

WSR 23-04-004
PERMANENT RULES
BELLEVUE COLLEGE

[Filed January 19, 2023, 7:37 a.m., effective February 19, 2023]

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

Purpose: To update to the current student financial debt rules under chapter 132H-122 WAC in order to be in compliance with current policies, remove outdated information, and clarify processes.

Citation of Rules Affected by this Order: Amending WAC 132H-122-010, 132H-122-020, and 132H-122-030.

Statutory Authority for Adoption: RCW 28B.50.140(13); chapter 34.05 RCW.

Adopted under notice filed as WSR 22-21-054 on October 12, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: January 18, 2023.

Loreen M. Keller
Associate Director
Policies and Special Projects

OTS-4127.1

Chapter 132H-122 WAC
((WITHHOLDING SERVICES FOR OUTSTANDING)) STUDENT FINANCIAL DEBTS

AMENDATORY SECTION (Amending WSR 92-19-054, filed 9/10/92, effective 10/11/92)

WAC 132H-122-010 Statement of policy. ((The college expects that students who receive services for which a financial obligation is incurred will exercise responsibility in meeting these obligations. Appropriate college staff are empowered to act in accordance with regularly adopted procedures to carry out the intent of this policy, and if necessary to initiate legal action to insure that collection matters are brought to a timely and satisfactory conclusion.

Admission to or registration with the college, conferring of degrees and issuance of academic transcripts may be withheld for failure to meet financial obligations to the college.)) (1) Bellevue College

expects students who owe a debt for services, tuition and fees, housing, financial aid, fines, and other fees to pay the amount they owe, or set up a payment plan, and to contact the college for additional information, if needed.

(2) Students have the right to ask for details related to the debt, and to appeal a debt.

(3) The finance office is responsible for the implementation of this code.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140. WSR 92-19-054, § 132H-122-010, filed 9/10/92, effective 10/11/92.]

AMENDATORY SECTION (Amending WSR 02-14-008, filed 6/20/02, effective 7/21/02)

WAC 132H-122-020 ((Withholding services for outstanding debts.))

Student financial debt procedures. ~~((1) Where there is an outstanding debt owed to the college and upon receipt of a written request inquiring as to the reason(s) for services or refund being withheld the college shall reply in writing to the person that the services and/or refund will not be provided. The college will include the amount of the outstanding debt, and further explain that until that debt is satisfied (or stayed by bankruptcy proceedings or discharged in bankruptcy), no such services and/or refund will be provided to the individual.~~

~~(a) The notice shall include a statement to inform the individual that he or she has a right to a hearing before a person designated by the president of the college if he or she believes that no debt is owed. The notice shall state that the request for the hearing must be made within twenty-one days from the date of notification.~~

~~(2) Upon receipt of a timely request for a hearing, the person designated by the president shall have the records and files of the college available for review and, at that time, shall hold a brief adjudicative proceeding concerning whether the individual owes or owed any outstanding debts to the institution. After the brief adjudicative proceeding, a decision shall be rendered by the president's designee indicating whether the college is correct in withholding services and/or applying off-set for the outstanding debt.~~

~~(a) If the outstanding debt is found to be owed by the individual involved, no further services shall be provided.~~

~~(b) Notice of the decision shall be sent to the individual within five days after the hearing.)~~ (1) The college may take the following actions for nonpayment of outstanding student debt:

(a) Place a hold, also called a negative service indicator, on a student's account if they owe a debt for housing, financial aid, tuition, or other college fees. A negative service indicator prevents enrollment for future quarters.

(b) Drop students for nonpayment of any debt at any time.

(c) Refer past due debts that exceed \$100 to a collection agency. Prior to referral, students will receive notice via their Bellevue College email. The notice will include at a minimum the following information:

(i) The amount of the debt owed;

(ii) The nature of the debt;

(iii) Information on how to pay the debt;

(iv) Contact information for the finance office and/or staff member who can provide more information, and/or set up a payment plan;
(v) The deadline for payment of the debt; and
(vi) Any consequences that may result from nonpayment of the debt.

(2) Reporting requirements: The college follows the state reporting rules related to the use of negative service indicators, debt levels, and collection practices.

[Statutory Authority: RCW 28B.50.140. WSR 02-14-008, § 132H-122-020, filed 6/20/02, effective 7/21/02. Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140. WSR 92-19-054, § 132H-122-020, filed 9/10/92, effective 10/11/92.]

AMENDATORY SECTION (Amending WSR 92-19-054, filed 9/10/92, effective 10/11/92)

WAC 132H-122-030 ~~((Appeal of initial order upholding the withholding of services for outstanding debts.))~~ **Debt dispute and appeal.**

~~((1) Any person aggrieved by an order issued under WAC 132H-122-020 may file an appeal with the president. The appeal must be in writing and must clearly state errors in fact or matters in extenuation or mitigation which justify the appeal.~~

~~(2) The appeal must be filed within twenty one days from the date on which the appellant received notification of the order issued under WAC 132H-122-020 upholding the withholding of services for outstanding debts. The president's determination shall be final.))~~ **Students who believe that exigent circumstances exist, or an error occurred that may require reduction or removal of a debt, may submit an online appeal form, available on the enrollment services website, for review of the debt.**

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140. WSR 92-19-054, § 132H-122-030, filed 9/10/92, effective 10/11/92.]

WSR 23-04-012
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed January 20, 2023, 8:13 a.m., effective August 1, 2023]

Effective Date of Rule: August 1, 2023.

Purpose: Rule amendments establish a timeline and defined process for professional performance evaluations of certificated principals and assistant principals. Evaluations and summative conferences shall be conducted by the evaluator prior to June 1 of the school year in which the evaluation is made. The timeline applies to both focused and comprehensive evaluations for principals and assistant principals and is intended to ensure that principals and assistant principals receive timely feedback, as well as indications of their employment status.

Rule changes were made in collaboration with the teacher and principal evaluation program (TPEP) steering committee* to support growth and development for all principals and assistant principals by requiring evaluations and summative conferences occur in a manner and timeline that allows a principal/assistant principal to improve their practice or to seek another position.

*The TPEP steering committee includes the following: Association of Washington School Principals, Washington Association of School Administrators, Washington Education Association, Washington State School Directors' Association, and Washington State Parent Teacher Association, as well as the office of superintendent of public instruction.

Citation of Rules Affected by this Order: Amending WAC 392-191A-160 and 392-191A-190.

Statutory Authority for Adoption: RCW 28A.405.100.

Adopted under notice filed as WSR 22-23-062 on November 9, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: January 20, 2023.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-4131.1

AMENDATORY SECTION (Amending WSR 16-17-028, filed 8/8/16, effective 8/31/16)

WAC 392-191A-160 Minimum procedural standards—Conduct of the comprehensive evaluation for certificated principals and assistant principals. The conduct of the evaluation of principals and assistant principals must include, at a minimum, the following:

- (1) All eight principal criteria must contribute to the overall summative evaluation.
- (2) The evaluation must include an assessment of the criteria using the leadership framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.
- (3) Criterion scores, including leadership and student growth rubrics, must be determined by an analysis of evidence.
- (4) An overall summative score shall be derived by a calculation of all summative scores and determining the final four level rating based on the superintendent of public instruction's determined summative evaluation scoring band.
- (5) Upon completion of the overall summative scoring process, the evaluator will combine only the student growth rubric scores to assess the certificated principal or assistant principal's student growth impact rating.
- (6) The student growth impact rating will be determined by the superintendent of public instruction's student impact rating scoring band.
- (7) A student growth score of "1" in any of the rubric rows will result in an overall low student growth impact rating.
- (8) Principal and assistant principal evaluations, including a scheduled summative conference with their evaluators, must be held on or prior to June 1st of the school year for which the evaluation is being made.

[Statutory Authority: RCW 28A.405.100. WSR 16-17-028, § 392-191A-160, filed 8/8/16, effective 8/31/16; WSR 13-05-009, § 392-191A-160, filed 2/7/13, effective 3/10/13.]

AMENDATORY SECTION (Amending WSR 16-17-028, filed 8/8/16, effective 8/31/16)

WAC 392-191A-190 Minimum procedural standards—Conduct of the focused evaluation for certificated principals and assistant principals. The conduct of the evaluation of principals or assistant principals must include, at a minimum, the following:

- (1) One of the eight criterion for certificated principals or assistant principals must be assessed in every year that a comprehensive evaluation is not required.
- (2) The selected criterion must be approved by the principal's evaluator and may have been identified in a previous comprehensive summative evaluation as benefiting from additional attention.
- (3) The evaluation must include an assessment of the criterion using the leadership framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one meas-

ure of student growth data must be used in scoring the student growth rubrics.

(4) The focused evaluation will include the student growth rubrics selected by the principal or assistant principal and approved by the principal's evaluator. If criterion 3, 5, or 8 is selected, evaluators will use those student growth rubrics. If criterion 1, 2, 4, 6, or 7 is selected, evaluators will use criterion 3, 5, or 8 student growth rubrics.

