

(b) 2018-3 Miscellaneous Corrections - 83 F.R. 30285: Amends Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material and Packaging and Transportation of Radioactive Material rules to provide the department an oath or affirmation certificate(s) for reviewing officials seeking access authorization, to include in the security program, for the protection of information, a list of individuals that have been approved for unescorted access, and nonsubstantive changes such as updating titles.

(c) 2019-1 Miscellaneous Corrections - 84 F.R. 63565: Amends Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material rules to make miscellaneous corrections that are nonsubstantive changes, such as updating titles, mailing address, email address, and basic instructions for clarity.

(d) 2019-2 Organizational Changes and Conforming Amendments - 84 F.R. 65639 and 84 F.R. 66561: Amends Packaging and Transportation of Radioactive Material rules to make organizational changes instructing Washington licensees to send quality assurance plans to the department and not to NRC directly and to make nonsubstantive conforming changes to update a division title.

(e) 2020-1 Individual Monitoring Devices - 85 F.R. 15347: Amends Licenses and Radiation Safety Requirements for Irradiators and Radiation Protection - Industrial Radiography, and Radiation Protection - Wireline Services. These amendments were made in response to a 2016 petition for rule making that NRC received from the American Society for Nondestructive Testing and the Nondestructive Testing Management Association. NRC is amending its regulations to authorize the use of modern individual monitoring devices in industrial radiographic, irradiator, and well-logging operations. These amendments will align personnel dosimetry requirements in these areas with the requirements for all other NRC licensees.

The proposed rule also makes nonsubstantive formatting changes.

Reasons Supporting Proposal: The rule making is required to comply with RCW 70A.388.040, State radiation control agency, and 70A.388.110, Federal-state agreements. Under the formal state agreement between the governor and NRC, the department is required to remain compatible with NRC rules. This is done through rule amendments to make our state rules consistent with, and at-least-as-stringent-as, NRC's rules. Additional nonsubstantive formatting changes are being proposed to make the rule easier to read.

Statutory Authority for Adoption: RCW 70A.388.040.

Statute Being Implemented: RCW 70A.388.040 and 70A.388.110.

Rule is necessary because of federal law, RCW 70A.388.040.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Raj Maharjan, 111 Israel Road S.E., Tumwater, WA 98501, 360-522-0613; Implementation and Enforcement: Tracy Eaton, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3300.

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)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards and RCW 34.05.328 (5)(b)(iv) exempt rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

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: 83 F.R. 30285, 83 F.R. 58721, 84 F.R. 63565, 84 F.R. 65639, 84 F.R. 66561, and 85 F.R. 15347 identify updates to the Code of Federal Registration, Title 10 - Energy, Chapter I. Nuclear Regulatory Commission. Per RCW 70A.388.040, State radiation control agency, and 70A.388.110, Federal-state agreements. Under the formal

state agreement between the governor and NRC, the department is required to remain compatible with NRC rules. If the department did not adopt these proposed changes the department would be out of compliance with state compatibility requirements of NRC, and RCW 70A.388.110 Federal-state agreements. Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

February 17, 2022
Lauren Jenks
Assistant Secretary

OTS-3485.2

AMENDATORY SECTION (Amending WSR 17-01-034, filed 12/12/16, effective 1/12/17)

WAC 246-231-060 General license—NRC-approved package. (1) A general license is hereby issued to any licensee of the department, NRC, or an agreement state, to transport, or to deliver to a carrier for transport, licensed material in a package for which a license, certificate of compliance, or other approval has been issued by the NRC.

(2) This general license applies only to a licensee who has a quality assurance program approved by NRC as satisfying the provisions of 10 C.F.R. 71 Subpart H.

(3) Each licensee issued a general license under this chapter shall:

(a) Maintain a copy of the certificate of compliance, or other approval of the package, and the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken before shipment;

(b) Comply with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of 10 C.F.R. 71 Subparts A, G, and H; and

(c) Before the licensee's first use of the package, submits in writing to: **ATTN: Document Control Desk, Director, Division of (~~Spent Fuel Storage and Transportation~~) Fuel Management**, Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in 10 C.F.R. 71.1(a), the licensee's name and license number and the package identification number specified in the package approval.

(4) This general license applies only when the package approval authorizes use of the package under this general license.

(5) For a Type B or fissile material package, the design of which was approved by NRC before April 1, 1996, the general license is subject to the additional restrictions of 10 C.F.R. 71.19.

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 17-01-034, § 246-231-060, filed 12/12/16, effective 1/12/17. Statutory Authority: RCW 70.98.050. WSR 14-09-017, § 246-231-060, filed 4/7/14, effective 5/8/14; WSR 08-09-093, § 246-231-060, filed 4/18/08, effective 5/19/08; WSR 99-15-105, § 246-231-060, filed 7/21/99, effective 8/21/99.]

AMENDATORY SECTION (Amending WSR 17-01-034, filed 12/12/16, effective 1/12/17)

WAC 246-231-140 Advance notification of shipment of irradiated reactor fuel and nuclear waste. (1) (a) As specified in subsections (2), (3), and (4) of this section, each licensee shall provide advance notification to the governor of a state, or the governor's designee, of the shipment of licensed material, within or across the boundary of the state, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage.

(b) As specified in subsections (2), (3), and (4) of this section, after June 11, 2013, each licensee shall provide advance notification to the Tribal official of participating tribes referenced in subsection (3)(c)(iii) of this section, or the official's designee, of the shipment of licensed material within or across the boundary of the Tribe's reservation before the transport, or delivery to a carrier for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage.

(2) Advance notification is required under this section for shipments of irradiated reactor fuel in quantities less than that subject to advance notification requirements of NRC regulations 10 C.F.R. 73.37(f). Advance notification is also required under this section for shipment of licensed material, other than irradiated fuel, meeting the following three conditions:

(a) The licensed material is required by this section to be in Type B packaging for transportation;

(b) The licensed material is being transported to or across a state boundary en route to a disposal facility or to a collection point for transport to a disposal facility; and

(c) The quantity of licensed material in a single package exceeds the least of the following:

(i) (~~3000~~) Three thousand times the A1 value of the radionuclides as specified in WAC 246-231-200, Table A-1 for special form radioactive material;

(ii) (~~3000~~) Three thousand times the A2 value of the radionuclides as specified in WAC 246-231-200, Table A-1 for normal form radioactive material; or

(iii) (~~1000~~) One thousand TBq (27,000 Ci).

(3) Procedures for submitting advance notification.

(a) The notification must be made in writing to the office of each appropriate governor or governor's designee, to the office of each appropriate Tribal official or Tribal official's designee, and to

the Director, (~~(Division of Security Policy,~~) Office of Nuclear Security and Incident Response.

(b) A notification delivered by mail must be postmarked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

(c) A notification delivered by any other means than mail must reach the office of the governor or the governor's designee, or of the Tribal official or the Tribal official's designee, at least four days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

(i) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the *Federal Register* on June 30, 1995, (60 FR 34306).

(ii) Contact information for each state, including telephone and mailing addresses of governors and governors' designees, and participating Tribes, including telephone and mailing addresses of Tribal officials and Tribal official's designees, is available on the NRC website at (~~(+)~~) <https://scp.nrc.gov/special/designee.pdf>.

(iii) A list of the names and mailing addresses of the governors' designees and Tribal officials' designees of participating Tribes is available on request from the Director, Division of (~~Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, NRC~~) Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001.

(d) The licensee shall retain a copy of the notification as a record for three years.

(4) Information to be furnished in advance notification of shipment. Each advance notification of shipment of irradiated reactor fuel or nuclear waste must contain the following information:

(a) The name, address, and telephone number of the shipper, carrier, and receiver of the irradiated reactor fuel or nuclear waste shipment;

(b) A description of the irradiated reactor fuel or nuclear waste contained in the shipment, as specified in the regulations of DOT in 49 C.F.R. 172.202 and 172.203(d);

(c) The point of origin of the shipment and the seven-day period during which departure of the shipment is estimated to occur;

(d) The seven-day period during which arrival of the shipment at state boundaries or Tribal reservation boundaries is estimated to occur;

(e) The destination of the shipment, and the seven-day period during which arrival of the shipment is estimated to occur; and

(f) A point of contact, with a telephone number, for current shipment information.

(5) Revision notice. A licensee who finds that schedule information previously furnished to a governor or governor's designee, or a Tribal official or Tribal official's designee, in accordance with this section, will not be met, shall telephone a responsible individual in the office of the governor of the state or of the governor's designee or the Tribal official or the Tribal official's designee, and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for three years.

(6) Cancellation notice.

(a) Each licensee who cancels an irradiated reactor fuel or nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each state or to the governor's designee previously notified, to each Tribal official or to the Tribal official's designee previously notified, and to the Director, (~~Division of Security Policy,~~) Office of Nuclear Security and Incident Response.

(b) The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled. The licensee shall retain a copy of the notice as a record for three years.

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 17-01-034, § 246-231-140, filed 12/12/16, effective 1/12/17. Statutory Authority: RCW 70.98.050. WSR 14-09-017, § 246-231-140, filed 4/7/14, effective 5/8/14; WSR 08-09-093, § 246-231-140, filed 4/18/08, effective 5/19/08; WSR 99-15-105, § 246-231-140, filed 7/21/99, effective 8/21/99.]

AMENDATORY SECTION (Amending WSR 17-01-034, filed 12/12/16, effective 1/12/17)

WAC 246-231-150 Quality assurance requirements. (1) Purpose. This section describes quality assurance requirements that apply to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging that are important to safety. As used in this chapter, "quality assurance" comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements. Each licensee and applicant for a package approval is responsible for satisfying the quality assurance requirements that apply to design, fabrication, testing, and modification of packaging subject to this chapter. Each licensee is responsible for satisfying the quality assurance requirements that apply to its use of packaging for the shipment of licensed material subject to this chapter.

(2) Establishment of program. Each licensee, certificate holder, and applicant for a certificate of compliance shall establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria in 10 C.F.R. 71.101 through 71.137 and satisfying any specific provisions that are applicable to the licensee's activities including procurement of packaging. The licensee, certificate holder, and applicant for a certificate of compliance shall execute the applicable criteria in a graded approach to an extent that is commensurate with the quality assurance requirement's importance to safety.

(3) Approval of program. Before the use of any package for the shipment of licensed material subject to this chapter, each licensee shall obtain (~~NRC~~) the department's approval of its quality assurance program. Using an appropriate method listed in 10 C.F.R. 71.1(a), each licensee shall file a description of its quality assurance program, including a discussion of which requirements of 10 C.F.R. 71

Subpart H are applicable and how they will be satisfied, by submitting the description to (~~ATTN: Document Control Desk, Director, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards~~) the department.

(4) Radiography containers. A program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices and meeting the requirements of WAC 246-243-120(2), 10 C.F.R. 34.31(b), or equivalent agreement state requirements, is deemed to satisfy the requirements of WAC 246-231-060(2) and 246-231-150(2).

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 17-01-034, § 246-231-150, filed 12/12/16, effective 1/12/17. Statutory Authority: RCW 70.98.050. WSR 14-09-017, § 246-231-150, filed 4/7/14, effective 5/8/14; WSR 08-09-093, § 246-231-150, filed 4/18/08, effective 5/19/08.]

OTS-3486.2

AMENDATORY SECTION (Amending WSR 18-15-017, filed 7/9/18, effective 8/9/18)

WAC 246-236-055 Personnel monitoring. (1) Irradiator operators shall wear a personnel dosimeter (~~that is processed and evaluated by an accredited national voluntary laboratory accreditation program processor~~) while operating a panoramic or beam-type irradiator or while in the area around the pool of an underwater irradiator. The personnel dosimeter (~~processor must be accredited for~~) must be capable of detecting high energy photons in the normal and accident dose ranges per WAC 246-221-090(3). Each personnel dosimeter must be assigned to and worn by only one individual. Film badges must be (~~processed~~) replaced at least monthly(~~7~~) and other personnel dosimeters that require replacement must be (~~processed~~) evaluated at least quarterly or promptly after replacement, whichever is more frequent.

(2) Other individuals who enter the radiation room of a panoramic or beam-type irradiator shall wear a dosimeter, which may be a pocket dosimeter. For groups of visitors, only two people who enter the radiation room are required to wear dosimeters. If pocket dosimeters are used to meet the requirements of this subsection, a check of their response to radiation must be done at least annually. Acceptable dosimeters must read within plus or minus (~~thirty~~) 30 percent of the true radiation dose.

[Statutory Authority: RCW 70.98.050, 70.98.110 and 58 F.R. 7728, 76 F.R. 56963, 77 F.R. 39906, 80 F.R. 54234. WSR 18-15-017, § 246-236-055, filed 7/9/18, effective 8/9/18.]

OTS-3487.4

AMENDATORY SECTION (Amending WSR 16-13-079, filed 6/14/16, effective 7/15/16)

WAC 246-237-010 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section and in WAC 246-220-010 apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Access control" means a system for allowing only approved individuals to have unescorted access to the security zone and for ensuring that all other individuals are subject to escorted access.

(2) "Act" means the Atomic Energy Act of 1954, including any amendments thereto.

(3) "Aggregated" means accessible by the breach of a single physical barrier that would allow access to radioactive material in any form, including any devices that contain the radioactive material, when the total activity equals or exceeds a Category 2 quantity of radioactive material.

(4) "Agreement state" means any state with which the Atomic Energy Commission or the NRC has entered into an effective agreement under subsection 274b of the act. Nonagreement state means any other state.

(5) "Approved individual" means an individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with WAC 246-237-021 through 246-237-033 and who has completed the training required by WAC 246-237-043(3).

(6) "Background investigation" means the investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

(7) "Becquerel (Bq)" means the SI unit of activity. One becquerel is equal to 1 disintegration or transformation per second (s^{-1}).

(8) "By-product material" means:

(a) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "by-product material" within this definition;

(c) (i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) Any material that:

(A) Has been made radioactive by use of a particle accelerator; and

(B) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(d) Any discrete source of naturally occurring radioactive material, other than source material, that:

(i) The NRC, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

(9) "Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(10) "Category 1 quantity of radioactive material" means a quantity of radioactive material meeting or exceeding the Category 1 threshold in Table 1 of WAC 246-237-900 Appendix A: Table 1—Category 1 and Category 2. This is determined by calculating the ratio of the total activity of each radionuclide to the Category 1 threshold for that radionuclide and adding the ratios together. If the sum equals or exceeds 1, the quantity would be considered a Category 1 quantity. Category 1 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(11) "Category 2 quantity of radioactive material" means a quantity of radioactive material meeting or exceeding the Category 2 threshold but less than the Category 1 threshold in Table 1 of WAC 246-237-900 Appendix A: Table 1—Category 1 and Category 2. This is determined by calculating the ratio of the total activity of each radionuclide to the Category 2 threshold for that radionuclide and adding the ratios together. If the sum equals or exceeds (\pm) one, the quantity would be considered a Category 2 quantity. Category 2 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(12) "Curie" means a unit of quantity of radioactivity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} transformations per second (tps).

(13) "Diversion" means the unauthorized movement of radioactive material subject to this chapter to a location different from the material's authorized destination inside or outside of the site at which the material is used or stored.

(14) "Escorted access" means accompaniment while in a security zone by an approved individual who maintains continuous direct visual surveillance at all times over an individual who is not approved for unescorted access.

(15) "FBI" means the federal bureau of investigation.