(5) A summative score is assigned using the summative score from the most recent comprehensive evaluation. This score becomes the focused summative evaluation score for any of the subsequent years following the comprehensive summative evaluation in which the certificated principal or assistant principal is placed on a focused evaluation. Should a principal or assistant principal provide evidence of exemplary practice on the chosen focused criterion, a level 4 (Distinguished) score may be awarded by the evaluator.

(6) Should an evaluator determine that a principal or assistant principal on a focused evaluation should be moved to a comprehensive evaluation for that school year, the principal or assistant principal must be informed of this decision in writing at any time on or before December 15th.

(7) Districts shall implement the changes described in subsections (5) and (6) in this section no later than the 2017-18 school year. A district has the option to implement beginning in either the 2016-17 or the 2017-18 school year.

(8) Principal and assistant principal evaluations, including a scheduled summative conference with their evaluators must be held on or prior to June 1st of the school year for which the evaluation is being made.

[Statutory Authority: RCW 28A.405.100. WSR 16-17-028, § 392-191A-190, filed 8/8/16, effective 8/31/16; WSR 13-05-009, § 392-191A-190, filed 2/7/13, effective 3/10/13.]

WSR 23-04-013
PERMANENT RULES
BOARD OF

PILOTAGE COMMISSIONERS

[Filed January 20, 2023, 8:31 a.m., effective February 20, 2023]

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

Purpose: The purpose of this rule making is to update the exam process to better reflect agency practices, goals, and values, as well as to conduct other housekeeping of language to increase clarity to pilot aspirants and applicants, in preparation for the 2024 marine pilot exam.

Citation of Rules Affected by this Order: Amending WAC 363-116-0751 Qualifications for pilot applicants.

Statutory Authority for Adoption: Chapter 88.16 RCW, Pilotage Act.

Adopted under notice filed as WSR 22-23-129 on November 21, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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Date Adopted: January 19, 2023.

Jaimie C. Bever
Executive Director

OTS-4215.1

AMENDATORY SECTION (Amending WSR 20-19-110, filed 9/21/20, effective 10/22/20)

WAC 363-116-0751 Qualifications for pilot applicants. (1) Sea service.

(a) In addition to meeting the preexamination requirements of RCW 88.16.090, pilot applicants must, before taking the examination provided in WAC 363-116-076, meet one of the following indicated service requirements while holding a minimum license as mate/master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) (~~(+)~~); any such license to be held by the applicant for at least two years before application.

Vessel Type	Minimum Size	Waters	Minimum Time
Cargo or tank	5000 GRT or 10,000 GT (ITC)	Ocean or near coastal	1 year as master

Vessel Type	Minimum Size	Waters	Minimum Time
Cargo or tank	700 GRT or 1400 GT (ITC)	Ocean or near coastal	2 years as master
Cargo or tank	1600 GRT or 3000 GT (ITC)	Inland	2 years as master
Passenger or ferry	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as master
Towing	100 GRT or 300 GT (ITC) towing/barge combination greater than 1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as master
Ship assist	100 GRT or 300 GT (ITC)	Inland	2 years as master or 4 years sailing as a mate/master with a minimum of 1 year as master
Articulated tug barge (ATB)	Combined 10,000 GT (ITC)	Ocean or near coastal	4 years sailing as a mate/master with a minimum of 1 year as master
U.S. Flag government	3000 displacement tons	Ocean, near coastal or inland	2 years as commanding officer or master
Special purpose	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as master
Other			
State-licensed pilot or Navy civil service pilot	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as pilot and 120 vessel moves

(b) Sea service is calculated based on days spent onboard a vessel while it is actively engaged in normal operations. "Sea service" does not include time onboard a vessel that is "laid up" or on "stand-by." One day of duty time equates to one day of sea service with no multiples or reductions based upon the type of industry or the watch and schedule a certain officer has to stand. In calculating sea service under this subsection, a year of service shall equal (~~three hundred sixty~~) 360 days of service on the vessel in the required capacity. Pilot applicants combining the above types of sea service shall have a total of at least two years of the various service times, except that one day of service as master on cargo, tank, or passenger/ferry vessels of at least 5000 GRT or 10,000 GT (ITC) shall be credited as two days of service time for the purpose of calculating such combined service times.

(c) Ship assist vessel sea service as mate must be on vessels where the mate is the sole vessel operator and acts independently of the master for (~~twelve~~) 12 hours per day.

(2) In lieu of the requirements of subsection (1) of this section, a pilot applicant may substitute either:

(a) Two years of service as a state licensed pilot and active member of a professional pilot association or as a naval federal pilot during which periods the pilot applicant was actively engaged in maneuvering, docking and undocking vessels while holding a minimum li-

cense as a master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters; a naval federal pilot or state licensed pilot must also have 120 vessel moves; or

(b) Two years of service as a commanding officer or master of U.S. flag government vessels of not less than 3000 displacement tons. The pilot applicant must hold at the time of application a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters; or

(c) Two years of service as master of special purpose vessels of not less than 1600 GRT or 3000 GT (ITC) while holding a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC), provided that the sea time making up the sea service was spent in charge of a vessel that can be documented to have been underway and to have required the type of ship-handling, navigation and leadership skills that the board finds necessary to provide the experience needed to become a pilot. Special purpose vessels may include fishing vessels, fishing processors, research vessels, offshore supply vessels, dredge vessels, and cable vessels. Special purpose vessels do not include drill ships. Evaluation of service time on special purpose vessels shall be made by the board on a case-by-case basis and shall not be approved unless the board finds the service to be the substantial equivalent of the sea service required in subsection (1)(a) and (b) of this section or (a) and (b) of this subsection. The determination of the board as to the suitability of service as master of a special purpose vessel will be final.

(3) As used in this section these terms shall have the following meanings:

(a) Cargo or tank vessels shall refer to vessels primarily engaged in the transportation of cargo between points.

(b) Passenger vessels shall refer to vessels primarily engaged in the transportation of passengers between points. This shall include yachts only to the extent and for such times that such vessels are actively engaged in moving passengers between points.

(c) Ferry vessels shall refer to vessels primarily engaged in the transportation of vehicles and passengers between points.

(d) Towing vessels shall refer to vessels primarily engaged in commercial towing.

(e) Ship assist vessels shall refer to vessels primarily engaged in assisting ships dock, undock, and maneuver.

(f) GRT shall refer to gross register tonnage (domestic).

(g) GT (ITC) shall refer to gross tonnage measured in accordance with the requirements of the 1969 *International Convention on Tonnage Measurement of Ships*.

(h) Master shall refer to the person of master's rank on the vessel's station bill or muster list or other such document who, in the event of an emergency or the sounding of a general alarm, is required to be on the bridge and in charge. If there is no such designation, the term master shall refer to the person of master's rank and pay who is ultimately in charge of the navigation of the vessel as reflected in the vessel's official log book, or there being no official log book, the bridge log of the vessel.

(i) Mate shall refer to the person of mate's rank (third mate, second mate, chief mate or simply mate) whose duties include regular bridge watchkeeping. Except where mate is defined above under ship assist sea time.

(4) It will be the responsibility of the pilot applicant to provide adequate documentation to enable the board to set forth and verify sea service in the manner specified in the board's application form.

The board will not provide applicants with a final determination verifying service until it receives an application form. An applicant will not get official notification of whether ((he/she ~~qualifies~~)) they qualify to sit for the examination until the board reviews a formal application. In the event an applicant is working on a vessel other than one of the five specified in subsection (1)(a) of this section, e.g., a special purpose vessel, ((he/she)) the applicant will be required to provide the board with sufficient documentation to demonstrate to the board the amount of time involved in the navigation of a vessel underway.

[Statutory Authority: Chapter 88.16 RCW. WSR 20-19-110, § 363-116-0751, filed 9/21/20, effective 10/22/20; WSR 18-14-024, § 363-116-0751, filed 6/26/18, effective 7/27/18; WSR 12-05-064, § 363-116-0751, filed 2/15/12, effective 3/17/12. Statutory Authority: Chapter 88.16 RCW and 2008 c 128. WSR 08-15-119, § 363-116-0751, filed 7/21/08, effective 8/21/08. Statutory Authority: Chapter 88.16 RCW and 2005 c 26. WSR 05-18-021, § 363-116-0751, filed 8/29/05, effective 10/1/05.]

WSR 23-04-033

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed January 25, 2023, 11:21 a.m., effective February 25, 2023]

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

Purpose: The agency is amending WAC 182-501-0215 to correct the wraparound with intensive services (WISE) website address. The correct address is <https://www.hca.wa.gov/billers-providers-partners/program-information-providers/wraparound-intensive-services-wise>. The agency is amending WAC 182-502-0022 to correct the agency's forms and publications website address. The correct address is <https://www.hca.wa.gov/billers-providers-partners/forms-and-publications>.

Citation of Rules Affected by this Order: Amending WAC 182-501-0215 and 182-502-0022.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-23-084 on November 14, 2022.

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

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

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Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: January 25, 2023.

Wendy Barcus
Rules Coordinator

OTS-4172.1

AMENDATORY SECTION (Amending WSR 22-08-013, filed 3/24/22, effective 4/24/22)

WAC 182-501-0215 Wraparound with intensive services (WISE). (1) Wraparound with intensive services (WISE) is a service delivery model that provides comprehensive behavioral health covered services and support to:

(a) Clients age 20 or younger with complex behavioral health needs who are eligible for coverage under WAC 182-505-0210; and

(b) Their families.

(2) The authority, the managed care organizations, and the WISE provider agencies must use, continue to use, and substantially comply with the WISE quality plan (WISE QP) for the delivery of WISE. The purpose of the WISE QP is to:

(a) Provide a framework for quality management goals, objectives, processes, tools, and resources to measure the implementation and success of the WISE service delivery model; and

(b) Guide production, dissemination, and use of measures used to inform and improve WISE service delivery.

(3) The WISE QP, as may be amended from time to time, is incorporated by reference and is available online at (~~https://www.hca.wa.gov/billers-providers-partners/behavioral-health-recovery-wraparound-intensive-services-wise~~) www.hca.wa.gov/billers-providers-partners/program-information-providers-wraparound-intensive-services-wise.

[Statutory Authority: RCW 41.05.021, 41.05.160, and Thurston County Superior Court in A.G.C. v. Washington State Health Care Authority, no. 21-2-00479-34. WSR 22-08-013, § 182-501-0215, filed 3/24/22, effective 4/24/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-15-026, § 182-501-0215, filed 7/7/20, effective 8/7/20.]

OTS-4173.1

AMENDATORY SECTION (Amending WSR 19-08-037, filed 3/28/19, effective 4/28/19)

WAC 182-502-0022 Provider preventable conditions (PPCs)—Payment policy. (1) This section establishes the agency's payment policy for services provided to medicaid clients on a fee-for-service basis or to a client enrolled in a managed care organization (defined in WAC 182-538-050) by health care professionals and inpatient hospitals that result in provider preventable conditions (PPCs).

(2) The rules in this section apply to:

(a) All health care professionals who bill the agency directly;
and

(b) Inpatient hospitals.

(3) Definitions. The following definitions and those found in chapter 182-500 WAC apply to this section:

(a) **Agency** - See WAC 182-500-0010.

(b) **Health care-acquired conditions (HCAC)** - A condition occurring in any inpatient hospital setting (identified as a hospital acquired condition by medicare other than deep vein thrombosis/pulmonary embolism as related to a total knee replacement or hip replacement surgery in pediatric and obstetric patients.) Medicare's list of hospital acquired conditions is also available at (~~(+)~~) http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalAcqCond/Hospital-Acquired_Conditions.html.

(c) **Other provider preventable conditions (OPPC)** - The list of serious reportable events in health care as identified by the department of health in WAC 246-302-030 and published by the National Quality Forum.

(d) **Present on admission (POA) indicator** - A status code the hospital uses on an inpatient claim that indicates if a condition was present at the time the order for inpatient admission occurs.

(e) **Provider preventable condition (PPC)** - An umbrella term for hospital and nonhospital acquired conditions identified by the agency for nonpayment to ensure the high quality of medicaid services. PPCs

include two distinct categories: Health care-acquired conditions (HCACs) and other provider-preventable conditions (OPPCs).

(4) **Health care-acquired condition (HCAC)** - The agency will deny or recover payment to health care professionals and inpatient hospitals for care related only to the treatment of the consequences of a HCAC.

(a) HCAC conditions include:

(i) Foreign object retained after surgery;

(ii) Air embolism;

(iii) Blood incompatibility;

(iv) Stage III and IV pressure ulcers;

(v) Falls and trauma:

(A) Fractures;

(B) Dislocations;

(C) Intracranial injuries;

(D) Crushing injuries;

(E) Burns;

(F) Other injuries.

(vi) Manifestations of poor glycemic control:

(A) Diabetic ketoacidosis;

(B) Nonketotic hyperosmolar coma;

(C) Hypoglycemic coma;

(D) Secondary diabetes with ketoacidosis;

(E) Secondary diabetes with hyperosmolarity.

(vii) Catheter-associated urinary tract infection (UTI);

(viii) Vascular catheter-associated infection;

(ix) Surgical site infection, mediastinitis, following coronary artery bypass graft (CABG);

(x) Surgical site infection following bariatric surgery for obesity:

(A) Laparoscopic gastric bypass;

(B) Gastroenterostomy; or

(C) Laparoscopic gastric restrictive surgery.

(xi) Surgical site infection following certain orthopedic procedures:

(A) Spine;

(B) Neck;

(C) Shoulder;

(D) Elbow.

(xii) Surgical site infection following cardiac implantable electronic device (CIED).

(xiii) Deep vein thrombosis/pulmonary embolism (DVT/PE) following certain orthopedic procedures:

(A) Total knee replacement; or

(B) Hip replacement.

(xiv) Iatrogenic pneumothorax with venous catheterization.

(b) Hospitals must include the present on admission (POA) indicator when submitting inpatient claims for payment. The POA indicator is to be used according to the official coding guidelines for coding and reporting and the CMS guidelines. The POA indicator may prompt a review, by the agency or the agency's designee, of inpatient hospital claims with an HCAC diagnosis code when appropriate according to the CMS guidelines. The agency will identify professional claims using the information provided on the hospital claims.

(c) HCACs are based on current medicare inpatient prospective payment system rules with the inclusion of POA indicators. Health care

professionals and inpatient hospitals must report HCACs on claims submitted to the agency for consideration of payment.

(5) **Other provider preventable condition (OPPC)** - The agency will deny or recoup payment to health care professionals and inpatient hospitals for care related only to the treatment of consequences of an OPPC when the condition:

- (a) Could have reasonably been prevented through the application of nationally recognized evidence based guidelines;
- (b) Is within the control of the hospital;
- (c) Occurred during an inpatient hospital admission;
- (d) Has a negative consequence for the beneficiary;
- (e) Is auditable; and
- (f) Is included on the list of serious reportable events in health care as identified by the department of health in WAC 246-302-030 effective on the date the incident occurred. The list of serious reportable events in health care, as of the publishing of this rule, includes:
 - (i) Surgical or invasive procedure events:
 - (A) Surgical or other invasive procedure performed on the wrong site;
 - (B) Surgical or other invasive procedure performed on the wrong patient;
 - (C) Wrong surgical or other invasive procedure performed on a patient;
 - (D) Unintended retention of a foreign object in a patient after surgery or other invasive procedure;
 - (E) Intraoperative or immediately postoperative/postprocedure death in an ASA Class 1 patient.
 - (ii) Product or device events:
 - (A) Patient death or serious injury associated with the use of contaminated drugs, devices, or biologics provided by the hospital;
 - (B) Patient death or serious injury associated with the use or function of a device in patient care, in which the device is used or functions other than as intended;
 - (C) Patient death or serious injury associated with intravascular air embolism that occurs while being cared for in a hospital.
 - (iii) Patient protection events:
 - (A) Discharge or release of a patient/resident of any age, who is unable to make decisions, to other than an authorized person;
 - (B) Patient death or serious injury associated with patient elopement;
 - (C) Patient suicide, attempted suicide, or self-harm that results in serious injury, while being cared for in a hospital.
 - (iv) Care management events:
 - (A) Patient death or serious injury associated with a medication error (e.g., errors involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration);
 - (B) Patient death or serious injury associated with unsafe administration of blood products;
 - (C) Maternal death or serious injury associated with labor or delivery in a low-risk pregnancy while being cared for in a hospital;
 - (D) Death or serious injury of a neonate associated with labor or delivery in a low-risk pregnancy;
 - (E) Patient death or serious injury associated with a fall while being cared for in a hospital;

- (F) Any stage 3, stage 4, or unstageable pressure ulcers acquired after admission/presentation to a hospital (not present on admission);
- (G) Patient death or serious injury resulting from the irretrievable loss of an irreplaceable biological specimen;
- (H) Patient death or serious injury resulting from failure to follow-up or communicate laboratory, pathology, or radiology test results.
- (v) Environmental events:
- (A) Patient death or serious injury associated with an electric shock in the course of a patient care process in a hospital;
- (B) Any incident in which systems designated for oxygen or other gas to be delivered to a patient contains no gas, the wrong gas, or is contaminated by toxic substances;
- (C) Patient death or serious injury associated with a burn incurred from any source in the course of a patient care process in a hospital;
- (D) Patient death or serious injury associated with the use of physical restraints or bedrails while being cared for in a hospital.
- (vi) Radiologic events: Death or serious injury of a patient associated with the introduction of a metallic object into the magnetic resonance imaging (MRI) area.
- (vii) Potential criminal event:
- (A) Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed health care provider;
- (B) Abduction of a patient of any age;
- (C) Sexual abuse/assault on a patient within or on the grounds of a health care setting;
- (D) Death or serious injury of a patient resulting from a physical assault (i.e., battery) that occurs within or on the grounds of a health care setting.
- (6) Reporting PPCs.
- (a) The agency requires inpatient hospitals to report PPCs (as appropriate according to (d) and (e) of this subsection) to the agency by using designated present on admission (POA) indicator codes and appropriate HCPCs modifiers that are associated:
- (i) With claims for medical assistance payment; or
- (ii) With courses of treatment furnished to clients for which medical assistance payment would otherwise be available.
- (b) Health care professionals and inpatient hospitals must report PPCs associated with medicaid clients to the agency even if the provider does not intend to bill the agency.
- (c) Use of the appropriate POA indicator codes informs the agency of the following:
- (i) A condition was present at the time of inpatient hospital admission or at the time the client was first seen by the health care professional or hospital; or
- (ii) A condition occurred during admission or encounter with a health care professional either inpatient or outpatient.
- (d) Hospitals must notify the agency of an OPPC associated with an established medicaid client within (~~forty-five~~) 45 calendar days of the confirmed OPPC in accordance with RCW 70.56.020. If the client's medicaid eligibility status is not known or established at the time the OPPC is confirmed, the agency allows hospitals (~~thirty~~) 30 days to notify the agency once the client's eligibility is established or known.