(16) "Fingerprint orders" means the orders issued by the NRC or the legally binding requirements issued by agreement states that require fingerprints and criminal history records checks for individuals with unescorted access to Category 1 and Category 2 quantities of radioactive material or safeguards information-modified handling.

(17) "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the government.

(18) "License" means, except where otherwise specified, a license for radioactive material issued pursuant to the regulations in chapters 246-232, 246-233, 246-235, 246-240, 246-243, or 246-244 WAC.

(19) "License issuing authority" means the licensing agency (the department, NRC, or an agreement state) that issued the license.

(20) "LLEA (local law enforcement agency)" means a public or private organization that has been approved by a federal, state, or local

government to carry firearms and make arrests, and is authorized and has the capability to provide an armed response in the jurisdiction where the licensed Category 1 or Category 2 quantity of radioactive material is used, stored, or transported.

(21) "Lost or missing licensed material" means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

(22) "Mobile device" means a piece of equipment containing licensed radioactive material that is either mounted on wheels or casters, or otherwise equipped for moving without a need for disassembly or dismounting; or designed to be hand carried. Mobile devices do not include stationary equipment installed in a fixed location.

(23) "Movement control center" means an operations center that is remote from transport activity and that maintains position information on the movement of radioactive material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies, and can request and coordinate appropriate aid.

(24) "No-later-than arrival time" means the date and time that the shipping licensee and receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than arrival time may not be more than six hours after the estimated arrival time for shipments of Category 2 quantities of radioactive material.

(25) "NRC or commission" means the U.S. Nuclear Regulatory Commission.

(26) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than NRC or the Department of Energy, any state or any political subdivision of, or any political entity within, a state, any foreign government or nation, or any political subdivision of any such government or nation, or other entity, and any legal successor, representative, agent or agency of the foregoing.

(27) "Reviewing official" means the individual who makes the trustworthiness and reliability determination of an individual to determine whether the individual may have, or continue to have, unescorted access to the Category 1 or Category 2 quantities of radioactive materials that are possessed by the licensee.

(28) "Sabotage" means deliberate damage, with malevolent intent, to a Category 1 or Category 2 quantity of radioactive material, a device that contains a Category 1 or Category 2 quantity of radioactive material, or the components of the security system.

(29) "Safe haven" means a readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.

(30) "Security zone" means any temporary or permanent area determined and established by the licensee for the physical protection of Category 1 or Category 2 quantities of radioactive material.

(31) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(32) "Telemetric position monitoring system" means a data transfer system that captures information by instrumentation or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations.

(33) "Trustworthiness and reliability" are characteristics of an individual considered dependable in judgment, character, and performance, such that unescorted access to Category 1 or Category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or security. A determination of trustworthiness and reliability for this purpose is based upon the results from a background investigation.

(34) "Unescorted access" means solitary access to an aggregated Category 1 or Category 2 quantity of radioactive material or the devices that contain the material.

(35) "United States" means when used in a geographical sense includes Puerto Rico and all territories and possessions of the United States.

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 16-13-079, § 246-237-010, filed 6/14/16, effective 7/15/16.]

AMENDATORY SECTION (Amending WSR 17-01-034, filed 12/12/16, effective 1/12/17)

WAC 246-237-023 Access authorization program requirements. (1)

Granting unescorted access authorization.

(a) Licensees shall implement the requirements of this chapter for granting initial or reinstated unescorted access authorization.

(b) Individuals who have been determined to be trustworthy and reliable shall also complete the security training required by WAC 246-237-043(3) before being allowed unescorted access to Category 1 or Category 2 quantities of radioactive material.

(2) Reviewing officials. Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to Category 1 or Category 2 quantities of radioactive materials possessed by the licensee.

(a) Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide, under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. Provide oath or affirmation certificates to the department. The fingerprints of the named reviewing official must be taken by a law enforcement agency, federal or state agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a state to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every (~~ten~~) 10 years in accordance with WAC 246-237-025(3).

(b) Reviewing officials must be permitted to have unescorted access to Category 1 or Category 2 quantities of radioactive materials or access to safeguards information or safeguards information-modified handling, if the licensee possesses safeguards information or safeguards information-modified handling.

(c) Reviewing officials cannot approve other individuals to act as reviewing officials.

(d) A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:

(i) The individual has undergone a background investigation that included fingerprinting and an FBI criminal history records check and has been determined to be trustworthy and reliable by the licensee; or

(ii) The individual is subject to a category listed in WAC 246-237-029(1).

(3) Informed consent.

(a) Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed during the background investigation. Licensees do not need to obtain signed consent from those individuals who meet the requirements of WAC 246-237-025(2). A signed consent must be obtained prior to any reinvestigation.

(b) The subject individual may withdraw their consent at any time. Licensees shall inform the individual that:

(i) If an individual withdraws their consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew their consent; and

(ii) The withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

(4) Personal history disclosure. Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by this chapter is sufficient cause for denial or termination of unescorted access.

(5) Determination basis.

(a) The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements of this chapter.

(b) The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of this chapter and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.

(c) The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

(d) The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.

(e) Licensees shall maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or meets the access authorization requirement, the licensee shall remove the person from the approved list as soon as possible, but no later than seven working

days, and take prompt measures to ensure that the individual is unable to have unescorted access to the material.

(6) Procedures. Licensees shall develop, implement, and maintain written procedures for implementing the access authorization program. The procedures must include provisions for the notification of individuals who are denied unescorted access. The procedures must include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization. The procedures must contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

(7) Right to correct and complete information.

(a) Prior to any final adverse determination, licensees shall provide each individual subject to this chapter with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of one year from the date of the notification.

(b) If, after reviewing their criminal history record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the FBI, Criminal Justice Information Services Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306 as set forth in 28 C.F.R. 16.30 through 16.34. In the latter case, the FBI will forward the challenge to the agency that submitted the data, and will request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. Licensees must provide at least (~~ten~~) 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record being made available for their review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

(8) Records.

(a) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years from the date the individual no longer requires unescorted access to Category 1 or Category 2 quantities of radioactive material.

(b) The licensee shall retain a copy of the current access authorization program procedures as a record for three years after the procedure is no longer needed. If any portion of the procedure is superseded, the licensee shall retain the superseded material for three years after the record is superseded.

(c) The licensee shall retain the list of persons approved for unescorted access authorization for three years after the list is superseded or replaced.

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 17-01-034, § 246-237-023, filed 12/12/16, effective 1/12/17; WSR 16-13-079, § 246-237-023, filed 6/14/16, effective 7/15/16.]

AMENDATORY SECTION (Amending WSR 16-13-079, filed 6/14/16, effective 7/15/16)

WAC 246-237-027 Requirements for criminal history records checks of individuals granted unescorted access to Category 1 or Category 2 quantities of radioactive material. (1) General performance objective and requirements.

(a) Except for those individuals listed in WAC 246-237-029 and those individuals grandfathered under WAC 246-237-025(2), each licensee subject to the provisions of this chapter shall fingerprint each individual who is to be permitted unescorted access to Category 1 or Category 2 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the NRC for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background investigation to determine whether to grant or deny further unescorted access to Category 1 or Category 2 quantities of radioactive materials for that individual.

(b) The licensee shall notify each affected individual that their fingerprints will be used to secure a review of their criminal history record, and shall inform them of the procedures for revising the record or adding explanations to the record.

(c) Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to Category 1 or Category 2 quantities of radioactive materials if:

(i) The individual returns to the same facility that granted unescorted access authorization within (~~three hundred sixty-five~~) 365 days of the termination of their unescorted access authorization; and

(ii) The previous access authorization was terminated under favorable conditions.

(d) Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to Category 1 or Category 2 quantities of radioactive material, access to safeguards information, or safeguards information-modified handling by another licensee, based upon a background investigation conducted under this chapter, or the fingerprint orders, or 10 C.F.R. 73. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with the provisions of WAC 246-237-031(3).

(e) Licensees shall use information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to Category 1 or Category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

(2) Prohibitions.

(a) Licensees may not base a final determination to deny an individual unescorted access authorization to Category 1 or Category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

(i) An arrest more than one year old for which there is no information of the disposition of the case; or

(ii) An arrest which resulted in dismissal of the charge or an acquittal.

(b) Licensees may not use information received from a criminal history records check obtained under this chapter in a manner which would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall licensees use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

(3) Procedures for processing of fingerprint checks.

(a) For the purpose of complying with this chapter, licensees shall use an appropriate method to submit to the U.S. Nuclear Regulatory Commission, Director, Division of Facilities and Security, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop (~~(TWB-05B32M)~~) T-07D04M, Rockville, MD 20852, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to Category 1 or Category 2 quantities of radioactive material. Copies of these forms may be obtained by (~~writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, by calling 1-630-829-9565, or by email to FORMS.Resource@nrc.gov~~) emailing MAILSVS.Resource@nrc.gov. Guidance on submitting electronic fingerprints can be found at (~~(http://www.nrc.gov/site-help/e-submittals.html)~~) https://www.nrc.gov/security/chp.html.

(b) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the (~~Security Branch, Division of Facilities and Security at 301-415-7513~~) Division of Physical and Cyber Security Policy by emailing Crimhist.resource@nrc.gov.) Combined payment for multiple applications is acceptable. The (~~(NRC)~~) commission publishes the amount of the fingerprint check application fee on the NRC's public website. (To find the current fee amount, go to the (~~electronic submittals page at http://www.nrc.gov/site-help/e-submittals.html~~) Licensee Criminal History Records Checks and Firearms Background Check information page at https://www.nrc.gov/security/chp.html and see the link for (~~the Criminal History Program under Electronic Submission Systems~~) How do I determine how much to pay for the request?)

(c) The (~~(NRC)~~) commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application for criminal history records checks.

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 16-13-079, § 246-237-027, filed 6/14/16, effective 7/15/16.]

AMENDATORY SECTION (Amending WSR 16-13-079, filed 6/14/16, effective 7/15/16)

WAC 246-237-043 General security program requirements. (1) Security plan.

(a) Each licensee identified in WAC 246-237-041(1) shall develop a written security plan specific to its facilities and operations. The

purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by this chapter. The security plan must, at a minimum:

(i) Describe the measures and strategies used to implement the requirements of this chapter; and

(ii) Identify the security resources, equipment, and technology used to satisfy the requirements of this chapter.

(b) The security plan must be reviewed and approved by the individual with overall responsibility for the security program.

(c) A licensee shall revise its security plan as necessary to ensure the effective implementation of department requirements. The licensee shall ensure that:

(i) The revision has been reviewed and approved by the individual with overall responsibility for the security program; and

(ii) The affected individuals are instructed on the revised plan before the changes are implemented.

(d) The licensee shall retain a copy of the current security plan as a record for three years after the security plan is no longer required. If any portion of the plan is superseded, the licensee shall retain the superseded material for three years after the record is superseded.

(2) Implementing procedures.

(a) The licensee shall develop and maintain written procedures that document how the requirements of this chapter and the security plan will be met.

(b) The implementing procedures and revisions to these procedures must be approved in writing by the individual with overall responsibility for the security program.

(c) The licensee shall retain a copy of the current procedure as a record for three years after the procedure is no longer needed. Superseded portions of the procedure must be retained for three years after the record is superseded.

(3) Training.

(a) Each licensee shall conduct training to ensure those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training must include instruction in:

(i) The licensee's security program and procedures to secure Category 1 or Category 2 quantities of radioactive material, and in the purposes and functions of the security measures employed;

(ii) The responsibility to report promptly to the licensee any condition which causes or may cause a violation of department requirements;

(iii) The responsibility of the licensee to report promptly to the LLEA and licensee any actual or attempted theft, sabotage, or diversion of Category 1 or Category 2 quantities of radioactive material; and

(iv) The appropriate response to security alarms.

(b) In determining those individuals who shall be trained on the security program, the licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of Category 1 or Category 2 quantities of radioactive material. The extent of the training must be commensurate with the individual's potential involvement in the security of Category 1 or Category 2 quantities of radioactive material.

(c) Refresher training must be provided at a frequency not to exceed (~~twelve~~) 12 months and when significant changes have been made to the security program. This training must include:

- (i) Review of the training requirements of this subsection and any changes made to the security program since the last training;
- (ii) Reports on any relevant security issues, problems, and lessons learned;
- (iii) Relevant results of department inspections; and
- (iv) Relevant results of the licensee's program review and testing and maintenance.

(d) The licensee shall maintain records of the initial and refresher training for three years from the date of the training. The training records must include dates of the training, topics covered, a list of licensee personnel in attendance, and related information.

(4) Protection of information.

(a) Licensees authorized to possess Category 1 or Category 2 quantities of radioactive material shall limit access to, and unauthorized disclosure of, their security plan, implementing procedures, and the list of individuals who have been approved for unescorted access.

(b) Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan and implementing procedures, and the list of individuals that have been approved for unescorted access.

(c) Before granting an individual access to the security plan or implementing procedures, or the list of individuals that have been approved for unescorted access, licensees shall:

(i) Evaluate an individual's need to know the security plan or implementing procedures, or the list of individuals that have been approved for unescorted access; and

(ii) If the individual has not been authorized for unescorted access to Category 1 or Category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee must complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in WAC 246-237-025 (1)(b) through (g).

(d) Licensees need not subject the following individuals to the background investigation elements for protection of information:

(i) The categories of individuals listed in WAC 246-237-029 (1)(a) through (m); or

(ii) Security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in WAC 246-237-025 (1)(b) through (g), has been provided by the security service provider.

(e) The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan (~~(or)~~) implementing procedures, or the list of individuals that have been approved for unescorted access.

(f) Licensees shall maintain a list of persons currently approved for access to the security plan (~~(or)~~) implementing procedures, or the list of individuals that have been approved for unescorted access. When a licensee determines that a person no longer needs access to the

security plan ~~((or))~~, implementing procedures, or the list of individuals that have been approved for unescorted access, or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no later than seven working days, and take prompt measures to ensure that the individual is unable to obtain the security plan ~~((or))~~, implementing procedures, or the list of individuals that have been approved for unescorted access.

(g) When not in use, the licensee shall store its security plan ~~((and))~~, implementing procedures, and the list of individuals that have been approved for unescorted access in a manner to prevent unauthorized access. Information stored in nonremovable electronic form must be password protected.

(h) The licensee shall retain as a record for three years after the document is no longer needed:

(i) A copy of the information protection procedures; and

(ii) The list of individuals approved for access to the security plan ~~((or))~~, implementing procedures, or the list of individuals that have been approved for unescorted access.

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 16-13-079, § 246-237-043, filed 6/14/16, effective 7/15/16.]

AMENDATORY SECTION (Amending WSR 17-01-034, filed 12/12/16, effective 1/12/17)

WAC 246-237-077 Advance notification of shipment of Category 1 quantities of radioactive material. As specified in subsections (1) and (2) of this section, each licensee shall provide advance notification to the department and the governor of a state, or the governor's designee, of the shipment of licensed material in a Category 1 quantity, through or across the boundary of the state, before transport, or delivery to a carrier for transport, of the licensed material outside the confines of the licensee's facility or other place of use or storage.

(1) Procedures for submitting advance notification.

(a) The notification must be made to the department and to the office of each appropriate governor or governor's designee. The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC's website at <https://scp.nrc.gov/special/designee.pdf>. A list of the contact information is also available upon request from the Director, Division of Material Safety, Security, State, and Tribal ~~((and Rulemaking))~~ Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001. Notifications to the department must be made to the attention of the Director, Office of Radiation Protection.