(i) Notification must be in writing, addressed to the agency's office of program integrity, and include the OPPC, date of service, client identifier, and the claim number if the facility submits a claim to the agency.

(ii) Hospitals must complete the appropriate portion of the HCA 12-200 form to notify the agency of the OPPC. Agency forms are available for download at (~~(+)~~) <https://www.hca.wa.gov/billers-providers-partners/forms-and-publications>.

(e) Health care professionals or designees responsible for or may have been associated with the occurrence of a PPC involving a medicaid client must notify the agency within (~~(forty-five)~~) 45 calendar days of the confirmed PPC in accordance with chapter 70.56 RCW. Notifications must be in writing, addressed to the agency's chief medical officer, and include the PPC, date of service, and client identifier. Providers must complete the appropriate portion of the HCA 12-200 form to notify the agency of the PPC. Agency forms are available for download at (~~(+ http://www.hca.wa.gov/medicaid/forms/Pages/index.aspx)~~) www.hca.wa.gov/billers-providers-partners/forms-and-publications.

(f) Failure to report, code, bill or claim PPCs according to the requirements in this section will result in loss or denial of payments.

(7) Identifying PPCs. The agency may identify PPCs as follows:

(a) Through the department of health (DOH); or

(b) Through the agency's program integrity efforts, including:

(i) The agency's claims payment system;

(ii) Retrospective hospital utilization review process (see WAC 182-550-1700);

(iii) The agency's provider payment review process (see WAC 182-502-0230);

(iv) The agency's provider audit process (see chapter 182-502A WAC); and

(v) A provider or client complaint.

(8) Payment adjustment for PPCs. The agency or its designee conducts a review of the PPC prior to reducing or denying payment.

(a) The agency does not reduce, recoup, or deny payment to a provider for a PPC when the condition:

(i) Existed prior to the initiation of treatment for that client by that provider. Documentation must be kept in the client's clinical record to clearly support that the PPC existed prior to initiation of treatment; or

(ii) Is directly attributable to a comorbid condition(s).

(b) The agency reduces payment to a provider when the following applies:

(i) The identified PPC would otherwise result in an increase in payment; and

(ii) The portion of the professional services payment directly related to the PPC, or treatment of the PPC, can be reasonably isolated for nonpayment.

(c) The agency does not make additional payments for services on claims for covered health care services that are attributable to HCACs and/or are coded with POA indicator codes "N" or "U."

(d) Medicare crossover claims. The agency applies the following rules for these claims:

(i) If medicare denies payment for a claim at a higher rate for the increased costs of care under its PPC policies:

(A) The agency limits payment to the maximum allowed by medicare;

(B) The agency does not pay for care considered nonallowable by medicare; and

(C) The client cannot be held liable for payment.

(ii) If medicare denies payment for a claim under its national coverage determination agency from Section 1862 (a) (1) (A) of the Social Security Act (42 U.S.C. 1395) for an adverse health event:

(A) The agency does not pay the claim, any medicare deductible or any coinsurance related to the inpatient hospital and health care professional services; and

(B) The client cannot be held liable for payment.

(9) The agency will calculate its reduction, denial or recoupment of payment based on the facts of each OPPC or HCAC. Any overpayment applies only to the health care professional or hospital where the OPPC or HCAC occurred and does not apply to care provided by other health care professionals and inpatient hospitals, should the client subsequently be transferred or admitted to another hospital for needed care.

(10) Medicaid clients are not liable for payment of an item or service related to an OPPC or HCAC or the treatment of consequences of an OPPC or HCAC that would have been otherwise payable by the agency, and must not be billed for any item or service related to a PPC.

(11) Provider dispute process for PPCs.

(a) A health care professional or inpatient hospital may dispute the agency's reduction, denial or recoupment of payment related to a PPC as described in chapter 182-502A WAC.

(b) The disputing health care professional or inpatient hospital must provide the agency with the following information:

(i) The health care professional or inpatient hospital's assessment of the PPC; and

(ii) A complete copy of the client's medical record and all associated billing records, to include itemized statement or explanation of charges.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-08-037, § 182-502-0022, filed 3/28/19, effective 4/28/19. Statutory Authority: RCW 41.05.021. WSR 13-19-038, § 182-502-0022, filed 9/11/13, effective 10/12/13. Statutory Authority: 42 C.F.R. § 447.26. WSR 13-11-051, § 182-502-0022, filed 5/14/13, effective 7/1/13.]

WSR 23-04-034

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed January 25, 2023, 11:31 a.m., effective February 25, 2023]

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

Purpose: In each of the rules listed below the agency is replacing an incorrect website address with the correct address for the Washington apple health income and resource standards. The correct address is <https://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources>.

Citation of Rules Affected by this Order: Amending WAC 182-507-0125, 182-513-1105, 182-513-1215, 182-513-1220, 182-513-1225, 182-513-1240, 182-513-1350, 182-513-1355, 182-513-1380, 182-513-1385, 182-513-1660, 182-514-0230, 182-515-1506, 182-515-1507, 182-515-1508, 182-515-1509, 182-515-1511, 182-515-1512, 182-515-1513, 182-515-1514, and 182-517-0100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-23-082 on November 14, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 21, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 21, Repealed 0.

Date Adopted: January 25, 2023.

Wendy Barcus
Rules Coordinator

OTS-4178.1

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-507-0125 State-funded long-term care services. (1) Caseload limits.

(a) The state-funded long-term care services program is subject to caseload limits determined by legislative funding.

(b) The aging and long-term support administration (AL TSA) must preauthorize state-funded long-term care service before payments begin.

(c) AL TSA cannot authorize a service, under chapter 388-106 WAC, if doing so would exceed statutory caseload limits.

(2) **Location of services.** State-funded long-term care services may be provided in:

- (a) The person's own home, defined in WAC 388-106-0010;
 - (b) An adult family home, defined in WAC 182-513-1100;
 - (c) An assisted living facility, defined in WAC 182-513-1100;
 - (d) An enhanced adult residential care facility, defined in WAC 182-513-1100;
 - (e) An adult residential care facility, defined in WAC 182-513-1100; or
 - (f) A nursing facility, defined in WAC 182-500-0050, but only if nursing facility care is necessary to sustain life.
- (3) **Client eligibility.** To be eligible for the state-funded long-term care services program, a person must meet all of the following conditions:
- (a) General eligibility requirements for medical programs under WAC 182-503-0505, except (c) and (d) of this subsection;
 - (b) Be age (~~nineteen~~) 19 or older;
 - (c) Reside in one of the locations under subsection (2) of this section;
 - (d) Attain institutional status under WAC 182-513-1320;
 - (e) Meet the functional eligibility requirements under WAC 388-106-0355 for nursing facility level of care;
 - (f) Not have a penalty period due to a transfer of assets under WAC 182-513-1363;
 - (g) Not have equity interest in a primary residence more than the amount under WAC 182-513-1350; and
 - (h) Meet the requirements under chapter 182-516 WAC for annuities owned by the person or the person's spouse.
- (4) **General limitations.**
- (a) If a person entered Washington only to obtain medical care, the person is ineligible for state-funded long-term care services.
 - (b) The certification period for state-funded long-term care services may not exceed (~~twelve~~) 12 months.
 - (c) People who qualify for state-funded long-term care services receive categorically needy (CN) medical coverage under WAC 182-501-0060.
- (5) **Supplemental security income (SSI)-related program limitations.**
- (a) A person who is related to the SSI program under WAC 182-512-0050 (1), (2), and (3) must meet the financial requirements under WAC 182-513-1315 to be eligible for state-funded long-term care services.
 - (b) An SSI-related person who is not eligible for the state-funded long-term care services program under CN rules may qualify under medically needy (MN) rules under WAC 182-513-1395.
 - (c) The agency determines how much an SSI-related person is required to pay toward the cost of care, using:
 - (i) WAC 182-513-1380, if the person resides in a nursing facility.
 - (ii) WAC 182-515-1505 or 182-515-1510, if the person resides in one of the locations listed in subsection (2)(a) through (e) of this section.
- (6) **Modified adjusted gross income (MAGI)-based program limitations.**
- (a) A person who is related to the MAGI-based program may be eligible for state-funded long-term care services under this section and chapter 182-514 WAC if the person resides in a nursing facility.
 - (b) A MAGI-related person is not eligible for residential or in-home care state-funded long-term care services unless the person also

meets the SSI-related eligibility criteria under subsection (5)(a) of this section.