(b) A notification delivered by mail must be postmarked at least seven days before transport of the shipment commences at the shipping facility.

(c) A notification delivered by any means other than mail must reach the department at least four days before transport of the shipment commences and must reach the office of the governor or the governor's designee at least four days before transport of a shipment within or through the state.

(2) Information to be furnished in advance notification of shipment. Each advance notification of shipment of Category 1 quantities of radioactive material must contain the following information, if available at the time of notification:

(a) The name, address, and telephone number of the shipper, carrier, and receiver of the Category 1 radioactive material;

(b) The license numbers of the shipper and receiver;

(c) A description of the radioactive material contained in the shipment, including the radionuclides and quantities;

(d) The point of origin of the shipment and the estimated time and date when shipment will commence;

(e) The estimated time and date the shipment is expected to enter each state along the route;

(f) The estimated time and date of arrival of the shipment at the destination; and

(g) A point of contact, with a telephone number, for current shipment information.

(3) Revision notice.

(a) The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the governor of the state or the governor's designee and to the department.

(b) A licensee shall promptly notify the governor of the state or the governor's designee of any changes to the information provided in accordance with subsections (2) and (3)(a) of this section. The licensee shall also immediately notify the department of any such changes.

(4) Cancellation notice. Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the department and to the governor of each state or to the governor's designee previously notified. The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible. The licensee shall state in the notice that it is a cancellation and identify the advance notification which is being canceled.

(5) Records. The licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for three years.

(6) Protection of information. State officials, state employees, and other individuals, whether or not licensees of the department, NRC, or an agreement state who receive schedule information of the kind specified in subsection (2) of this section shall protect that information against unauthorized disclosure as specified in WAC 246-237-043(4).

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 17-01-034, § 246-237-077, filed 12/12/16, effective 1/12/17; WSR 16-13-079, § 246-237-077, filed 6/14/16, effective 7/15/16.]

OTS-3488.2

AMENDATORY SECTION (Amending WSR 03-12-062, filed 6/2/03, effective 7/3/03)

WAC 246-243-150 Personnel monitoring control. (1) A licensee may not permit any individual to act as a radiographer or as a radiographer's assistant unless, at all times during radiographic operations, the individual wears a direct reading pocket dosimeter, an alarming rate meter, and a personnel dosimeter (~~that is processed and evaluated by an accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor~~) on the trunk of the body. In permanent facilities where other appropriate alarming or warning devices are in routine use, the wearing of an alarming rate meter is not required.

(a) Pocket dosimeters must be capable of measuring exposures from zero to at least 200 milliroentgens. Electronic personal dosimeters may only be used in place of ion-chamber pocket dosimeters.

(b) Each personnel dosimeter shall be assigned to and worn by only one individual.

(c) Film badges must be replaced at periods not to exceed one month and other personnel dosimeters (~~processed and evaluated by an accredited NVLAP processor~~) that require replacement must be replaced at periods not to exceed three months. All personnel dosimeters must be evaluated at least quarterly or promptly after replacement, whichever is more frequent.

~~((d) After replacement, each personnel dosimeter must be processed as soon as possible.))~~

(2) (a) Direct reading dosimeters such as pocket dosimeters or electronic personal dosimeters shall be read and exposures recorded at the beginning and end of each shift. Pocket dosimeters shall be charged at the beginning of each shift. Pocket dosimeters shall be checked annually at periods not to exceed (~~twelve~~) 12 months for correct response to radiation. Acceptable dosimeters shall read within plus or minus (~~twenty~~) 20 percent of the true radiation exposure.

(b) Each alarming rate meter must:

(i) Be checked to ensure that the alarm functions properly (sounds) prior to use at the start of each shift;

(ii) Be set to give an alarm signal at a maximum preset rate of 5 mSv/hr. (500 mR/hr.);

(iii) Require special means to change the preset alarm functions; and

(iv) Be calibrated annually at periods not to exceed (~~twelve~~) 12 months for correct response to radiation: Acceptable rate meters must alarm within plus or minus (~~twenty~~) 20 percent of the true radiation exposure rate.

(3) If an individual's pocket dosimeter is found to be off-scale, or if his or her electronic personal dosimeter reads greater than 2 millisieverts (200 millirems), and the possibility of radiation exposure cannot be ruled out as the cause, the individual's personnel dosimeter that require processing must be sent for processing and evaluation within (~~twenty-four~~) 24 hours. For personnel dosimeters that do not require processing, evaluation of the dosimeter must be started within 24 hours. In addition, the individual may not resume work associated with licensed material use until a determination of the individual's radiation exposure has been made. This determination shall be made by the RSO or the RSO's designee.

(4) If the personnel dosimeter required by this section is lost or damaged, the worker shall cease work immediately until a replacement personnel dosimeter is provided and the exposure is calculated

for the time period from issuance to loss or damage of the personnel dosimeter.

(5) Each licensee shall maintain the following exposure records:

(a) Direct reading dosimeter readings and yearly operability checks required by subsection (2) of this section for three years after the record is made.

(b) Records of alarm rate meter calibrations for three years after the record is made.

(c) Reports (~~received from the~~) of personnel dosimeter (~~accredited NVLAP processor~~) until the department terminates the license.

(d) Records of estimates of exposures as a result of: Off-scale personal direct reading dosimeters, or lost or damaged personnel dosimeters(~~(7)~~) until the department terminates the license. The time period for which the personnel dosimeter was lost or damaged shall be included in the records.

[Statutory Authority: RCW 70.98.050. WSR 03-12-062, § 246-243-150, filed 6/2/03, effective 7/3/03; WSR 00-08-013, § 246-243-150, filed 3/24/00, effective 4/24/00; WSR 94-01-073, § 246-243-150, filed 12/9/93, effective 1/9/94. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 91-15-112 (Order 184), § 246-243-150, filed 7/24/91, effective 8/24/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-243-150, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 83-19-050 (Order 2026), § 402-36-120, filed 9/16/83. Statutory Authority: RCW 70.98.050. WSR 81-01-011 (Order 1570), § 402-36-120, filed 12/8/80; Order 1084, § 402-36-120, filed 1/14/76; Order 1, § 402-36-120, filed 1/8/69; Rules (part), filed 10/26/66.]

OTS-3489.1

AMENDATORY SECTION (Amending WSR 03-12-062, filed 6/2/03, effective 7/3/03)

WAC 246-244-160 Personnel monitoring. (1) The licensee may not permit an individual to act as a logging supervisor or logging assistant unless that person wears (~~(, at all times during the handling of licensed radioactive materials,)~~) a personnel dosimeter (~~(that is processed by an accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor)~~) at all times during the handling of licensed radioactive materials. Each personnel dosimeter must be assigned to and worn by only one individual. The film badge must be (~~(exchanged and analyzed)~~) replaced at least monthly and other personnel dosimeters (~~(exchanged and analyzed)~~) that require replacement must be replaced at least every three months, whichever is more frequent. (~~(The licensee shall have each personnel dosimeter processed in a timely fashion.)~~)

(2) The licensee shall provide appropriate bioassay services to individuals using licensed materials (~~(for)~~) in subsurface tracer studies if required by the license.

(3) The licensee shall keep reports (~~received from the accredited NVLAP personnel dosimeter processor~~) of personnel dosimeter re-

quired by subsection (1) of this section and (~~from the~~) bioassay (~~service laboratory~~) results for inspection until the department authorizes disposition (~~or terminates the license~~) of the records.

(4) Personnel monitoring devices and equipment shall monitor for beta, gamma, and neutron radiation as appropriate.

(5) Each licensee shall adhere to the requirements of (~~the department's~~) NRC Regulatory Guide 8.20 (~~Bioassay Program Criteria for I-125 and I-131~~) Application of Bioassay for Radioiodine.

[Statutory Authority: RCW 70.98.050. WSR 03-12-062, § 246-244-160, filed 6/2/03, effective 7/3/03. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 91-15-112 (Order 184), § 246-244-160, filed 7/24/91, effective 8/24/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-244-160, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 87-01-031 (Order 2450), § 402-38-300, filed 12/11/86.]

WSR 22-06-046

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed February 24, 2022, 2:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-02-011.

Title of Rule and Other Identifying Information: WAC 182-513-1105 Personal needs allowance (PNA) and room and board standards in a medical institution and alternate living facility (ALF).

Hearing Location(s): On April 5, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_DNowSCHXRGWpziJU7bNWTw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than April 6, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by April 5, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay service 711, email arc@hca.wa.gov, by March 25, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-513-1105 to remove stated dollar amounts for certain personal needs allowances and replace them with a reference to the current Washington apple health income and resource standards chart located at www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.

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.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Paige Lewis, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-0757.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule pertains to client program financial obligations and does not impose any costs on businesses.

February 24, 2022

Wendy Barcus

OTS-3553.1

AMENDATORY SECTION (Amending WSR 21-02-086, filed 1/6/21, effective 2/6/21)

WAC 182-513-1105 Personal needs allowance (PNA) and room and board standards in a medical institution and alternate living facility (ALF). (1) This section describes the personal needs allowance (PNA), which is an amount set aside from a client's income that is intended for personal needs, and the room and board standard.

(2) The PNA in a state veteran's nursing facility:

(a) Is (~~(\$71.12, effective January 1, 2021)~~) indicated on the chart described in subsection (8) of this section as "All other PNA Med Inst.", for a veteran without a spouse or dependent children receiving a needs-based veteran's pension in excess of \$90;

(b) Is (~~(\$71.12, effective January 1, 2021)~~) indicated on the chart described in subsection (8) of this section as "All other PNA Med Inst.", for a veteran's surviving spouse with no dependent children receiving a needs-based veteran's pension in excess of \$90; or

(c) Is \$160 for a client who does not receive a needs-based veteran's pension.

(3) The PNA in a medical institution for clients receiving aged, blind, or disabled (ABD) cash assistance or temporary assistance for needy families (TANF) cash assistance is the client's personal and incidental (CPI) cash payment, as described in WAC 388-478-0006, based on residing in a medical institution, which is \$41.62.

(4) The PNA in an alternate living facility (ALF) for clients receiving ABD cash assistance or TANF cash assistance is the CPI, as described in WAC 388-478-0006, based on residing in an ALF that is not an adult family home, which is \$38.84.

(5) The PNA for clients not described in subsections (2), (3), and (4) of this section, who reside in a medical institution or in an ALF, is (~~(\$71.12, effective January 1, 2021.)~~) indicated on the chart described in subsection (8) of this section as "All other PNA Med Inst." and "HCS & DDA Waivers, CFC & MPC PNA in ALF."

(6) Effective January 1, 2018, and each year thereafter, the amount of the PNA in subsection (5) of this section may be adjusted by the percentage of the cost-of-living adjustment (COLA) for old-age, survivors, and disability social security benefits as published by the federal Social Security Administration. This adjustment is subject to state legislative funding.

(7) The room and board standard in an ALF used by home and community services (HCS) and the developmental disabilities administration (DDA) is based on the federal benefit rate (FBR) minus the current PNA as described under subsection (5) (~~((b))~~) of this section.

(8) The current PNA and room and board standards used in long-term services and supports are published under the institutional standards on the Washington apple health (medicaid) income and resource standards chart located at www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, and 74.09.340. WSR 21-02-086, § 182-513-1105, filed 1/6/21, effective 2/6/21. Statutory Authority: RCW 41.05.021, 41.05.160, 2018 c 137, 2018 c 299 §§ 204 (2) (p) and 207(13), and 2018 c 299. WSR 18-20-047, § 182-513-1105, filed 9/26/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 c 270. WSR 17-23-039, § 182-513-1105, filed 11/8/17, effective 1/1/18.]

WSR 22-06-063

PROPOSED RULES

STATE BOARD OF HEALTH

[Filed February 25, 2022, 4:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-024.

Title of Rule and Other Identifying Information: Chapter 246-90 WAC, Local board of health membership, the state board of health (board) is proposing adding a new chapter of rule to implement new requirements made by E2SHB 1152 (chapter 205, Laws of 2021) as it relates to the appointment of nonelected members of local boards of health.

Hearing Location(s): On April 13, 2022, at 1:30 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing. This helps provide 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.

Register in advance for this hearing at https://us02web.zoom.us/webinar/register/WN_fPNK3XjVT0uzyc12vSkdtQ. After registering, you will receive a confirmation email containing information about joining the webinar/hearing.

Date of Intended Adoption: April 13, 2022.

Submit Written Comments to: Samantha Pskowski, P.O. Box 47990, Olympia, WA 98504-7990, email <https://fortress.wa.gov/doh/policyreview>, by March 30, 2022.

Assistance for Persons with Disabilities: Contact Melanie Hisaw, phone 360-236-4110, TTY 711, email Melanie.Hisaw@sboh.wa.gov, by April 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will establish the selection and appointment process for nonelected members of local boards of health. The purpose of the rule is to provide local governments a standard process for such recruitment and ultimate appointment of nonelected members of local boards of health. The rule will reduce uncertainty on how local boards of health need to conduct selection and provide the public an understanding of the process for how they may apply for local board of health positions.

Reasons Supporting Proposal: During the 2021 legislative session, the legislature passed E2SHB 1152. Among other changes, this bill made changes to the required composition of local boards of health by requiring an equal number of members who are nonelected officials. The statute specifies groups of individuals that must be represented on the local board of health. The legislation also requires the board to establish rules for the appointment process of these nonelected members of local boards of health in a manner that is fair and unbiased, and ensure to the extent possible a balanced representation of elected and nonelected persons with diversity of expertise and experience.

Statutory Authority for Adoption: E2SHB 1152 (chapter 205, Laws of 2021), codified as RCW 43.20.300.

Statute Being Implemented: E2SHB 1152 (chapter 205, Laws of 2021), codified as RCW 43.20.300, 70.05.030 (1)(a), 70.05.035 (1)(a), 70.46.020 (1)(a), and 70.46.031 (1)(a).

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Samantha Pskowski, 101 Israel Road S.E., Tumwater, WA 98504-7990, 360-789-2358.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt from completing a cost-benefit analysis under RCW 34.05.328 (5) (b) (ii) because they are only related to the internal operations of a governmental entity. The proposed rule sets the process and standards for the recruitment, selection, and appointment of nonelected members of local boards of health and is solely implemented by the governmental entity.

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.

February 25, 2022
Michelle A. Davis
Executive Director

OTS-3624.1

**Chapter 246-90 WAC
LOCAL BOARD OF HEALTH MEMBERSHIP**

NEW SECTION

WAC 246-90-005 Purpose, scope, and applicability of chapter.

(1) The purpose of this chapter is to establish requirements for the recruitment, selection and appointment process of nonelected members of local boards of health. The processes established in this chapter are intended to be fair, unbiased, and ensure to the extent practicable that the membership of local boards of health include a balanced representation of elected officials and nonelected people with a diversity of expertise and lived experience.

(2) The provisions of this chapter apply to the following:

(a) A county without a home rule charter in which the jurisdiction of the local board of health is coextensive with the boundaries of the county as established in RCW 70.05.030;

(b) A county with a home rule charter in which the jurisdiction of the local board of health is coextensive with the boundaries of the county as established in RCW 70.05.035;

(c) A health district consisting of two or more counties in which the jurisdiction of the local board of health is coextensive with the combined boundaries of the counties as established in RCW 70.46.020;
and

(d) A health district consisting of one county in which the jurisdiction of the board of health is coextensive with the boundary of the county as established in RCW 70.46.031.

(3) The provisions of this chapter apply only to the recruitment, selection and appointment of persons who are not elected officials who are identified in RCW 70.05.030 (1)(a), 70.05.035 (1)(a), 70.46.020 (1)(a), and 70.46.031 (1)(a).

[]

NEW SECTION

WAC 246-90-010 Definitions. The following definitions apply throughout this chapter unless the context clearly requires otherwise:

- (1) "Board" means the Washington state board of health.
- (2) "Consumers of public health" means the category of persons consisting of county or health district residents who have self-identified as having faced significant health inequities or as having lived experiences with public health-related programs.
- (3) "Elected official" means any person elected at a general or special election to public office representing a city or county, and any person appointed to fill a vacancy in any such office.
- (4) "Health agency" means a private or public business or organization that renders or connects persons to health services, insurance, or other benefits.
- (5) "Health facility" means a facility, clinic, or other setting licensed under Title 18, 70, or 71 RCW in which behavioral or medical diagnosis, care, treatment, or services are provided.
- (6) "Local board of health" means the county or district board of health as established under chapter 70.05 RCW.
- (7) "Local health jurisdiction" or "LHJ" means a county health department under chapter 70.05 RCW or health district under chapter 70.46 RCW.
- (8) "Nonelected member" or "nonelected position" means a person appointed to a local board of health who is not an elected official, and represents:
 - (a) Public health, health care facilities, and providers;
 - (b) Consumers of public health; or
 - (c) Other community stakeholders.
- (9) "Other community stakeholders" means the category of persons representing the following types of organizations located in the county or health district:
 - (a) Community-based organizations or nonprofits that work with populations experiencing health inequities in the county;
 - (b) Active, reserve, or retired armed services members;
 - (c) The business community; or
 - (d) The environmental public health regulated community.
- (10) "Public health, health care facilities, and providers" means the category of persons practicing or employed in the county or health district who are:
 - (a) Medical ethicists;
 - (b) Epidemiologists;
 - (c) Experienced in environmental public health;
 - (d) Community health workers;

- (e) Holders of master's degrees or higher in public health or another field with an emphasis or concentration in health care, public health, or health policy;
- (f) Employees of a hospital located in the county; or
- (g) Any of the following providers holding an active or retired license in good standing under Title 18 RCW:
 - (i) Physicians or osteopathic physicians;
 - (ii) Advanced registered nurse practitioners;
 - (iii) Physician assistants;
 - (iv) Registered nurses;
 - (v) Dentists;
 - (vi) Naturopaths; or
 - (vii) Pharmacists.

[]

NEW SECTION

WAC 246-90-015 Local boards of health—Nonelected members. (1)

The number of nonelected members, as defined in WAC 246-90-010, on a local board of health, including any tribal representatives as described in subsection (2) of this section, must equal the number of elected officials on a local board of health. Elected members of the local board of health may not constitute a majority.

(2) If a federally recognized Indian tribe holds reservation, trust lands, or has usual and accustomed areas within the county or health district, or if a 501 (c) (3) organization registered in Washington that serves American Indian and Alaska Native people and provides services within the county or health district, the local board of health must include a tribal representative selected by the American Indian health commission according to the selection process prescribed by the commission. A tribal representative as described in this subsection may serve in any of the three nonelected member categories as defined in this chapter if the representative meets the requirements of the category.

(3) Any changes to local board of health composition must meet the requirements of this chapter.

(4) If a board of county commissioners or a county legislative authority chooses to adopt a resolution or ordinance or otherwise act to change the size or composition of the local board of health, the resolution, ordinance, or other document used must:

(a) Include provisions, which are comparable to those of elected members, for the appointment, term, including initial term, and, if applicable, compensation or reimbursement of expenses for nonelected members as defined in this chapter;

(b) Ensure elected officials do not constitute a majority of the total membership of the local board of health;

(c) Ensure recruitment, selection, and appointment of nonelected members of the local board of health conform with the requirements of this chapter;

(d) Identify nonelected members as voting members of the local board of health except as it pertains to any decision related to the setting or modification of permit, licensing, and application fees; and

(e) Identify the process for how a local board of health will refer successful applicants to the board of county commissioners for approval and appointment. If a county does not have a board of county commissioners, the local board of health will refer successful applicants to the county legislative authority for consideration for approval and appointment.

[]

NEW SECTION

WAC 246-90-020 Local boards of health—Nonelected members—Recruitment. (1) A local board of health must actively recruit applicants for nonelected member positions of the local board of health in a manner that solicits a broad pool of applicants that represent a diversity of expertise and lived experience.

(2) A local board of health must:

(a) Provide reasonable advance notice for applicants to apply for vacancies for positions representing nonelected members on a local board of health;

(b) Post vacancy announcements in public places, including the newspaper of record, in the county or district;

(c) Make available vacancy announcements in any language upon request;

(d) Post vacancy announcements in all geographic regions represented by the local board of health;

(e) Work with local community organizations to distribute vacancy notices; and

(f) Comply with applicable provisions of the Americans with Disabilities Act, Public Law Number 101-336 and chapter 49.60 RCW.

(3) A local board of health may:

(a) Require nonelected members serving in the other community stakeholder or public health, health care facilities, and providers positions on the local board of health to reside within the county or local board of health's jurisdictional boundaries; and

(b) Work with local community organizations to identify potential applicants for nonelected positions.

(4) A local board of health may not require an applicant to provide their political affiliation or voting history.

(5) A local board of health may require an applicant to designate the specific category or categories they are applying for as identified in WAC 246-90-025(1) in their application materials. A local board of health may consider applicants for any position for which they are qualified.

(6) All applicants for nonelected positions shall be interviewed in a panel format by the local board of health subject to the following:

(a) All applicants shall be asked a standard set of questions;

(b) Follow up questions may be asked if necessary to understand the applicant's response to a standard question; and

(c) In the event of a substantial number of applicants, the local board of health may elect to interview a smaller number of applicants as long as the applicants interviewed include a diversity of expertise and lived experience.

(7) The recruitment process must be consistent with applicable provisions of chapter 42.30 RCW.

[]

NEW SECTION

WAC 246-90-025 Local boards of health—Nonelected members—Selection. (1) Nonelected members of a local board of health must be selected from the following categories:

- (a) Public health, health care facilities, and providers;
- (b) Consumers of public health; and
- (c) Other community stakeholders.

(2) If the total number of nonelected members of a local board of health is evenly divisible by three, there must be an equal number of members selected from each of the three categories.

(3) There may be no more than one member selected from each category with the same background or position except under the following circumstances:

(a) If there are one or two nonelected members over the nearest multiple of three, those nonelected members may be selected from any of the three categories; and

(b) If, in a health district consisting of one county, there are two nonelected members over the nearest multiple of three, each member over the nearest multiple of three must be selected from a different category.

(4) A local board of health shall assess the following when considering applicants for selection to a local board of health:

(a) Service, current or past, on other local boards or commissions;

(b) Whether the applicant's background meets the qualifications of the applicant's selected category or categories as defined in WAC 246-095-010;

(c) Potential conflict of interest;

(d) The applicant's demonstrated commitment to public health;

(e) Whether the applicant represents a diversity of expertise and lived experience; and

(f) Whether the applicant represents the geographic diversity of the community.

(5) A local board of health shall also assess whether the applicant identifies with a historically underrepresented community when being considered as a nonelected member representing consumers of public health.

(6) Local board of health membership must include a balanced representation of elected officials and nonelected people with a diversity of expertise and lived experience.

(7) Persons with a fiduciary obligation to a health facility or other health agency, or a material financial interest in the rendering of health services, may not be selected as a nonelected member of a local board of health representing consumers of public health.

(8) Applicants must disclose any potential conflict of interest.

(9) If a local board of health demonstrates that it attempted to recruit members from all three categories under subsection (1) of this

section and was unable to do so, the local board of health may select members only from the other two categories.

(10) The selection process must be consistent with applicable provisions of chapter 42.30 RCW.

[]

NEW SECTION

WAC 246-90-030 Local boards of health—Nonelected members—Appointment. (1) Nonelected members of a local board of health shall be approved and appointed by a majority vote of the board of county commissioners. If a county does not have a board of county commissioners, then the nonelected members of a local board of health shall be approved and appointed by a majority vote of the county legislative authority.

(2) The appointment process must be consistent with applicable provisions of chapter 42.30 RCW.

[]

NEW SECTION

WAC 246-90-035 Local boards of health—Nonelected members—Exceptions. In accordance with RCW 70.05.030, 70.05.035, 70.46.020, and 70.46.031, the following exceptions apply to this chapter:

(1) For counties with a home rule charter, counties without a home rule charter, health districts consisting of two or more counties, and health districts consisting of one county. A local board of health comprised solely of elected officials may retain its composition if the local health jurisdiction had a public health advisory committee or board with its own bylaws established on January 1, 2021. By January 1, 2022, the public health advisory committee or board must have met the requirements established in RCW 70.46.140 for community health advisory boards.

(2) For local boards of health made up of three counties east of the Cascade mountains:

(a) If a local board of health is comprised solely of elected officials, it may retain its current composition if the local health jurisdiction has a public health advisory committee or board that meets the requirements established in RCW 70.46.140 for community health advisory boards by July 1, 2022.

(b) If the local board of health does not establish the required community health advisory board by July 1, 2022, it must comply with the requirements of this chapter.

(3) For local boards of health established under RCW 70.46.031, "other community stakeholders" as defined in this chapter does not include active, reserve, or retired armed services members. Active, reserve, or retired armed services members are not precluded from representing other categories of nonelected members as defined in WAC 246-90-010.

[]

WSR 22-06-072

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed February 28, 2022, 1:33 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

246-282-990(4) Sanitary control of shellfish—Fees. Department of health annual paralytic shellfish poisoning (PSP) testing fee redistribution.

Hearing Location(s): On April 11, 2022, at 1:00 p.m. In response to the coronavirus disease 2019 (COVID-19), the department of health (DOH) will not provide a physical location for this hearing. This is 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. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_dycHyBiITGK8u4UWZ7dGag. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: April 18, 2022.

Submit Written Comments to: Peter Beaton, DOH, Division of Environmental Public Health, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, by April 11, 2022.

Assistance for Persons with Disabilities: Contact April Gilbreath, phone 360-236-3301, TTY 711, email april.gilbreath@doh.wa.gov, by April 4, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to equitably assess the costs of commercial geoduck PSP testing. Geoduck PSP testing generate[s] \$58,000 in testing fees annually. The fees are calculated by determining the cost per sample and multiplying this value by how many samples each harvester had tested in the previous year. The PSP testing, which is based on the department's risk assessment of the growing areas, is essential to public health as it is the only way to determine if dangerous levels of PSP exist in commercial geoduck clams and ensure toxic shellfish do not reach the public.

Reasons Supporting Proposal: The proposed geoduck PSP fee redistribution is based on the 2021 total cost of service for the harvesters that submitted geoduck samples (\$58,000) and is based on the cost per sample multiplied by the number of tests done for each harvester.

Statutory Authority for Adoption: RCW 43.70.250, 43.20B.020.

Statute Being Implemented: RCW 43.70.250, 43.20B.020.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Peter Beaton, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4031; Implementation and Enforcement: Jerry Borchert, 243 Israel Road S.E., Tumwater, WA 98501, 360-236-3328.

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)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

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

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

February 17, 2022
 Lauren Jenks
 Assistant Secretary

OTS-3571.1

AMENDATORY SECTION (Amending WSR 21-11-080, filed 5/18/21, effective 6/18/21)

WAC 246-282-990 Fees. (1) Annual shellfish operation license fees are:

<u>Type of Operation</u>	<u>Annual Fee</u>
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

(2) The fee for each export certificate is \$55.00.

(3) Annual biotoxin testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category		
<u>Type of Operation</u>	<u>Number of Harvest Sites</u>	<u>Fee</u>
Harvester	≤ 2	\$353
Harvester	3 or more	\$535
Shellstock Shipper		\$198
Wholesale Company		
Shellstock Shipper	≤ 2	\$393
0 - 49 acres		
Shellstock Shipper	3 or more	\$610
0 - 49 acres		
Shellstock Shipper	N/A	\$961
50 or greater acres		

Fee Category

Type of Operation	Number of Harvest Sites	Fee
Shucker-Packer (plants < 2000 ft ²)	≤ 2	\$752
Shucker-Packer (plants < 2000 ft ²)	3 or more	\$1,076
Shucker-Packer (plants 2000 - 5000 ft ²)	≤ 2	\$882
Shucker-Packer (plants 2000 - 5000 ft ²)	3 or more	\$1,297
Shucker-Packer (plants > 5000 ft ²)	N/A	\$2,412

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1st of each year for companies licensed as harvesters; or
- (iii) July 1st of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Cert #	Fee
((Chuckanut Shellfish, Inc.	WA-1350-HA	\$626)
Department of Natural Resources	NA	(\$11,266) <u>\$15,037</u>
Jamestown S'Klallam Tribe	WA-0588-SS	(\$4,590) <u>\$5,618</u>
Lower Elwha Klallam Tribe	WA-0587-HA	(\$6,468) <u>\$2,644</u>
Lummi Indian Business Council	WA-0098-SS	(\$209) <u>\$496</u>
((Nisqually Indian Tribe	WA-1268-HA	\$209)
Port Gamble S'Klallam Tribe	WA-0859-HA	(\$2,295) <u>\$5,123</u>
Puyallup Tribe of Indians	WA-1137-HA	(\$7,302) <u>\$4,957</u>
Seaproducts, Inc.	WA-1416-SS	(\$417) <u>\$661</u>
Skokomish Indian Tribe	WA-0577-HA	(\$1,878) <u>\$165</u>
Suquamish Tribe	WA-0694-SS	(\$7,719) <u>\$5,618</u>
Swinomish Indian Tribal Community	WA-1420-SS	(\$1,043) <u>\$661</u>
Taylor Shellfish Company, Inc.	WA-0046-SP	(\$6,468) <u>\$7,932</u>
The Tulalip Tribes	WA-0997-HA	(\$7,511) <u>\$9,088</u>