(c) A MAGI-based person does not pay toward the cost of care in a nursing facility.

(7) Current resource, income, PNA, and room and board standards are found at (~~http://www.heca.wa.gov/free-or-low-cost-health-care/program-administration/standards-lte~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R § 155. WSR 17-03-116, § 182-507-0125, filed 1/17/17, effective 2/17/17. WSR 12-13-056, recodified as § 182-507-0125, filed 6/15/12, effective 7/1/12. Statutory Authority: 2011 c 5, RCW 74.04.057, 74.08.090, and 74.09.510. WSR 11-19-070, § 388-438-0125, filed 9/15/11, effective 10/16/11. Statutory Authority: RCW 74.04.050, 74.08.090, and 2009 c 564 §§ 1109, 201, 209. WSR 10-19-085, § 388-438-0125, filed 9/17/10, effective 10/18/10.]

OTS-4179.1

AMENDATORY SECTION (Amending WSR 22-08-104, filed 4/6/22, effective 5/7/22)

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 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 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 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) 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~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-08-104, § 182-513-1105, filed 4/6/22, effective 5/7/22. 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.]

AMENDATORY SECTION (Amending WSR 21-10-051, filed 4/29/21, effective 5/30/21)

WAC 182-513-1215 Community first choice (CFC)—Eligibility. (1)

A client who is determined functionally eligible for community first choice (CFC) services under WAC 388-106-0270 through 388-106-0295 is financially eligible to receive CFC services if the client is:

(a) Eligible for a noninstitutional Washington apple health (medicaid) program which provides categorically needy (CN) or alternative benefits plan (ABP) scope of care;

(b) Through September 30, 2023, a spousal impoverishment protections institutional (SIPI) spouse under WAC 182-513-1220; or

(c) Determined eligible for a home and community based (HCB) waiver program under chapter 182-515 WAC.

(2) A client whose only coverage is through one of the following programs is not eligible for CFC:

(a) Medically needy program under WAC 182-519-0100;

(b) Premium-based children's program under WAC 182-505-0215;

(c) Medicare savings programs under WAC 182-517-0300;

(d) Family planning program under WAC 182-505-0115;

(e) Take charge program under WAC 182-532-0720;

(f) Medical care services program under WAC 182-508-0005;

(g) Pregnant minor program under WAC 182-505-0117;

(h) Alien emergency medical program under WAC 182-507-0110 through 182-507-0120;

- (i) State-funded long-term care (LTC) for noncitizens program under WAC 182-507-0125; or
- (j) Kidney disease program under chapter 182-540 WAC.
- (3) Transfer of asset penalties under WAC 182-513-1363 do not apply to CFC applicants, unless the client is applying for long-term services and supports (LTSS) that are available only through one of the HCB waivers under chapter 182-515 WAC.
- (4) Home equity limits under WAC 182-513-1350 do apply.
- (5) Post-eligibility treatment of income rules do not apply if the client is eligible under subsection (1)(a) or (b) of this section.
- (6) Clients eligible under subsection (1)(a) or (b) of this section, who reside in an alternate living facility (ALF):
 - (a) Keep a personal needs allowance (PNA) under WAC 182-513-1105; and
 - (b) Pay up to the room and board standard under WAC 182-513-1105 except when CN eligibility is based on the rules under WAC 182-513-1205.
- (7) A client who receives CFC services under the health care for workers with disabilities (HWD) program under chapter 182-511 WAC must pay the HWD premium in addition to room and board under WAC 182-513-1105, if residing in an ALF.
- (8) Post-eligibility treatment of income rules do apply if a client is eligible under subsection (1)(c) of this section.
- (9) A client may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the room and board and participation.
- (10) PNA, MNIL, and room and board standards are found at (~~www.heca.wa.gov/health-care-services-supports/program-standard-income-and-resources~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Consolidated Appropriations Act of 2021, H.R. 133, Division CC, Title II, Sec. 204 (b) (1) (A) and Sec. 205. WSR 21-10-051, § 182-513-1215, filed 4/29/21, effective 5/30/21. Statutory Authority: RCW 41.05.021, 41.05.160 and P.L. 111-148, Title II, § 2404. WSR 18-06-031, § 182-513-1215, filed 2/28/18, effective 3/31/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 c 270. WSR 17-23-039, § 182-513-1215, filed 11/8/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1215, filed 1/17/17, effective 2/17/17.]

AMENDATORY SECTION (Amending WSR 21-10-051, filed 4/29/21, effective 5/30/21)

- WAC 182-513-1220 Community first choice (CFC)—Spousal impoverishment protections for noninstitutional Washington apple health clients.** (1) This section is effective through September 30, 2023.
- (2) The agency or its designee determines eligibility for community first choice (CFC) using spousal impoverishment protections under this section, when an applicant:
- (a) Is married to, or marries, a person not in a medical institution;

(b) Meets institutional level of care and eligibility for CFC services under WAC 388-106-0270 through 388-106-0295;

(c) Is ineligible for a noninstitutional categorically needy (CN) SSI-related program:

(i) Due to spousal deeming rules under WAC 182-512-0920, or due to exceeding the resource limit in WAC 182-512-0010, or both; or

(ii) In an ALF due to combined spousal resources exceeding the resource limit in WAC 182-512-0010; and

(d) Meets the aged, blindness, or disability criteria under WAC 182-512-0050.

(3) The agency or its designee determines countable income using the SSI-related income rules under chapter 182-512 WAC but uses only the applicant's or recipient's separate income and not the income of the applicant's or recipient's spouse.

(4) The agency or its designee determines countable resources using the SSI-related resource rules under chapter 182-512 WAC, except pension funds owned by the spousal impoverishment protections community (SIPC) spouse are not excluded as described under WAC 182-512-0550:

(a) For the applicant or recipient, the resource standard is \$2000.

(b) Before determining countable resources used to establish eligibility for the applicant, the agency allocates the state spousal resource standard to the SIPC spouse.

(c) The resources of the SIPC spouse are unavailable to the spousal impoverishment protections institutionalized (SIPI) spouse the month after eligibility for CFC services is established unless subsection (9) of this section applies.

(5) The SIPI spouse has until the end of the month of the first regularly scheduled eligibility review to transfer countable resources in excess of \$2000 to the SIPC spouse.

(6) A redetermination of the couple's resources under subsection (4) of this section is required if:

(a) The SIPI spouse has a break in CFC services of at least ~~((thirty))~~ 30 consecutive days;

(b) The SIPI spouse's countable resources exceed the standard under subsection (4)(a) of this section; or

(c) The SIPI spouse does not transfer the amount under subsection (5) of this section to the SIPC spouse by the end of the month of the first regularly scheduled eligibility review.

(7) If the applicant lives at home and the applicant's separate countable income is at or below the SSI categorically needy income level (CNIL) and the applicant is resource eligible, the applicant is a SIPI spouse and is financially eligible for noninstitutional CN coverage and CFC services.

(8) If the applicant lives in an ALF, has separate countable income at or below the standard under WAC 182-513-1205(2), and is resource eligible, the applicant is a SIPI spouse and is financially eligible for noninstitutional CN coverage and CFC services.

(9) If the applicant is employed and has separate countable income at or below the standard under WAC 182-511-1060, the applicant is a SIPI spouse and is financially eligible for noninstitutional CN coverage and CFC services.

(10) Once a person no longer receives CFC services for ~~((thirty))~~ 30 consecutive days, the agency redetermines eligibility without using spousal impoverishment protection, under WAC 182-504-0125.

(11) If the applicant's separate countable income is above the standards under subsections (7), (8), and (9) of this section, the applicant is not eligible for CFC services under this section.

(12) The spousal impoverishment protections under this section expire on September 30, 2023.

(13) Standards are found at (~~www.hea.wa.gov/health-care-services-supports/program-standard-income-and-resources~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Consolidated Appropriations Act of 2021, H.R. 133, Division CC, Title II, Sec. 204

(b) (1) (A) and Sec. 205. WSR 21-10-051, § 182-513-1220, filed 4/29/21, effective 5/30/21. Statutory Authority: RCW 41.05.021, 41.05.160 and P.L. 111-148, Title II, § 2404. WSR 18-06-031, § 182-513-1220, filed 2/28/18, effective 3/31/18. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1220, filed 1/17/17, effective 2/17/17.]

AMENDATORY SECTION (Amending WSR 17-23-039, filed 11/8/17, effective 1/1/18)

WAC 182-513-1225 Medicaid personal care (MPC). (1) Medicaid personal care (MPC) is a state-plan benefit available to a client who is determined:

(a) Functionally eligible for MPC services under WAC 388-106-0200 through 388-106-0235; and

(b) Financially eligible for a noninstitutional categorically needy (CN) or alternative benefits plan (ABP) Washington apple health (medicaid) program.