(5) Fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

[Statutory Authority: RCW 43.70.250 and 69.30.050. WSR 21-11-080, § 246-282-990, filed 5/18/21, effective 6/18/21; WSR 20-22-001, § 246-282-990, filed 10/21/20, effective 11/21/20; WSR 19-10-026, § 246-282-990, filed 4/23/19, effective 5/24/19; WSR 18-09-067, § 246-282-990, filed 4/16/18, effective 5/17/18; WSR 17-06-062, § 246-282-990, filed 2/28/17, effective 3/31/17. Statutory Authority: RCW 43.70.250 and 60.30.005. WSR 16-07-094, § 246-282-990, filed 3/18/16, effective 4/18/16. Statutory Authority: RCW 43.70.250 and 77.32.555. WSR 16-01-041, § 246-282-990, filed 12/9/15, effective 1/9/16. Statutory Authority: RCW 43.70.250. WSR 15-11-053, § 246-282-990, filed 5/15/15, effective 6/15/15; WSR 14-12-082, § 246-282-990, filed 6/3/14, effective 7/4/14; WSR 13-11-038, § 246-282-990, filed 5/10/13, effective 6/10/13; WSR 12-14-073, § 246-282-990, filed 7/2/12, effective 8/2/12. Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 11-19-011, § 246-282-990, filed 9/7/11, effective 10/8/11. Statutory Authority: RCW 43.70.250. WSR 10-19-034, § 246-282-990, filed 9/9/10, effective 10/10/10; WSR 09-19-067, § 246-282-990, filed 9/14/09, effective 10/15/09; WSR 08-13-067, § 246-282-990, filed 6/13/08, effective 7/14/08; WSR 07-17-159, § 246-282-990, filed 8/21/07, effective 9/21/07; WSR 06-15-131, § 246-282-990, filed 7/19/06, effective 8/19/06; WSR 05-17-120, § 246-282-990, filed 8/17/05, effective 9/17/05; WSR 04-15-154, § 246-282-990, filed 7/21/04, effective 8/21/04; WSR 03-18-093, § 246-282-990, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 43.70.250 and 34.70.250 [43.70.250]. WSR 03-14-037, § 246-282-990, filed 6/23/03, effective 7/24/03. Statutory Authority: RCW 43.70.250 and the 2002 supplemental operating budget. WSR 02-15-094, § 246-282-990, filed 7/16/02, effective 8/16/02. Statutory Authority: RCW 43.70.250, 70.90.150, and 43.20B.250. WSR 01-14-047, § 246-282-990, filed 6/29/01, effective 7/30/01. Statutory Authority: RCW 69.30.030 and 43.20.030. WSR 01-04-054, § 246-282-990, filed 2/5/01, effective 3/8/01. Statutory Authority: RCW 43.70.250. WSR 00-02-016, § 246-282-990, filed 12/27/99, effective 1/27/00; WSR 99-12-022, § 246-282-990, filed 5/24/99, effective 6/24/99. Statutory Authority: RCW 43.20B.020 and 69.30.030. WSR 98-12-068, § 246-282-990, filed 6/1/98, effective 7/2/98. Statutory Authority: RCW 43.203.020 [43.20B.020]. WSR 97-12-031, § 246-282-990, filed 5/30/97, effective 6/30/97. Statutory Authority: RCW 43.20B.020 and 69.30.030. WSR 96-16-073, § 246-282-990, filed 8/6/96, effective 10/1/96. Statutory Authority: RCW 43.70.040. WSR 93-17-096 (Order 389), § 246-282-990, filed 8/17/93, effective 9/17/93; WSR 91-02-049 (Order 121), recodified as § 246-282-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.20A.055. WSR 85-12-029 (Order 2236), § 440-44-065, filed 5/31/85; WSR 84-13-006 (Order 2109), § 440-44-065, filed 6/7/84; WSR 83-15-021 (Order 1991), § 440-44-065, filed 7/14/83. Statutory Authority: 1982 c 201. WSR 82-13-011 (Order 1825), § 440-44-065, filed 6/4/82.]

WSR 22-06-075
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed March 1, 2022, 8:20 a.m.]

Continuance of WSR 22-02-054.

Preproposal statement of inquiry was filed as WSR 19-22-062.

Title of Rule and Other Identifying Information: Chapter 296-831 WAC, Adult entertainer safety.

Hearing Location(s): On April 6, 2022, at 1:00 p.m. PST, United States and Canada. Public hearing meeting link <https://lni-wa.gov.zoom.us/j/89947181396?pwd=TXV6RW9pTElpUkdOTI5L3pVajdLUT09>, phone 253-215-8782, Meeting ID 899 4718 1396, Passcode 31078381. Virtual meetings and public hearings necessitated by the COVID-19 pandemic have proven effective in allowing greater public access, eliminating the burden of physical travel, and maintaining public safety. Accordingly, no in-person meeting will be held. The hearing will start at 1:00 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: May 3, 2022.

Submit Written Comments to: Kevin Walder, Department of Labor and Industries (L&I), Division of Occupational Safety and Health (DOSH), P.O. Box 44620, Olympia, WA 98504-4620, email Kevin.Walder@lni.wa.gov, fax 360-902-5619, by April 13, 2022.

Assistance for Persons with Disabilities: Contact Kevin Walder, administrative regulations analyst, phone 360-902-6681, email Kevin.Walder@lni.wa.gov, by March 31, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is a continuance filed for WSR 22-02-054 to obtain additional stakeholder feedback on the rule.

This rule making will implement the requirements of EHB 1756 (chapter 304, Laws of 2019) codified under RCW 49.17.470.

New chapter 296-831 WAC, Adult entertainer safety.

- Adds requirement that adult entertainment establishments provide panic buttons in specified locations.
 - Panic buttons must be silent (discreet) unless an adult entertainment establishment's safety committee has assessed the premises and operations and have unanimously agreed on the use of an audible alarm.
- Adds requirement that adult entertainment establishments record accusations of customer violence, including assault, sexual assault, or sexual harassment, towards an entertainer.
- Adds requirement that adult entertainment establishments ban customers for three years if an accusation of violence or harassment against the entertainer is supported by a statement made under penalty of perjury or other evidence.
- Includes definitions pertinent to these new requirements.
- Includes notes clarifying requirements.

Reasons Supporting Proposal: L&I DOSH is implementing EHB 1756 (chapter 304, Laws of 2019) codified under RCW 49.17.470. The legislature passed this bill into law in recognition of the fact that adult entertainers encounter unique workplace hazards that warrant specific occupational safety and health rules to best protect them from these hazards.

Statutory Authority for Adoption: Chapter 49.17 RCW; RCW 49.17.470.

Statute Being Implemented: RCW 49.17.470.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Miller, Tumwater, Washington, 360-902-5516; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

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 Kevin Walder, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-902-6681, fax 360-902-5619, email Kevin.Walder@lni.wa.gov.

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

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

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. L&I first estimates the total cost for implementing the silent panic button which includes the hardware and labor costs. Second, L&I estimates the cost of recording accusations based on the estimated number of annual accusations. Both cost components are annualized to determine the total annual cost of implementing this rule to affected businesses.

Per Business Cost vs. Minor Cost Threshold:

Per business average cost recurring	\$108 to \$227
Minor cost threshold (one percent of annual payroll)	\$1,860 ¹

When compared to the minor cost threshold (one percent of annual payroll), it clearly indicates the average per business cost of these proposed rule amendments is far below the threshold for affected businesses discussed above.

March 1, 2022
 Joel Sacks
 Director

OTS-1747.14

**Chapter 296-831 WAC
 ADULT ENTERTAINER SAFETY**

NEW SECTION

WAC 296-831-100 Purpose and scope. This chapter applies to all adult entertainment establishments.

In addition to this chapter, chapter 296-800 WAC Safety and health core rules, chapter 296-24 WAC General safety and health standards, and chapter 296-62 WAC General occupational health standards contain safety and health rules that also apply to adult entertainment establishments. Similarly, other special industry focused chapters (e.g., chapter 296-832 WAC Late night retail worker crime prevention, chapter 296-155 WAC construction, etc.) and special hazard focused chapters (e.g., chapter 296-876 WAC ladders, chapter 296-880 WAC fall protection, etc.) complement the rules found in this chapter and may apply depending on operations being performed.

Note: All of the requirements in this rule work in conjunction with the Accident Prevention Program (APP) rules in WAC 296-800-140 through 296-800-14025 within the safety and health core rules. Therefore, an adult entertainment establishment's fully compliant Accident Prevention Program (APP) will cover the following (in addition to other general safety and health considerations applicable to all businesses):

- Entertainer orientation on panic button location, use, and maintenance, if any;
- How to add a problematic customer to your complaint log/blacklist;
- How to report work-related hazards, injuries, unsafe conditions, or unsafe practices;
- The proper use and care of personal protective equipment (PPE); and
- What to do in an emergency, including how to leave the workplace.

Adult entertainment establishments are also required to regularly hold safety and health meetings for the purpose of communicating and evaluating safety and health issues in the workplace, including the evaluation of your APP to determine whether improvements are necessary to ensure that it is effective in practice. Specific requirements differ somewhat between large and small employers. See WAC 296-800-130 Safety committees/safety meetings—Summary, for details.

[]

NEW SECTION

WAC 296-831-200 Definitions. Note: The definitions below exclusively apply to this chapter.

Adult entertainment. Any exhibition, performance, or dance of any type conducted in premises where such exhibition, performance, or dance involves an entertainer who:

(a) Is unclothed or in such attire, costume, or clothing as to expose to view any portion of the breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva, or genitals; or

(b) Touches, caresses, or fondles the breasts, buttocks, anus, genitals, or pubic region of another person, or permits the touching, caressing, or fondling of the entertainer's own breasts, buttocks, anus, genitals, or pubic region by another person, with the intent to sexually arouse or excite another person.

Adult entertainment establishment or establishment. Any business to which the public, patrons, or members are invited or admitted where an entertainer provides adult entertainment to a member of the public, a patron, or a member.

Entertainer. Any person who provides adult entertainment within an adult entertainment establishment, whether or not a fee is charged or accepted for entertainment and whether or not the person is an employee under RCW 49.17.020.

Panic button. An emergency contact device by which the entertainer may summon immediate on-scene assistance from another entertainer, a security guard, or a representative of the entertainment establishment.

[]

NEW SECTION

WAC 296-831-300 Panic button requirements. (1) Adult entertainment establishments must provide a panic button in each room in the establishment in which an entertainer may be alone with a customer, and in bathrooms and dressing rooms. An entertainer may use the panic button if the entertainer has been harmed, reasonably believes there is a risk of harm, or there is another emergency in the entertainer's presence. The entertainer may cease work and leave the immediate area to await the arrival of assistance.

(2) Panic buttons, and their associated alarm(s), must be silent (discreet) at the entertainer's point of use, while still effectively alerting whomever you have determined to be responsible for responding to emergencies.

Exception: Panic buttons that trigger a recognizable (audible/visual/tactile) alarm at the entertainer's point of use may be used in specific locations within an establishment where alarms are required but only if you have assessed your business operations and alarm system with your required safety and health committee (see WAC 296-800-130 Safety committees/safety meetings—Summary) and the committee has unanimously determined that such an alarm would be more effective for a particular location within your establishment where an alarm is required. In such cases, this determination is limited to a particular location within your establishment and must be documented along with other required safety committee documentation.

(3) Adult entertainment establishments must test and maintain your alarm system regularly to ensure that it will function as intended when needed.

(a) Testing must be performed at least annually, or at whatever interval is recommended by the alarm system manufacturer (this information is typically found in the owner's manual).

(b) Adult entertainment establishments must keep a record that includes the dates of all testing or maintenance performed and any pertinent details such as errors corrected or adjustments made.

Note: Appendix A contains a nonmandatory panic button checklist that adult entertainment establishments can use to assist in identifying panic button and response procedure related hazards in their workplace, and to aid establishments in evaluating what performance criteria will address the violence-based hazards in their establishment.

[]

NEW SECTION

WAC 296-831-310 Install an appropriate entertainer alarm system(s). (1) Adult entertainment establishments must make sure that an alarm system, with a distinctive (not confused with fire alarm, etc.) signal, is installed for the purposes of communicating entertainer violence related emergencies to employer-designated responders.

(2) Adult entertainment establishments must make sure alarm systems:

(a) Communicate the use/triggering of panic buttons.

(b) Identify the location of all panic buttons which have been used/triggered.

(c) Latch, or continue to both communicate the use/triggering of panic buttons, and identify the location of panic buttons which have been used/triggered, without requiring ongoing action(s) of the person

that used the panic button. For example, entertainers must not be required to hold a button down to keep the alarm triggering.

(d) Are recognizable above surrounding noise and/or light levels by establishment designated responder(s) in all relevant portions of the establishment in which designated responders are acting in this role. Areas far enough away from an alarm, or where building materials or walls are in the alarms path, may reduce the effectiveness of the alarm to the point that it is no longer recognizable.

(3) For the purposes of this rule, panic button alarm systems can be categorized based on whether the entertainer's point of use features a silent (discreet), or a recognizable (audible/visual/tactile) alarm from the entertainer's and customer's perspective. Discreet panic buttons reduce the likelihood of escalating a confrontation towards violence, but at the same time prevent other entertainers and personnel in the area from knowing a panic button was used/triggered. **See WAC 296-831-300(2) and the exception immediately following it for specific requirements regarding silent (discreet) vs. recognizable (audible/visual/tactile) alarm systems.** Regardless of which method is used, associated hazards must be further mitigated by implementing either of the below, or a similarly protective, strategy:

(a) A multistage alarm (normally discreet at the panic button point of use, but switches to audible/recognizable at the point of use if the alarm system detects a malfunction that would prevent response actions); or

(b) A multicomponent alarm (discreet at the panic button point of use, but nonaudible alarm components (lights, etc.)) provided within adjacent booths/rooms/etc., and above/adjacent/on the entrance to booth(s)/room(s)/etc., to communicate to designated responders both the use, and location, of a panic button alarm in the area.

[]

NEW SECTION

WAC 296-831-400 Training requirements. (1) Adult entertainment establishments must train entertainers on the following, prior to their work as entertainers (for more information related to customer complaint logs/blacklists see WAC 296-831-500).

(a) The location and type of panic buttons used in the establishment (audible/discreet at the point of use).

(b) How to use panic button(s).

(c) Proper scenarios for use of panic button(s).

(d) What, if any, are the limitations of the panic button(s) and/or alarm system(s) - Under what circumstances could the panic button(s) and alarm system(s) fail and what are entertainers expected to do in these scenarios.

(e) The location and purpose of both the customer complaint log and blacklist.

(f) What scenarios are appropriate for listing customers in both the complaint log and blacklist.

(g) What steps entertainers must take to have customers added to blacklist and/or customer complaint log.

(2) Adult entertainment establishments designate and train responders on the following prior to their work as designated responders

(for more information related to customer complaint logs/blacklists see WAC 296-831-500).

(a) The location and type of panic buttons used in the establishment.

(b) How to recognize panic button alarms?

(c) What, if any, are the limitations of the panic button(s) and/or alarm system(s) - Under what circumstances could the panic button(s) and alarm system(s) fail and what are responders expected to do in these scenarios?

(d) What are the designated responders assigned duties following the use of a panic button?

(e) How do designated responders perform assigned duties following the use of a panic button?

(f) The location and purpose of both the customer complaint log and blacklist.

(g) What scenarios are appropriate for listing customers in both the complaint log and blacklist.

(h) What steps designated responders must take to have customers added to blacklist and/or customer complaint log.

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NEW SECTION

WAC 296-831-500 Customer complaint log requirements. (1) Adult entertainment establishments must record the accusations it receives that a customer has committed an act of violence, including assault, sexual assault, or sexual harassment, towards an entertainer. The establishment must make every effort to obtain the customer's name and if the establishment cannot determine the name, it must record as much identifying information about the customer as is reasonably possible. The establishment must retain a record of the customer's identifying information for at least five years after the most recent accusation.

(2) If an accusation is supported by a statement made under penalty of perjury or other evidence, the adult entertainment establishment must decline to allow the customer to return to the establishment (blacklist) for at least three years after the date of the incident. The establishment must share the information about the customer with other establishments with common ownership and those establishments with common ownership must also decline to allow the customer to enter those establishments (blacklist) for at least three years after the date of the incident. No entertainer may be required to provide such a statement.

Note: Appendix B contains a standard declaration template that can be used to make a statement under penalty of perjury. In addition to statements made under penalty of perjury, any other evidence brought forth to an employer that a customer has committed an act of violence, including assault, sexual assault, or sexual harassment towards an entertainer, should be considered credible and trigger the employer to take action as required under the customer complaint log requirements above unless the employer can provide a rational explanation why they do not deem the evidence credible.

Appendix A

PANIC BUTTON CHECKLIST		
If the response to <i>any</i> of the following questions in this checklist is "NO," and if no other alternative hazard controls are in place for the identified hazard, panic buttons are likely not effective.		
Do panic buttons and panic buttons systems exclusively rely on establishment owned/leased/ etc., equipment or services?	YES	NO

The above covers the complete chain of events from the initial signaling at the entertainer's point of use through notification and to response from the establishment. The rule does not prohibit entertainer owned devices supplementing the devices provided by establishment (e.g., as a backup method).		
Do panic buttons require only a single action to activate (such as a single push/pull/tap, etc.)?	YES	NO
Panic buttons which require multiple actions (such as using a number pad to unlock/dial a cell phone, or selecting a channel/frequency on a portable radio, or pressing a button and then speaking) would require an entertainer to extend their exposure to a hazard in order to seek relief from it.		
Do panic buttons and the associated signal or alarm latch?	YES	NO
Once triggered, panic buttons alarms continue to both alarm and identify the location of the used panic button(s) without requiring ongoing action of the entertainer. Panic buttons requiring ongoing actions of the entertainer (continued holding/pressing, etc.) would require an entertainer to extend their exposure to a hazard in order to seek relief from it.		
Do panic buttons systems resist tampering?	YES	NO
Once triggered, panic buttons alarms are not easily reset at the panic button (entertainer's point of use) itself, especially using the same action that activated it. Panic buttons which can be readily turned off or reset by customers would delay response actions and allow continued exposure to the hazard.		
Do panic buttons reduce or minimize inadvertent activation or false alarms?	YES	NO
False alarms increase the likelihood of delayed, deprioritized, or ignored alarms. Buttons, switches, etc., which are protected, shouldered, recessed, or flush with top surface/bracket/etc. reduce the likelihood of false alarms.		
Do panic buttons systems identify the location of the triggered panic buttons?	YES	NO
Uncoordinated response to panic buttons increases the likelihood of response actions being delayed or otherwise inadequate.		
Do panic buttons trigger distinct alarms?	YES	NO
If an establishment's panic button response procedures dictate that after the triggering of a panic button, uninvolved entertainers should continue entertaining while the establishment conducts response activities; then panic buttons alarm systems (and response procedures) would need to continue to fully function during an alarm (or multiple alarms). Indistinct alarms, or alarms where the establishment cannot identify/respond to multiple simultaneous alarms, increase the likelihood of response actions being delayed or otherwise inadequate.		
Do panic buttons alarms produce recognizable signals to perform actions under the APP, Emergency Action Plan, etc.?	YES	NO
At the establishment's point of reception, alarms must be recognizable in the conditions under which they will be used. The following can obscure alarms sufficiently enough to make an alarm unrecognizable: <ul style="list-style-type: none"> - Areas subject to noise/music at volumes equal or above the volume of an alarm; - Areas subject to strobing lighting equal or above the amount of illumination of an alarm; - Areas with sufficient distance, intermediary materials, or the room/building configuration itself, impairs alarm signals to the point that they are no longer recognizable. At the entertainer's point of use, panic buttons may be either discreet, or produce an audible alarm. Discreet panic buttons reduce the likelihood of escalating a confrontation towards violence, but simultaneously prevent other entertainers and personnel in the area from knowing a panic button was triggered. Regardless of which method is used, associated hazards must be further mitigated such as via a multistage alarm (normally discreet, only audible if alarm malfunction, etc.), multicomponent alarm (using notification lights, rather than audible alarms, within adjacent booths/rooms/etc., in conjunction with indicator light(s) outside booth/room/etc., to signal and locate the use of a panic button).		
Are panic buttons provided by the establishment in each room in the establishment in which entertainers may be alone with a customer, and in bathrooms and dressing rooms?	YES	NO
For the purposes of this question, "alone" means outside of direct line-of-sight of other establishment personnel, entertainers, employees, etc., such as in private or semi-private booths, rooms, etc.		
Are panic buttons that are permanently installed in the workplace, located within immediate reach?	YES	NO
Panic buttons must be kept free of obstacles blocking their use (doors, furniture, mop buckets, boxes, coat racks, etc.).		

Are panic buttons in good working order? If not, are entertainers informed of, and excluded from, areas lacking required panic buttons protection (e.g. during power loss, wireless service loss, etc.)?	YES	NO
Keep a record of, and inform entertainers of, nonfunctional/improperly working panic buttons until replaced or repaired. - Use signage or otherwise inform entertainers prior to working; and - Use written procedures and policies in Accident Prevention Plan that prohibit or restrict access to relevant areas.		

Appendix B

Declaration of: _____
 (Type or print your name here)

_____ declares as follows:
 (Type or print your name)

I am over the age of eighteen, and I am otherwise competent to testify. I make these statements based on personal knowledge and belief.

 (Insert your statement here describing what happened)

I declare under penalty of perjury of the laws of the State of Washington the foregoing is true and correct.

DATED this ____ day of _____ 20__, in _____, Washington.
 (##) (Month) (Year) (Name of city/town)

 (Sign above)

 (Type or print your name)

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WSR 22-06-077
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed March 1, 2022, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-01-196.

Title of Rule and Other Identifying Information: Medical aid rules—Conversion factors and maximum daily fees: WAC 296-20-135, 296-23-220, and 296-23-230.

Hearing Location(s): On April 12, 2022, at 10:00 a.m., Zoom audio/visual meeting/hearing only. Join Zoom meeting <https://lni-wa-gov.zoom.us/j/89770968903>, Meeting ID 897 7096 8903, Passcode Hearing%24; One tap mobile +12532158782,,89770968903#,,,,*5466327035# US (Tacoma); Dial by your location +1 253 215 8782 US (Tacoma), Meeting ID 897 7096 8903, Passcode 5466327035. Find your local number <https://lni-wa-gov.zoom.us/j/89770968903>. The Zoom meeting/hearing starts at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: May 3, 2022.

Submit Written Comments to: Megan Lemon, Department of Labor and Industries (L&I), Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, email Megan.Lemon@lni.wa.gov, fax 360-902-4249, by 5:00 p.m. on April 12, 2022.

Assistance for Persons with Disabilities: Contact Megan Lemon, phone 360-902-5161, fax 360-902-4249, email Megan.Lemon@lni.wa.gov, by April 5, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will: (1) Increase the conversion factor used to calculate payment for anesthesia services; and (2) increase the maximum daily payment for physical and occupational therapy.

WAC 296-20-135(3): Increase the resource-based relative value scale conversion factor from \$57.90 to \$59.46 and increase the anesthesia conversion factor from \$3.64 to \$3.75 per minute.

WAC 296-23-220 and 296-23-230: Increase the maximum daily rate for physical and occupational therapy services from \$136.74 to \$140.84.

Reasons Supporting Proposal: These rules are to be updated to continually follow the established methodologies of L&I and maintain consistency with the health care authority and medicaid purchasing administration. This rule will provide medical aid updates regarding rate setting for professional health care services for injured workers.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Megan Lemon, Tumwater, Washington, 360-902-5161; Implementation and Enforcement: Vickie Kennedy, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply because the content of this rule sets fees and fits within the exception listed in RCW 34.05.328 (5)(b)(vi).

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

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

March 1, 2022

Joel Sacks

Director

OTS-3603.1

AMENDATORY SECTION (Amending WSR 21-11-084, filed 5/18/21, effective 7/1/21)

WAC 296-20-135 Conversion factors. (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of \$((~~57.90~~)) 59.46. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of \$((~~3.64~~)) 3.75 per minute, which is equivalent to \$((~~54.60~~)) 56.25 per 15 minutes. The base units and payment policies can be found in the fee schedules.

[Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 21-11-084, § 296-20-135, filed 5/18/21, effective 7/1/21; WSR 20-17-116, § 296-20-135, filed 8/18/20, effective 10/1/20; WSR 18-10-082, § 296-20-135, filed 5/1/18, effective 7/1/18; WSR 17-10-060, § 296-20-135, filed 5/2/17, effective 7/1/17; WSR 16-10-084, § 296-20-135, filed 5/3/16, effective 7/1/16; WSR 15-09-120, § 296-20-135, filed 4/21/15, effective 7/1/15; WSR 14-09-094, § 296-20-135, filed 4/22/14, effective 7/1/14; WSR 13-11-020, § 296-20-135, filed 5/7/13, effective 7/1/13; WSR 12-11-107, § 296-20-135, filed 5/22/12, effective 7/1/12; WSR 11-12-019, § 296-20-135, filed 5/24/11, effective 7/1/11; WSR 10-10-107, § 296-20-135, filed 5/4/10, effective 7/1/10; WSR 08-09-121, § 296-20-135, filed 4/22/08, effective 7/1/08; WSR 07-10-082, § 296-20-135, filed 5/1/07, effective 7/1/07; WSR 06-09-071, § 296-20-135, filed 4/18/06, effective 7/1/06; WSR 05-09-062, § 296-20-135, filed 4/19/05, effective 7/1/05; WSR 04-09-100, § 296-20-135, filed 4/20/04, effective 7/1/04; WSR 03-14-043, § 296-20-135, filed 6/24/03, effective 8/1/03; WSR 02-10-129, § 296-20-135, filed 5/1/02, effective 7/1/02; WSR 01-10-026, § 296-20-135, filed 4/24/01, effective 7/1/01; WSR 00-09-077, § 296-20-135, filed 4/18/00, effective 7/1/00. Statutory Authority: RCW 51.04.020(4) and 51.04.030. WSR 99-10-043, § 296-20-135, filed 4/30/99, effective 7/1/99; WSR 98-09-125, § 296-20-135, filed 4/22/98, effective 7/1/98; WSR 97-10-017, § 296-20-135, filed 4/28/97, effective 7/1/97. Statutory Authority: RCW 51.04.020 and 51.04.030. WSR

96-19-060. §296-20-135, filed 9/16/96, effective 10/17/96; WSR 96-10-086, § 296-20-135, filed 5/1/96, effective 7/1/96; WSR 95-17-001 § 296-20-135, filed 8/2/95, effective 10/1/95; WSR 95-05-072, § 296-20-135, filed 2/15/95, effective 3/18/95. Statutory Authority: RCW 51.04.020, 51.04.030 and 1993 c 159. WSR 94-02-045 and 94-03-008, § 296-20-135, filed 12/30/93 and 1/6/94, effective 3/1/94; WSR 93-16-072, § 296-20-135, filed 8/1/93, effective 9/1/93. Statutory Authority: RCW 51.04.020(4) and 51.04.030. WSR 91-02-063, § 296-20-135, filed 12/28/90, effective 1/28/91; WSR 88-24-011 (Order 88-28), § 296-20-135, filed 12/1/88, effective 1/1/89; WSR 87-03-004 (Order 86-45), § 296-20-135, filed 1/8/87; WSR 83-24-016 (Order 83-35), § 296-20-135, filed 11/30/83, effective 1/1/84; WSR 82-24-050 (Order 82-39), § 296-20-135, filed 11/29/82, effective 7/1/83. Statutory Authority: RCW 51.04.020(4), 51.04.030, and 51.16.120(3). WSR 81-24-041 (Order 81-28), § 296-20-135, filed 11/30/81, effective 1/1/82; WSR 80-18-033 (Order 80-24), § 296-20-135, filed 12/1/80, effective 1/1/81. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-20-135, filed 11/30/79, effective 1/1/80; Order 77-27, § 296-20-135, filed 11/30/77, effective 1/1/78; Order 76-34, § 296-20-135, filed 11/24/76, effective 1/1/77; Order 75-39, § 296-20-135, filed 11/28/75, effective 1/1/76; Order 74-7, § 296-20-135, filed 1/30/74; Order 71-6, § 296-20-135, filed 6/1/71; Order 68-7, § 296-20-135, filed 11/27/68, effective 1/1/69.]

OTS-3602.1

AMENDATORY SECTION (Amending WSR 21-11-084, filed 5/18/21, effective 7/1/21)

WAC 296-23-220 Physical therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist, a physical therapist assistant serving under the direction of a licensed physical therapist as required in RCW 18.74.180 (3)(a), or a licensed athletic trainer serving under the direction of a licensed physical therapist as required in RCW 18.250.010 (4)(a)(v). In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or \$((~~136.74~~)) 140.84 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following ((~~twelve~~)) 12 treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial ((~~twelve~~)) 12 treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

[Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 21-11-084, § 296-23-220, filed 5/18/21, effective 7/1/21; WSR 20-17-116, § 296-23-220, filed 8/18/20, effective 10/1/20; WSR 18-10-082, § 296-23-220, filed 5/1/18, effective 7/1/18; WSR 17-10-060, § 296-23-220, filed 5/2/17, effective 7/1/17; WSR 16-10-084, § 296-23-220, filed 5/3/16, effective 7/1/16; WSR 15-09-120, § 296-23-220, filed 4/21/15, effective 7/1/15. Statutory Authority: RCW 51.04.020 and 51.04.030. WSR 14-23-064, § 296-23-220, filed 11/18/14, effective 1/1/15. Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 14-09-094, § 296-23-220, filed 4/22/14, effective 7/1/14; WSR 13-11-020, § 296-23-220, filed 5/7/13, effective 7/1/13; WSR 12-11-107, § 296-23-220, filed 5/22/12, effective 7/1/12; WSR 08-09-121, § 296-23-220, filed 4/22/08, effective 7/1/08; WSR 07-10-082, § 296-23-220, filed 5/1/07, effective 7/1/07; WSR 06-09-071, § 296-23-220, filed 4/18/06, effective 7/1/06. Statutory Authority: RCW 51.04.020 and 51.04.030. WSR 05-18-030, § 296-23-220,

filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 05-09-062, § 296-23-220, filed 4/19/05, effective 7/1/05; WSR 04-09-100, § 296-23-220, filed 4/20/04, effective 7/1/04; WSR 03-14-043, § 296-23-220, filed 6/24/03, effective 8/1/03; WSR 02-10-129, § 296-23-220, filed 5/1/02, effective 7/1/02; WSR 01-10-026, § 296-23-220, filed 4/24/01, effective 7/1/01; WSR 00-09-077, § 296-23-220, filed 4/18/00, effective 7/1/00. Statutory Authority: RCW 51.04.020(4) and 51.04.030. WSR 99-10-043, § 296-23-220, filed 4/30/99, effective 7/1/99; WSR 98-09-125, § 296-23-220, filed 4/22/98, effective 7/1/98; WSR 97-10-017, § 296-23-220, filed 4/28/97, effective 7/1/97; WSR 96-10-086, § 296-23-220, filed 5/1/96, effective 7/1/96; WSR 95-05-072, § 296-23-220, filed 2/15/95, effective 3/18/95. Statutory Authority: RCW 51.04.020, 51.04.030 and 1993 c 159. WSR 94-02-045, § 296-23-220, filed 12/30/93, effective 3/1/94; WSR 93-16-072, § 296-23-220, filed 8/1/93, effective 9/1/93.]