(2) MPC services may be provided to a client residing at home, in a department-contracted adult family home (AFH), or in a licensed assisted living facility that is contracted with the department to provide adult residential care services.

(3) A client who resides in an alternate living facility (ALF) listed in subsection (2) of this section:

(a) Keeps a personal needs allowance (PNA) under WAC 182-513-1105; and

(b) Pays room and board up to the room and board standard under WAC 182-513-1105, unless CN eligibility is determined using rules under WAC 182-513-1205.

(4) A client who receives MPC services under the health care for workers with disabilities (HWD) program under chapter 182-511 WAC must pay the HWD premium in addition to room and board under WAC 182-513-1105, if residing in an ALF.

(5) A client may have to pay third-party resources as defined under WAC 182-513-1100 in addition to room and board.

(6) Current PNA and room and board standards are found at (~~www.hea.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 c 270. WSR 17-23-039, § 182-513-1225, filed 11/8/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1225, filed 1/17/17, effective 2/17/17.]

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1240 The hospice program. (1) General information.

(a) The hospice program provides palliative care to people who elect to receive hospice services and are certified as terminally ill by their physician.

(b) Program rules governing election of hospice services are under chapter 182-551 WAC.

(c) A person may revoke an election to receive hospice services at any time by signing a revocation statement.

(d) Transfer of asset rules under WAC 182-513-1363 do not apply to the hospice program in any setting, regardless of which apple health program the person is eligible to receive.

(2) When hospice is a covered service.

(a) A person who receives coverage under a categorically needy (CN), medically needy (MN), or alternative benefits plan (ABP) program is eligible for hospice services as part of the program specific benefit package.

(b) A person who receives coverage under the alien emergency medical (AEM) program under WAC 182-507-0110 may be eligible for payment for hospice services if preapproved by the agency.

(c) A person who receives coverage under the medical care services (MCS) program is not eligible for coverage of hospice services.

(3) When HCB waiver rules are used to determine eligibility for hospice.

(a) A person who is not otherwise eligible for a CN, MN, or ABP noninstitutional program who does not reside in a medical institution, may be eligible for CN coverage under the hospice program by using home and community based (HCB) waiver rules under WAC 182-515-1505 to determine financial eligibility.

(b) When HCB waiver rules are used, the following exceptions apply:

(i) A person on the hospice program may reside in a medical institution, including a hospice care center, (~~(thirty)~~) 30 days or longer and remain eligible for hospice services; and

(ii) A person residing at home on the hospice program who has available income over the special income limit (SIL), defined under WAC 182-513-1100, is not eligible for CN coverage. If available income is over the SIL, the agency or its designee determines eligibility for medically needy coverage under WAC 182-519-0100.

(c) When HCB waiver rules are used, a person may be required to pay income and third-party resources (TPR) as defined under WAC 182-513-1100 toward the cost of hospice services. The cost of care calculation is described under WAC 182-515-1509.

(d) When a person already receives HCB waiver services and elects hospice, the person must pay any required cost of care towards the HCB waiver service provider first.

(4) Eligibility for hospice services in a medical institution:

(a) A person who elects to receive hospice services, resides in a medical institution for ~~((thirty))~~ 30 days or longer, and has income:

(i) Equal to or less than the SIL is income eligible for CN coverage. Eligibility for institutional hospice is determined under WAC 182-513-1315; or

(ii) Over the SIL may be eligible for MN coverage under WAC 182-513-1245.

(b) A person eligible for hospice services in a medical institution may have to pay toward the cost of nursing facility or hospice care center services. The cost of care calculation is under WAC 182-513-1380.

(5) Changes in coverage. The agency or its designee redetermines a person's eligibility under WAC 182-504-0125 if the person:

(a) Revokes the election of hospice services and is eligible for coverage using HCB waiver rules only, described in subsection (3) of this section; or

(b) Loses CN, MN, or ABP eligibility.

(6) Personal needs allowance and income and resource standards for hospice and home and community based (HCB) waiver programs are found at ~~((http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources))~~ www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1240, filed 1/17/17, effective 2/17/17.]

AMENDATORY SECTION (Amending WSR 22-13-058, filed 6/8/22, effective 7/9/22)

WAC 182-513-1350 Defining the resource standard and determining resource eligibility for SSI-related long-term care (LTC) services.

(1) General information.

(a) This section describes how the agency or the agency's designee defines the resource standard and countable or excluded resources when determining a person's eligibility for SSI-related long-term care (LTC) services.

(b) "Resource standard" means the maximum amount of resources a person can have and still be resource eligible for program benefits.

(c) For a person not SSI-related, the agency applies program specific resource rules to determine eligibility.

(2) Resource standards.

(a) The resource standard for the following people is \$2000:

(i) A single person; or

(ii) An institutionalized spouse.

(b) The resource standard for a legally married couple is \$3000, unless subsection (3)(b)(ii) of this section applies.

(c) The resource standard for a person with a qualified long-term care partnership policy under WAC 182-513-1400 may be higher based on the dollar amount paid out by a partnership policy.

(d) Determining the amount of resources that can be allocated to the community spouse when determining resource eligibility is under WAC 182-513-1355.

(3) Availability of resources.

(a) General. The agency or the agency's designee applies the following rules when determining available resources for LTC services:

(i) WAC 182-512-0300 SSI-related medical—Resources eligibility;

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources; and

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(b) Married couples.

(i) When both spouses apply for LTC services, the resources of both spouses are available to each other through the month in which the spouses stopped living together.

(ii) When both spouses are institutionalized, the agency or the agency's designee determines the eligibility of each spouse as a single person the month following the month of separation.

(iii) If the agency or the agency's designee has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, but after eligibility has been established and services authorized for the institutionalized spouse, then the agency applies the standard under subsection (2)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the agency applies subsection (2)(b) of this section for the couple.

(iv) The resources of the community spouse are unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless (v) or (vi) of this subsection applies.

(v) When a single institutionalized individual marries, the agency or the agency's designee redetermines eligibility applying the resource and income rules for a legally married couple.

(vi) A redetermination of the couple's resources under this section is required if:

(A) The institutionalized spouse has a break of at least 30 consecutive days in a period of institutional status;

(B) The institutionalized spouse's countable resources exceed the standard under subsection (2)(a) of this section, and WAC 182-513-1355 (2)(b) applies; or

(C) The institutionalized spouse does not transfer the amount, under WAC 182-513-1355 (3) or (5), to the community spouse by either:

(I) The end of the month of the first regularly scheduled eligibility review; or

(II) A reasonable amount of time necessary to obtain a court order for the support of the community spouse.

(4) Countable resources.

(a) The agency or the agency's designee determines countable resources using the following sections:

(i) WAC 182-512-0200 SSI-related medical—Definition of resources.

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources.

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(iv) WAC 182-512-0300 SSI-related medical—Resources eligibility.

(v) WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources;

(vi) WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources;

(vii) WAC 182-512-0450 SSI-related medical—Life insurance excluded as a resource; and

(viii) WAC 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources.

(ix) Chapter 182-516 WAC, Trusts, annuities, life estates, and promissory notes—Effect on medical programs.

(b) The agency or the agency's designee determines excluded resources based on federal law and WAC 182-512-0550, except:

(i) For institutional and HCB waiver programs, pension funds owned by a nonapplying spouse are counted toward the resource standard.

(ii) For long-term services and supports (LTSS), based on the need for either nursing facility level of care or intermediate care facility for the intellectually disabled level of care, one home is excluded only if it meets the home equity limits of subsection (8) of this section. See WAC 182-512-0350 (1)(b).

(c) The agency or the agency's designee adds together the countable resources of both spouses if subsections (3)(b)(i) and (iv) apply, but not if subsection (3)(b)(ii) or (iii) apply. For a person with a community spouse, see WAC 182-513-1355.

(5) Excess resources.

(a) For LTC programs, a person may reduce excess resources by deducting incurred medical expenses under subsection (6) of this section;

(b) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) In a medical institution, excess resources and available income must be under the state medicaid rate based on the number of days the person spent in the medical institution in the month.

(B) For HCB waiver eligibility, incurred medical expenses must reduce resources within allowable resource standards. The cost of care for the HCB waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program, see:

(A) WAC 182-513-1395 for LTC programs; and

(B) WAC 182-513-1245 for hospice.

(c) Excess resources not otherwise applied to medical expenses will be applied to the projected cost of care for services in a medical institution under WAC 182-513-1380.

(6) Allowable medical expenses.

(a) The following incurred medical expenses may be used to reduce excess resources:

(i) Premiums, deductibles, coinsurance, or copayment charges for health insurance and medicare;

(ii) Medically necessary care defined under WAC 182-500-0070, but not covered under the state's medicaid plan. Information regarding covered services is under chapter 182-501 WAC;

(iii) Medically necessary care defined under WAC 182-500-0070 incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the specific facility that provided the services.