AMENDATORY SECTION (Amending WSR 21-11-084, filed 5/18/21, effective 7/1/21)

WAC 296-23-230 Occupational therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following ((~~twelve~~)) 12 treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial ((~~twelve~~)) 12 treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and cus-

tomary charge, or \$((136.74)) 140.84 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

[Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 21-11-084, § 296-23-230, filed 5/18/21, effective 7/1/21; WSR 20-17-116, § 296-23-230, filed 8/18/20, effective 10/1/20; WSR 18-10-082, § 296-23-230, filed 5/1/18, effective 7/1/18; WSR 17-10-060, § 296-23-230, filed 5/2/17, effective 7/1/17; WSR 16-10-084, § 296-23-230, filed 5/3/16, effective 7/1/16; WSR 15-09-120, § 296-23-230, filed 4/21/15, effective 7/1/15; WSR 14-09-094, § 296-23-230, filed 4/22/14, effective 7/1/14; WSR 13-11-020, § 296-23-230, filed 5/7/13, effective 7/1/13; WSR 12-11-107, § 296-23-230, filed 5/22/12, effective 7/1/12; WSR 08-09-121, § 296-23-230, filed 4/22/08, effective 7/1/08; WSR 07-10-082, § 296-23-230, filed 5/1/07, effective 7/1/07; WSR 06-09-071, § 296-23-230, filed 4/18/06, effective 7/1/06. Statutory Authority: RCW 51.04.020 and 51.04.030. WSR 05-18-030, § 296-23-230, filed 8/30/05, effective 10/1/05. Statutory Authority: RCW 51.04.020(1) and 51.04.030. WSR 05-09-062, § 296-23-230, filed 4/19/05, effective 7/1/05; WSR 04-09-100, § 296-23-230, filed 4/20/04, effective 7/1/04; WSR 03-14-043, § 296-23-230, filed 6/24/03, effective 8/1/03; WSR 02-10-129, § 296-23-230, filed 5/1/02, effective 7/1/02; WSR 01-10-026, § 296-23-230, filed 4/24/01, effective 7/1/01; WSR 00-09-077, § 296-23-230, filed 4/18/00, effective 7/1/00. Statutory Authority: RCW 51.04.020(4) and 51.04.030. WSR 99-10-043, § 296-23-230, filed 4/30/99, effective 7/1/99; WSR 98-09-125, § 296-23-230, filed 4/22/98, effective 7/1/98; WSR 97-10-017, § 296-23-230, filed 4/28/97, effective 7/1/97; WSR 96-10-086, § 296-23-230, filed 5/1/96, effective 7/1/96; WSR 95-05-072, § 296-23-230, filed 2/15/95, effective 3/18/95. Statutory Authority: RCW 51.04.020, 51.04.030 and 1993 c 159. WSR 94-02-045, § 296-23-230, filed 12/30/93, effective 3/1/94; WSR 93-16-072, § 296-23-230, filed 8/1/93, effective 9/1/93.]

WSR 22-06-080

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 1, 2022, 9:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-106.

Title of Rule and Other Identifying Information: New chapter 182-400 WAC, Public option plans (Cascade care select).

Hearing Location(s): On April 5, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_DNowSCHXRGWpziJU7bnNWTw. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than April 6, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay service 711, email arc@hca.wa.gov, by March 25, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new rules align with the requirements of E2SSB 5377. This bill provides that if a public option plan is not available in plan year 2022 or later, certain hospitals must contract with at least one public option plan to provide in-network services to that plan's enrollees. The bill also provides that HCA may adopt rules to enforce compliance. The new rules, in part, describe:

- Which hospitals must comply.
- Agency investigations.
- Sanctions.
- Appeals.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; E2SSB 5377.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Penny Adler, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-9727.

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

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

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

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

March 1, 2022
Wendy Barcus
Rules Coordinator

OTS-3528.3

**Chapter 182-400 WAC
PUBLIC OPTION PLANS (CASCADE CARE SELECT)**

NEW SECTION

WAC 182-400-0100 Public option hospital participation—Purpose and scope. (1) The Washington health benefits exchange, in partnership with the health care authority, administers public purchasing of the Washington state public option plans known as Cascade Care Select.

(2) Each hospital should actively seek to contract with as many carriers that offer public option plans as possible to ensure compliance with this chapter and to avoid sanctions by failing to contract with at least one carrier offering public option plans.

(3) In accordance with RCW 41.05.405, beginning in plan year 2023, a hospital that receives payments through a medical assistance program under chapter 74.09 RCW, or a public employees benefits board (PEBB) or a school employees benefits board (SEBB) program under chapter 41.05 RCW must contract with at least one carrier offering public option plans to provide in-network coverage to enrollees, if the hospital received a valid offer to contract with a carrier offering public option plans to provide in-network services.

[]

NEW SECTION

WAC 182-400-0200 Definitions. For the purposes of this chapter:

"Authority" means the Washington state health care authority.

"Carrier" is defined in RCW 48.43.005.

"Health benefits exchange" means the Washington state health benefits exchange established in RCW 43.71.020.

"Hospital" means any hospital licensed under chapter 70.41 RCW that receives payment for services provided:

(a) To enrollees in the public employees benefits program or school employees benefits program under chapter 41.05 RCW; or

(b) Through a medical assistance program under chapter 74.09 RCW.

"Parties" means carriers and hospitals as defined in this chapter.

"Plan year" means the 12-month period beginning on January 1st of each year and ending on December 31st of the same year.

"Public option plan" means a qualified health plan contracted by or offered in a response to a procurement issued by the authority under RCW 41.05.410.

"Valid offer to contract" means:

(a) A written offer made by a carrier to a hospital to enter into a contract with the carrier to provide in-network coverage to enrollees of the carrier's public option plans; and

(b) The carrier's offer must contain sufficient information so that a reasonable person would understand that a good faith offer has been made. The carrier must, at a minimum, include the reimbursement rate offered in a manner that constitutes a legally binding document that the parties could execute.

[]

NEW SECTION

WAC 182-400-0300 Enforcement. (1) **Compliance.** The authority conducts investigations, as needed, to ensure compliance with this chapter.

(2) **Investigations.** The authority may open an investigation:

(a) When the authority receives information from a carrier that a hospital failed to contract with that carrier to provide in-network coverage to enrollees of the carrier's public option plans after making a valid offer to contract;

(b) When there are counties in which no public option plans are available; or

(c) On a case-by-case basis at the authority's sole discretion.

(3) **Procedure.**

(a) The authority sends a written investigation notice explaining the nature of the allegation to both the hospital and to bidding or contracted carriers.

(b) The authority may request additional information or documentation from the carrier or carriers and the hospital. If the authority sends a written request for information, parties have 30 calendar days to:

(i) Provide the requested information or documentation; or

(ii) Request additional time to complete the request, which the authority may grant on a case-by-case basis.

(c) The authority may request the following information or documentation from any party during an investigation:

(i) A copy of all written communications, including emails, between the hospital and the carriers related to any potential contract offers, or contracts that have been executed related to public option plans and related discussions;

(ii) A copy, including the provider reimbursement rates, of any offer to contract or executed contract;

(iii) A statement from a party explaining the party's position, including information regarding why the offer was not accepted;

(iv) A statement regarding any mitigating factors the hospital or carrier would like the authority to take into consideration when determining whether a sanction is warranted; and

(v) Any other information the authority decides is relevant in determining whether a sanction is appropriate.

(d) If the authority determines that any party has failed to fully and timely respond to the authority's request for information or documentation, the authority may impose an immediate sanction for non-compliance for each incident of noncompliance, as follows:

Number of incidents of noncompliance	Sanction amount
First	\$10,000
Second	\$25,000
Third	\$50,000
Fourth and subsequent incidents	\$100,000

(e) The authority may issue a sanction for each missing item, or for each failure to provide documentation or information within the required time or may issue sanctions for both. Sanctions under this section are cumulative and immediate but may be stayed if the sanctioned party files an appeal under WAC 182-400-0400.

(f) When issuing an immediate sanction under (d) of this subsection, the authority sends a written notice to demand payment. The authority must receive payment within 28 calendar days of the date the party received the notice.

(4) Sanctions for failure to accept valid contract offer.

(a) After an investigation conducted under subsection (3) of this section, if, in the authority's sole discretion, the authority determines that a hospital failed to accept a valid offer to contract from a carrier, and is not contracted with any other public option plan for that plan year, the sanction amount for that plan year is as follows:

- (i) For hospitals with 50 beds or fewer, \$182,500; or
 - (ii) For hospitals with more than 50 beds, \$3,650 per bed.
- (b) A party may appeal a sanction notice under WAC 182-400-0400.

(5) **Public disclosure.** The information submitted according to this section is not subject to public disclosure under chapter 42.56 RCW, to the extent set forth in RCW 41.05.410 (3) (b).

[]

NEW SECTION

WAC 182-400-0400 Notice of sanction appeal process. (1) The process described in this section applies only if a party receives a written sanction notice from the authority for noncompliance with this chapter.

(2) The authority must receive a party's appeal within 28 calendar days of the date the party received the notice of sanction.

(a) To file an appeal, a party must send a written request for an administrative hearing to the address listed on the notice of sanction in a manner that provides proof of receipt.

(b) The request for the administrative hearing must provide a copy of the notice of sanction in dispute.

(3) The authority conducts hearings under the Washington state Administrative Procedure Act (chapter 34.05 RCW) and the administrative hearing rules for medical services programs (chapter 182-526 WAC).

(4) Under WAC 182-526-0025(2), the authority, in its sole discretion, may conduct the administrative hearing or may transfer the hearing to the office of administrative hearings (OAH).

(a) If the authority conducts the administrative hearing, it issues the final agency decision.

(b) If OAH conducts the administrative hearing, it issues an initial order with instructions on how to file an appeal with the authority's board of appeals.

(5) Repayment of sanctions is stayed only if a party timely files an appeal under this section.

(6) If the final order upholds the notice of sanction, the authority immediately begins collection activities.

(7) The authority may impose a one percent interest charge for any nonpayment of sanctions.

[]

WSR 22-06-085
WITHDRAWAL OF PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT
(By the Code Reviser's Office)
[Filed March 1, 2022, 2:44 p.m.]

WAC 357-31-325 and 357-31-326, proposed by the office of financial management in WSR 21-17-041, appearing in issue 21-17 of the Washington State Register, which was distributed on September 1, 2021, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 22-06-087

PROPOSED RULES

WASHINGTON STATE LOTTERY

[Filed March 1, 2022, 3:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-22-077.

Title of Rule and Other Identifying Information: Washington's lottery is proposing to amend chapter 315-20 WAC, Procedural rules—Contested cases—Petitions for declaratory ruling and rule making, in order to add a new section to allow the agency to hold brief adjudicative procedures (BAP) for certain administrative cases.

Hearing Location(s): On April 21, 2022, at 8:30 a.m., virtual. In response to the COVID-19 public health emergency, the commission will not provide a physical location in order to promote social distancing. See walottery.com or call or email Kristi Weeks for details on how to participate virtually.

Date of Intended Adoption: April 21, 2022.

Submit Written Comments to: Kristi Weeks, P.O. Box 4300 [43000], Olympia, WA 98504-3000, email KWeeks@walottery.com, fax 360-515-0416, by April 20, 2021.

Assistance for Persons with Disabilities: Contact Debbie Robinson, phone 360-791-3045, fax 360-515-0416, TTY 360-586-0933, email DRobinson@walottery.com, by April 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed changes to chapter 315-20 WAC would allow the agency to use the BAP process and to identify which categories of cases are appropriate for a BAP in accordance with the Administrative Procedure Act. This could allow the agency to resolve certain administrative cases faster and at less cost to the parties. The rule will also set forth the procedure used to conduct a BAP and the participants' opportunity for further review.

Reasons Supporting Proposal: The agency currently utilizes the full formal adjudicative process for all administrative cases, including very simple cases that could be resolved using a less complex process. As a result, cases are often not resolved for six to eight months. The BAP process will provide for resolution faster and at less cost to the parties. The proposed rule will contain all required procedural elements, thereby assisting unrepresented parties who will not have to research multiple rules and statutes in order to seek administrative relief.

Statutory Authority for Adoption: RCW 67.70.040 (1) and (3).

Statute Being Implemented: RCW 67.70.040 and 34.05.482.

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

Name of Proponent: Washington's lottery, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Kristi Weeks, 814 4th Avenue East, Olympia, WA, 360-810-2881; Enforcement: Marcus Glasper, 814 4th Avenue East, Olympia, WA, 360-810-2866.

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

A cost-benefit analysis is not required under RCW 34.05.328. The lottery is not an agency listed in RCW 34.05.328 (5) (a) (i). Further, the lottery does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5) (a) (ii) and to date

the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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.

March 1, 2022

Kristi Weeks

Director of Legal Services

OTS-3629.1

NEW SECTION

WAC 315-20-125 Brief adjudicative proceedings. (1) Application of brief adjudicative proceedings.

(a) If an adjudicative proceeding is timely requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(i) Denial, conditional grant, suspension, or revocation of a license pursuant to chapter 315-04 WAC; or

(ii) Prize denials pursuant to WAC 315-06-120.

(b) If an adjudicative proceeding is requested in a matter not listed in (a) of this subsection, a brief adjudicative proceeding may be conducted in the sole discretion of the presiding officer when it appears that protection of the public interest does not require that the lottery provide notice and opportunity to participate to persons other than the parties and:

(i) Only legal issues exist; or

(ii) Both parties have agreed to a brief adjudicative proceeding.

(c) The presiding officer may, in their sole discretion, convert a brief adjudicative proceeding to a formal adjudicative proceeding whenever it appears that a brief adjudicative proceeding is insufficient to resolve the case.

(2) Conduct of brief adjudicative proceedings.

(a) Brief adjudicative proceedings shall be conducted by a presiding officer designated by the director. The presiding officer shall have agency expertise in the subject matter at hand but shall not have personally participated in the decision to issue the initiating document. For purposes of this section, "initiating document" means one or more documents that provide notice to the affected party of the lottery's action or decision.

(b) The parties may present written arguments, documentation, evidence, and declarations. The presiding officer shall designate the date(s) by which written materials must be submitted by the parties.

(c) The presiding officer may, in their sole discretion, entertain oral argument from the parties at a time and place designated by the presiding officer.

(d) No witnesses may testify.

(e) Depositions and interrogatories are not allowed.

(f) In addition to considering the preliminary record, the presiding officer may employ agency expertise as a basis for decision.

(g) The presiding officer shall issue a written initial order within 10 days of the date for final submission of written materials or oral argument, if any.

(3) Preliminary record. The presiding officer shall consider the preliminary record when issuing an initial order.

(a) The preliminary record with respect to decisions made under chapter 315-04 WAC shall consist of:

(i) The lottery licensing file including, but not limited to, the application and all associated materials, correspondence to or from the applicant or licensee, background check results, and any documents relied upon in proposing to deny, grant conditionally, suspend, or revoke the license;

(ii) The initiating document;

(iii) The request for an adjudicative proceeding;

(iv) Any written materials submitted to, or considered by, the presiding officer; and

(v) Transcripts or recordings of oral argument, if any.

(b) The preliminary record with respect to decisions made under WAC 315-06-120 shall consist of:

(i) The lottery prize claim file including, but not limited to, any investigation or reconstruction results, and correspondence to or from the claimant;

(ii) The ticket, or a legible copy of the ticket, that is in question;

(iii) The initiating document;

(iv) The request for an adjudicative proceeding;

(v) Any written materials submitted to, or considered by, the presiding officer; and

(vi) Transcripts or recordings of oral argument, if any.

(4) Effectiveness of orders on brief adjudicative proceedings. Initial orders on brief adjudicative proceedings become final 21 days after service of the initial order unless:

(a) Administrative review is requested pursuant to subsection (5) of this section; or

(b) On their own initiative, the director or designee determines to review the matter and, within 21 days of service of the initial order, provides notice to the parties of the date by which a determination will be made.

(5) Administrative review.

(a) Any party to a brief adjudicative proceeding may request review of the initial order by filing a written petition for review by the director or designee.

(b) The petition for review must be actually received by the director or designee within 21 days of service of the initial order. The petition for review must also be served on any other party to the case at the time it is filed with the director or designee.

(c) The petition for review must contain a concise statement of the issue(s) to be reviewed.

(d) Each party shall be provided an opportunity to provide their written statement on the matter.

(e) The director or designee shall consider the petition for review and response, if any, and issue a final order or convert the proceeding to a formal adjudicative hearing.

(f) The final order must be in writing, must include a brief statement of the reason(s) for the decision, and must be entered with-

in 20 days after the date of the initial order or the request for review, whichever is later. The final order must contain a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(g) A request for administrative review is deemed to have been denied if the director or designee does not make a disposition within 20 days after the petition for review is submitted.

(6) Agency record of brief adjudicative proceedings. The agency record of a brief adjudicative proceeding shall consist of the preliminary record as set forth in subsection (3) of this section, and, if applicable, any materials considered during a review pursuant to subsection (5) of this section and the final order.

[]

WSR 22-06-090

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed March 2, 2022, 7:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-16-026.

Title of Rule and Other Identifying Information: New WAC 246-836A-990, Colon hydrotherapist fees and renewal cycle. The department of health (department) is proposing the creation of a new section of rule to implement SB 5124, which establishes the colon hydrotherapist profession. The department is required to adopt rules to specify the fees, as well as to ensure clarity and consistency of fees that are standard across all professions.

Hearing Location(s): On April 8, 2022, at 1:00 p.m. In response to the coronavirus disease 2019 (COVID-19), the department 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. Register in advance for this webinar <https://attendee.gotowebinar.com/register/4522694167139040781>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: April 15, 2022.

Submit Written Comments to: Heather Cantrell, P.O. Box 47850, Olympia, WA 98540-7850, email <https://fortress.wa.gov/doh/policyreview>, by April 4, 2022.

Assistance for Persons with Disabilities: Contact Heather Cantrell, phone 360-236-4637, TTY 711, email HSQAfeerules@doh.wa.gov, by April 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SB 5124 (chapter 179, Laws of 2021) creates a new certified profession, colon hydrotherapist. RCW 43.70.250 requires that the costs of licensing each profession be fully borne by the members of that profession. Rule making is proposed to ensure the department is in line with RCW 43.70.250 and the fees set are sufficient to cover the costs of licensing the profession. Professions need to maintain a reserve that is based on level of risk including revenue stability, disciplinary trends, and size of the profession, in order to cover unanticipated costs. Additionally, this proposal reflects the office of financial management requirement that agencies maintain a reasonable working capital reserve. The other aspects of the colon hydrotherapist rules will be established in a separate rule project under the board of naturopathy's authority.

Reasons Supporting Proposal: The department proposes these rules to align with the requirements of chapter 18.36A RCW and legislative intent of SB 5124. Rules are needed to establish the fees to support the profession. RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members and licensing fees to be based on the licensing program's costs. The department is also applying the developed standards to ensure consistent late renewal fees are applied across professions.

Statutory Authority for Adoption: RCW 18.36A.060, 18.36A.140, 43.70.110, 43.70.250, 43.70.280; and SB 5124 (chapter 179, Laws of 2021).

Statute Being Implemented: SB 5124 (chapter 179, Laws of 2021).

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

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Heather Cantrell, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4637; Implementation and Enforcement: Susan Gragg, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4941.

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) (vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

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

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

March 2, 2022
 Kristin Peterson, JD
 Deputy Secretary
 Policy and Planning
 for Umair A. Shah, MD, MPH
 Secretary

OTS-3599.3

NEW SECTION

WAC 246-836A-990 Colon hydrotherapist fees and renewal cycle.

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application-Original license	\$215.00
License renewal	
Renewal	215.00
Late renewal penalty	110.00
Expired license reissuance	65.00
Duplicate license	10.00
Verification of license	25.00

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WSR 22-06-093

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed March 2, 2022, 8:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-22-106.

Title of Rule and Other Identifying Information: Amending WAC 192-500-185 Waiting period, 192-620-035 When will a weekly benefit amount be prorated?, 192-620-040 How will the department determine the number of hours of paid family or medical leave an employee claims each week?, and 192-800-125 When is a petition for review considered delivered to the department?

Hearing Location(s): On April 5, 2022, at 9:00 a.m., Microsoft Teams. Join online, link available at paidleave.wa.gov/rulemaking under "Upcoming Meetings." Join by phone 564-999-2000, PIN 631874858#. Hearing will be held remotely due to COVID-19.

Date of Intended Adoption: On or after April 12, 2022.

Submit Written Comments to: Janette Benham, Employment Security Department (ESD), P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, by April 5, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, TTY 711, email Teckstein@esd.wa.gov, by March 29, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The paid family and medical leave (PFML) program (Title 50A RCW) is proposing amendments to existing rules to provide clarity and make necessary changes based on program and customer needs. Proposed amendments to WAC 192-500-185 provide clarification regarding the required waiting period. The amendments clarify that a waiting period does not reduce the maximum duration of an employee's available paid family or medical leave and that the waiting period does not apply to medical leave taken upon the birth of a child. Proposed amendments to WAC 192-620-035 and 192-620-040 provide clarification that proration of benefits and the calculation of typical work week hours do not apply to the waiting period. Additional changes are technical. Proposed amendments to WAC 192-800-125 allow petitions for review to be submitted by email.

Reasons Supporting Proposal: The proposed amendments to the rules are necessary to provide clear and usable guidance to the public regarding program operations.

Statutory Authority for Adoption: RCW 50A.05.060, 50A.15.020.

Statute Being Implemented: RCW 50A.15.020.

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

Name of Proponent: ESD, leave and care division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Lacey, Washington, 360-485-2816.

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

A cost-benefit analysis is not required under RCW 34.05.328. WAC 192-500-185 is exempt under RCW 34.05.328 (5)(c)(ii). The rule is an interpretive rule that does not subject a person to a penalty or sanction and sets forth the agency's interpretation of statutory provisions of RCW 50A.15.020. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii).

WAC 192-620-035 and 192-620-040 are exempt under RCW 34.05.328 (5) (b) (ii) and (c) (ii) because the rules relate to internal governmental operations that are not subject to violation by a nongovernment party and they are interpretive rules that do not subject a person to a penalty or sanction and set forth the agency's interpretation of statutory provisions of RCW 50A.15.020. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii).

WAC 192-800-125 is exempt under RCW 34.05.328 (5) (c) (i) (A) and (C) because it is a procedural rule that amends a procedure, practice, or requirement related to agency hearings and amends a policy statement pertaining to the consistent internal operations of the agency. Procedural rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii).

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

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

Explanation of exemptions: WAC 192-620-035 and 192-620-040 are exempt under RCW 34.05.310 (4) (b) because the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

WAC 192-800-125 is exempt under RCW 34.05.310 (4) (g) (i) because the rule relates to a procedure, practice, or requirement relating to agency hearings.

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. WAC 192-500-185 does not impact or create a cost of compliance for businesses because the benefit is administered and paid by the department to individuals who are approved to receive partial wage replacement for qualifying paid family or medical leave. The rule provides clarity regarding the duration of paid family or medical leave individuals may receive under RCW 50A.15.020.

March 2, 2022
April Amundson
Policy and Rules Manager
Leave and Care Division

OTS-3635.1

AMENDATORY SECTION (Amending WSR 20-20-074, filed 10/2/20, effective 11/2/20)

WAC 192-500-185 Waiting period. (1) A "waiting period" is the first seven consecutive calendar days beginning with the Sunday of the first week an eligible employee starts taking paid family or medical leave.

(2) An employee will satisfy the waiting period requirement if the employee takes at least eight consecutive hours of leave during the first week of the employee's paid family or medical leave claim.

(3) An employee will not receive a benefit payment for hours claimed during the waiting period.

(4) A waiting period does not reduce the maximum duration of an employee's available paid family or medical leave.

~~((6))~~ (7) Subject to subsection ~~((6))~~ (7) of this section, an employee must only meet the requirement of one waiting period in a claim year.

~~((5))~~ (6) If an employee is denied eligibility for a period of time that satisfied the waiting period requirement, the waiting period requirement will not be deemed satisfied for a future claim for which the employee is deemed eligible.

~~((6))~~ (7) The waiting period does not apply to:

(a) Medical leave taken upon the birth of a child;

(b) Family leave taken for bonding after the child's birth or placement; or

~~((b))~~ (c) Family leave taken for reasons related to a qualified military exigency.

~~((7))~~ (8) An employee's use of paid time off for all of or any portion of the waiting period will not affect the satisfaction of the waiting period requirement.

[Statutory Authority: RCW 50A.05.060 and 2020 c 125. WSR 20-20-074, § 192-500-185, filed 10/2/20, effective 11/2/20. Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-500-185, filed 12/12/19, effective 1/12/20.]

OTS-3636.1

AMENDATORY SECTION (Amending WSR 21-18-082, filed 8/30/21, effective 9/30/21)

WAC 192-620-035 When will a weekly benefit amount be prorated?

(1) For an employee on paid family or medical leave, a weekly benefit amount is prorated when:

(a) The employee reports hours worked for wages;

(b) The employee reports hours for paid sick leave, paid vacation leave, or other paid time off that is not considered a supplemental benefit payment as defined in WAC 192-500-180; or

(c) The employee files a weekly application for benefits that contains a day or days for which the employee was not approved for paid family or medical leave.

(2) If an employee reports hours under subsection (1)(a) or (b) of this section, proration will be calculated as specified by RCW 50A.15.020(2).

(3) This section does not apply to a week that is claimed to satisfy an employee's waiting period.

(4) If an employee is approved for leave for part of a week under subsection (1)(c) of this section, proration for that week will occur as follows:

(a) The employee's typical workweek hours are multiplied by the number of days approved for leave, then divided by seven. The result is rounded down to the nearest whole hour. This amount is the employee's adjusted typical workweek hours.

(b) Any hours worked or taken as paid time off as reported by the employee are then subtracted from the employee's adjusted typical workweek hours. This amount will be the number of hours of paid family or medical leave claimed for that week.

(c) The number of hours claimed for that week are then divided by the employee's typical workweek hours to produce a percentage.

(d) The resulting percentage is then multiplied by the employee's normal weekly benefit amount. The resulting amount, rounded down to the nearest whole dollar, is the employee's benefit payment for that week.

Example 1: An employee has already served a waiting period in the claim year and files a claim for a week of paid medical leave. The employee typically works ~~((forty))~~ 40 hours a week at eight hours per day. In the week for which the employee is claiming, the employee claimed one day of paid medical leave and worked the other four days. This employee's weekly benefit is usually ~~((eight hundred dollars))~~ \$800. The weekly benefit would then be prorated by the hours on paid medical leave (eight hours) relative to the typical workweek hours ~~((forty))~~ 40 hours). Eight hours is ~~((twenty))~~ 20 percent of ~~((forty))~~ 40 hours. The employee's weekly benefit would be prorated to ~~((twenty))~~ 20 percent for a total of ~~((one hundred sixty dollars))~~ \$160.

Example 2: An employee with typical workweek hours of ~~((forty))~~ 40 and a weekly benefit amount of ~~((one thousand dollars))~~ \$1,000 is approved for leave through Thursday. The employee is not approved for leave Friday or Saturday. For this week only, the following proration will occur:

(a) The employee's typical workweek hours ~~((forty))~~ 40 are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of ~~((twenty-eight))~~ 28.

(b) The employee reports no hours of work or paid time off for that week. The resulting number of hours claimed for that week are ~~((twenty-eight))~~ 28.

(c) The number of hours claimed for that week ~~((twenty-eight))~~ 28 are then divided by the employee's normal typical workweek hours ~~((forty))~~ 40). This results in a percentage of ~~((seventy))~~ 70 percent.

(d) The percentage ~~((seventy))~~ 70 is then multiplied by the employee's weekly benefit amount ~~((one thousand))~~ 1,000). For that week, the employee will receive ~~((seven hundred dollars))~~ \$700.

Example 3: An employee with typical workweek hours of ~~((forty))~~ 40 and a weekly benefit amount of ~~((one thousand dollars))~~ \$1,000 is approved for leave through Thursday. The employee is not approved for leave Friday or Saturday. For this week only, the following proration will occur:

(a) The employee's typical workweek hours ~~((forty))~~ 40 are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of ~~((twenty-eight))~~ 28.

(b) The employee reports eight hours of work and eight hours of paid time for that week. The adjusted workweek hours are reduced to

reflect (~~sixteen~~) 16 hours of work and paid time. The resulting number of hours claimed for that week are (~~twelve~~) 12.

(c) The number of hours claimed for that week (~~twelve~~) 12 are then divided by the employee's normal typical workweek hours (~~for~~ ~~ty~~) 40). This results in a percentage of (~~thirty~~) 30 percent.

(d) The percentage (~~thirty~~) 30 is then multiplied by the employee's weekly benefit amount (~~one thousand dollars~~) \$1,000). For that week, the employee will receive (~~three hundred dollars~~) \$300.

[Statutory Authority: RCW 50A.05.060 and 50A.15.020. WSR 21-18-082, § 192-620-035, filed 8/30/21, effective 9/30/21. Statutory Authority: RCW 50A.05.060 and 50A.25.030. WSR 21-11-009, § 192-620-035, filed 5/7/21, effective 6/7/21. Statutory Authority: RCW 50A.05.060. WSR 20-20-073, § 192-620-035, filed 10/2/20, effective 11/2/20. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-620-035, filed 11/19/19, effective 12/20/19.]

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

WAC 192-620-040 How will the department determine the number of hours of paid family or medical leave an employee claims each week?

(1) When the employee submits a weekly application for benefits as described in WAC 192-620-020, the department will determine the number of hours claimed by the employee for that week by determining the typical workweek hours as described in WAC 192-610-050, then deducting the number of hours:

(a) Physically worked by the employee; and

(b) Claimed by the employee as sick leave, vacation leave, or other paid time off that has not been offered as a supplemental benefit by the employer.

(2) The result of the calculation in subsection (1) of this section will be deducted from the employee's duration of paid family and medical leave for the current claim year and, if necessary, for the purposes of proration as described in WAC 192-620-035.

(3) This section does not apply to a week that is claimed to satisfy an employee's waiting period.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-620-040, filed 11/19/19, effective 12/20/19.]

OTS-3637.1

AMENDATORY SECTION (Amending WSR 21-04-067, filed 1/29/21, effective 3/1/21)

WAC 192-800-125 When is a petition for review considered delivered to the department? Delivery under RCW 34.05.542 is made when a copy of the petition for judicial review is received by:

(1) Delivery to the Commissioner's Office at 212 Maple Park Avenue S.E., Olympia, WA (~~or received by~~);

(2) Mail at the Commissioner's Review Office, Post Office Box 9555, Olympia, WA 98507-9555; or

(3) Email at the commissioner's review office at cro@esd.wa.gov.

[Statutory Authority: RCW 50A.05.060. WSR 21-04-067, § 192-800-125, filed 1/29/21, effective 3/1/21. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-125, filed 11/19/19, effective 12/20/19.]