(b) To be allowed, the medical expense must:

(i) Have been incurred no more than three months before the month of the medicaid application;

(ii) Not be subject to third-party payment or reimbursement;
 (iii) Not have been used to satisfy a previous spenddown liability;

(iv) Not have been previously used to reduce excess resources;
 (v) Not have been used to reduce participation;
 (vi) Not have been incurred during a transfer of asset penalty under WAC 182-513-1363; and

(vii) Be an amount for which the person remains liable.

(7) Nonallowable expenses. The following expenses are not allowed to reduce excess resources:

(a) Unpaid adult family home (AFH) or assisted living facility expenses incurred prior to medicaid eligibility;

(b) Personal care cost in excess of approved hours determined by the CARE assessment under chapter 388-106 WAC; and

(c) Expenses excluded by federal law.

(8) Excess home equity.

(a) A person with an equity interest in a primary residence in excess of the home equity limit is ineligible for long-term services and supports (LTSS) that are based on the need for either nursing facility level of care or intermediate care facility for the intellectually disabled level of care, unless one of the following persons lawfully resides in the home:

(i) That person's spouse; or

(ii) That person's dependent child under age 21, blind child, or disabled child.

(b) The home equity provision applies to all applications for LTSS received on or after May 1, 2006.

(c) The excess home equity limit is the federal maximum allowed. On January 1st of each year, this standard may change by the percentage in the consumer price index for all consumers (CPI-U). The current maximum home equity limit is posted by the Centers for Medicare and Medicaid Services. (See subsection (9) of this section for institutional resource standards.)

(d) A person who is denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver under WAC 182-513-1367.

(9) Institutional resource standards are found at (~~<https://www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources>~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-13-058, § 182-513-1350, filed 6/8/22, effective 7/9/22; WSR 17-18-023, § 182-513-1350, filed 8/28/17, effective 9/28/17. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1350, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as § 182-513-1350, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1). WSR 12-21-091, § 388-513-1350, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, and 74.09.575. WSR 09-12-058, § 388-513-1350, filed 5/28/09, effective 7/1/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530. WSR 08-13-072, § 388-513-1350, filed 6/16/08, effective 7/17/08. Statutory Authority:

RCW 74.04.050, 74.04.057, 74.08.090, 74.09.575, 74.09.500, and 74.09.530. WSR 07-19-128, § 388-513-1350, filed 9/19/07, effective 10/20/07. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.09.575, 2005 Federal Deficit Reduction Act (DRA) P.L. 109-171, and Section 1924 of the Social Security Act (42 U.S.C. 1396r-5). WSR 07-01-073, § 388-513-1350, filed 12/18/06, effective 1/18/07. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 42 U.S.C. 9902(2). WSR 05-07-033, § 388-513-1350, filed 3/9/05, effective 4/9/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.575; 2003 1st sp.s. c 28, and section 1924 of the Social Security Act (42 U.S.C. 1396R-5). WSR 04-04-072, § 388-513-1350, filed 2/2/04, effective 3/4/04. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500 and Section 1924 (42 U.S.C. 1396R-5). WSR 01-18-055, § 388-513-1350, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 11.92.180, 43.20B.460, 48.85.020, 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.[09.]575, 74.09.585; 20 C.F.R. 416.1110-1112, 1123 and 1160; 42 C.F.R. 435.403 (j) (2) and 1005; and Sections 17, 1915(c), and 1924 (42 U.S.C. 1396) of the Social Security Act. WSR 00-01-051, § 388-513-1350, filed 12/8/99, effective 1/8/00. Statutory Authority: RCW 74.08.090 and 74.09.500. WSR 99-06-045, § 388-513-1350, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.575 and Section 1924 (42 U.S.C. 1396r-5). WSR 98-11-033, § 388-513-1350, filed 5/14/98, effective 6/14/98. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090 and 74.09.575. WSR 97-09-112, § 388-513-1350, filed 4/23/97, effective 5/24/97. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 95-44. WSR 96-09-033 (Order 3963), § 388-513-1350, filed 4/10/96, effective 5/11/96. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 94-49, notice of increase in SSI level. WSR 95-05-022 (Order 3832), § 388-513-1350, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 74.08.090. WSR 94-23-129 (Order 3808), § 388-513-1350, filed 11/23/94, effective 12/24/94; WSR 94-10-065 (Order 3732), § 388-513-1350, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-95-337 and 388-95-340.]

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1355 Allocating resources to a community spouse when determining resource eligibility for SSI-related long-term care services. (1) The agency or its designee uses this section to calculate the resource allocation from the institutionalized spouse to the community spouse for the determination of the institutionalized spouse's resource eligibility under WAC 182-513-1350 (2) (a) (ii).

(2) If the institutionalized spouse's most recent continuous period of institutionalization (MRCPI) began:

(a) Before October 1, 1989, the agency adds together one-half the total amount of countable resources, as determined under WAC 182-513-1350(4), held in the name of:

- (i) The institutionalized spouse; and
- (ii) Both spouses.

(b) On or after October 1, 1989, the agency or its designee adds together the total amount of countable resources, as determined under WAC 182-513-1350(4), held in the name of:

(i) Either spouse; and

(ii) Both spouses.

(3) If subsection (2)(b) of this section applies, the agency or its designee determines the amount of resources allocated to the community spouse, before determining the amount of countable resources used to establish eligibility for the institutionalized spouse under WAC 182-513-1350:

(a) If the institutionalized spouse's MRCPI began on or after October 1, 1989, and before August 1, 2003, the agency or its designee allocates the federal spousal resource maximum;

(b) If the institutionalized spouse's MRCPI began on or after August 1, 2003, the agency or its designee allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources, up to the federal spousal resource maximum; or

(ii) The state spousal resource standard.

(4) Countable resources under subsection (3)(b) of this section determined as of the first day of the month in which MRCPI began.

(5) The agency or its designee uses a community spouse evaluation to determine the amount of the spousal share under subsection

(3)(b)(i) of this section.

(6) The agency or its designee completes a community spouse resource evaluation:

(a) Upon request by the institutionalized spouse, or the institutionalized spouse's community spouse;

(b) At any time between the date that the MRCPI began and the date that eligibility for long-term care (LTC) is determined; and

(c) Upon receipt of any verification required to establish the amount of the couple's resources in the month of MRCPI.

(7) The community spouse resource evaluation can be completed prior to an application for LTC or as part of the LTC application if:

(a) The beginning of the MRCPI was prior to the month of application; and

(b) The spousal share exceeds the state spousal resource standard.

(8) The amount of allocated resources under subsection (3) of this section can be increased, but only if:

(a) A court has entered an order against the institutionalized spouse for the support of the community spouse or a dependent of either spouse; or

(b) A final order is entered under chapter 182-526 WAC, ruling that the institutionalized spouse or community spouse established that the income generated by the resources allocated under subsection (3) of this section is insufficient to raise the community spouse's income to the monthly maintenance needs allowance (MMNA) determined under WAC 182-513-1385, but only after the application of the income-first rule under 42 U.S.C. 1396r-5 (d)(6).

(9) If a final order establishes that the conditions identified in subsection (8)(b) of this section have been met, then an amount of allocated resources under subsection (3) of this section will be substituted by an amount adequate to provide such an MMNA.

(10) The institutionalized spouse has until the end of the month of the first regularly scheduled eligibility review to transfer countable resources in excess of \$2000 to the community spouse.

(11) Standards in this section are found at (~~http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources~~) www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources)

cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1355, filed 1/17/17, effective 2/17/17.]

AMENDATORY SECTION (Amending WSR 21-09-092, filed 4/21/21, effective 5/22/21)

WAC 182-513-1380 Determining a client's financial participation in the cost of care for long-term care in a medical institution. This rule describes how the agency or the agency's designee allocates income and excess resources when determining participation in the cost of care in a medical institution.

(1) The agency or the agency's designee defines which income and resources must be used in this process under WAC 182-513-1315.

(2) The agency or the agency's designee allocates nonexcluded income in the following order, and the combined total of (a), (b), (c), and (d) of this subsection cannot exceed the effective one-person medically needy income level (MNIL):

(a) A personal needs allowance (PNA) under WAC 182-513-1105.

(b) Mandatory federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program under WAC 182-512-0050(1); and

(ii) Receives the wages as part of an agency-approved or department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction, employment expenses are not deducted.

(d) Guardianship fees and administrative costs, including any attorney fees paid by the guardian, as allowed under chapter 388-79A WAC.

(3) The agency or the agency's designee allocates nonexcluded income after deducting amounts under subsection (2) of this section in the following order:

(a) Current or back child support garnished or withheld from income according to a child support order in the month of the garnishment if it is:

(i) For the current month;

(ii) For the time period covered by the PNA; and

(iii) Not counted as the dependent member's income when determining the dependent allocation amount under WAC 182-513-1385.

(b) A monthly maintenance needs allowance for the community spouse as determined using the calculation under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the community spouse's income up to the PNA.

(c) A dependent allowance for each dependent of the institutionalized client or the client's spouse, as determined using the calculation under WAC 182-513-1385.

(d) Medical expenses incurred by the institutionalized individual and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 182-513-1350.

(e) Maintenance of the home of a single institutionalized client or institutionalized couple:

- (i) Up to (~~one hundred~~) 100 percent of the one-person federal poverty level per month;
- (ii) Limited to a six-month period;
- (iii) When a physician has certified that the client or couple is likely to return to the home within the six-month period; and
- (iv) When social services staff documents the need for the income deduction.

(4) A client may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the participation.

(5) A client is responsible to pay only up to the state rate for the cost of care. If long-term care insurance pays a portion of the state rate cost of care, a client pays only the difference up to the state rate cost of care.

(6) When a client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the client has in a month.

(7) Standards under this section for long-term care are found at (~~<https://www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources>~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-09-092, § 182-513-1380, filed 4/21/21, effective 5/22/21; WSR 20-08-082, § 182-513-1380, filed 3/27/20, effective 4/27/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 c 270. WSR 17-23-039, § 182-513-1380, filed 11/8/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1380, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as WAC 182-513-1380, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1). WSR 12-21-091, § 388-513-1380, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, and Deficit Reduction Act of 2005, 42 C.F.R. Section 435. WSR 09-07-037, § 388-513-1380, filed 3/10/09, effective 4/10/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530. WSR 08-13-072, § 388-513-1380, filed 6/16/08, effective 7/17/08. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, and 2006 c 372. WSR 07-19-126, § 388-513-1380, filed 9/19/07, effective 10/20/07; WSR 07-01-072, § 388-513-1380, filed 12/18/06, effective 1/18/07. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530 and 2005 c 518 § 207 and Sec. 1924 Social Security Act (42 U.S.C. 1396r-5). WSR 06-07-144, § 388-513-1380, filed 3/21/06, effective 4/21/06. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 42 U.S.C. 9902(2). WSR 05-07-033, § 388-513-1380, filed 3/9/05, effective 4/9/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.575; 2003 1st sp.s. c 28, and section 1924 of the Social Security Act (42 U.S.C. 1396R-5). WSR 04-04-072, § 388-513-1380, filed 2/2/04, effective 3/4/04. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500 and Section 1924 (42 U.S.C. 1396R-5). WSR 01-18-055, § 388-513-1380, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and Section 1924(g) of the Social Se-

curity Act. WSR 00-17-058, § 388-513-1380, filed 8/9/00, effective 9/9/00. Statutory Authority: RCW 72.36.160, 74.04.050, 74.04.057, 74.08.090, 74.09.500 and Section 1924(g) of the Social Security Act, Section 4715 of the BBA of 1997 (Public Law 105-33, HR 2015). WSR 99-11-017, § 388-513-1380, filed 5/10/99, effective 6/10/99. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 43.20B.460, 11.92.180, and Section 1924 (42 U.S.C. 396r-5). WSR 98-08-077, § 388-513-1380, filed 3/31/98, effective 4/1/98. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530 and Social Security Act, Federal Register, March 10, 1997, pgs. 10856 - 10859, 42 U.S.C. 1396 (a)(1)(m). WSR 97-16-008, § 388-513-1380, filed 7/24/97, effective 7/24/97. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 95-44. WSR 96-09-033 (Order 3963), § 388-513-1380, filed 4/10/96, effective 5/11/96. Statutory Authority: RCW 74.08.090. WSR 95-11-045 (Order 3848), § 388-513-1380, filed 5/10/95, effective 6/10/95. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 94-49, notice of increase in SSI level. WSR 95-05-022 (Order 3832), § 388-513-1380, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 74.08.090. WSR 94-10-065 (Order 3732), § 388-513-1380, filed 5/3/94, effective 6/3/94. Formerly WAC 388-95-360.]

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1385 Determining the community spouse monthly maintenance needs allowance and dependent allowance in post-eligibility treatment of income for long-term care (LTC) programs. (1) This section describes how to calculate the monthly maintenance needs allowance (MMNA) in post-eligibility treatment of income for long-term care (LTC) programs for a community spouse or dependent of the institutionalized individual.

(2) The community spouse MMNA standards are found at (~~http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/standards-ltc~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources, unless a greater amount is calculated under subsection (5) of this section. The MMNA standards may change each January and July based on the consumer price index.

(3) The community spouse MMNA is allowed only to the extent that the institutionalized spouse's income is made available to the community spouse, and is calculated as follows:

(a) The minimum MMNA as calculated in subsection (4)(a) of this section plus excess shelter expenses as calculated in subsection (4)(b) of this section;

(i) The total under (a) of this subsection cannot be less than the minimum MMNA; and

(ii) If the total under subsection (4)(a) of this section exceeds the maximum MMNA, the maximum MMNA is the result under subsection (4)(a) of this section; and

(b) The total under subsection (4)(a) of this section is reduced by the community spouse's gross income. The result is the MMNA.

(4) The minimum MMNA and excess shelter expense values are calculated as follows:

(a) The minimum MMNA is (~~one hundred fifty~~) 150 percent of the two-person federal poverty level (FPL); and

(b) If excess shelter expenses are less than zero, the result is zero. Excess shelter expenses are calculated as follows:

(i) Add:

- (A) Mortgage or rent, which includes space rent for mobile homes;
- (B) Real property taxes;
- (C) Homeowner's insurance;

(D) Required maintenance fees for a condominium, cooperative, or homeowner's association that are recorded in a covenant; and

(E) The food assistance standard utility allowance (SUA) under WAC 388-450-0195 minus the cost of any utilities that are included in (b)(i)(D) of this subsection.

(ii) Subtract the standard shelter allocation from the total in (b)(i) of this subsection. The standard shelter allocation is (~~thirty~~) 30 percent of (~~one hundred fifty~~) 150 percent of the two-person FPL. The result is the value of excess shelter expenses.

(5) The amount allocated to the community spouse may be greater than the amount determined in subsection (3) of this section, but only if:

(a) A court order has been entered against the institutionalized spouse approving a higher MMNA for the support of the community spouse; or

(b) A final order has been entered after an administrative hearing has been held under chapter 182-526 WAC ruling the institutionalized spouse or the community spouse established the community spouse needs income, above the level otherwise provided by the MMNA, due to exceptional circumstances causing significant financial duress.

(6) If a final order establishes that the conditions identified in subsection (5)(b) of this section have been met, then an amount of allocated resources under subsection (3) of this section will be substituted by an amount adequate to provide such an MMNA.

(7) The agency or its designee determines the dependent allowance for dependents of the institutionalized individual or the institutionalized individual's spouse. The amount the agency allows depends on whether the dependent resides with the community spouse.

(a) For each dependent who resides with the community spouse:

(i) Subtract the dependent's income from (~~one hundred fifty~~) 150 percent of the two-person FPL;

(ii) Divide the amount determined in (a)(i) of this subsection by three;

(iii) The result is the dependent allowance for that dependent.

(b) For each dependent who does not reside with the community spouse:

(i) The agency determines the effective MNIL standard based on the number of dependent family members in the home;

(ii) Subtracts each dependent's separate income;

(iii) The result is the dependent allowance for the dependents.

(c) Child support received from a noncustodial parent is the child's income.

[Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1385, filed 1/17/17, effective 2/17/17.]

AMENDATORY SECTION (Amending WSR 21-10-051, filed 4/29/21, effective 5/30/21)

WAC 182-513-1660 Medicaid alternative care (MAC) and tailored supports for older adults (TSOA)—Spousal impoverishment. (1) The medicaid agency or the agency's designee determines financial eligibility for medicaid alternative care (MAC) or tailored supports for older adults (TSOA) using spousal impoverishment protections under this section, when an applicant or recipient:

- (a) Is married to, or marries, a person who is not in a medical institution; and
- (b) Is ineligible for a noninstitutional categorically needy (CN) SSI-related program or the TSOA program due to:
 - (i) Spousal deeming rules under WAC 182-512-0920 for MAC;
 - (ii) Exceeding the resource limit in WAC 182-512-0010 for MAC, or the limit under WAC 182-513-1640 for TSOA; or
 - (iii) Both (b)(i) and (ii) of this subsection.

(2) When a resource test applies, the agency or the agency's designee determines countable resources using the SSI-related resource rules under chapter 182-512 WAC, except pension funds owned by the spousal impoverishment protections community (SIPC) spouse are not excluded as described under WAC 182-512-0550:

- (a) Resource standards:
 - (i) For MAC, the resource standard is \$2,000; or
 - (ii) For TSOA, the resource standard is \$53,100.
- (b) Before determining countable resources used to establish eligibility for the applicant, the agency or the agency's designee allocates the state spousal resource standard to the SIPC spouse.
- (c) The resources of the SIPC spouse are unavailable to the spousal impoverishment protections institutionalized (SIPI) spouse the month after eligibility for MAC or TSOA services is established.

(3) The SIPI spouse has until the end of the month of the first regularly scheduled eligibility review to transfer countable resources in excess of \$2,000 (for MAC) or \$53,100 (for TSOA) to the SIPC spouse.

(4) Income eligibility:

- (a) For MAC:
 - (i) The agency or the agency's designee determines countable income using the SSI-related income rules under chapter 182-512 WAC, but uses only the applicant or recipient's income;
 - (ii) If the applicant's or recipient's countable income is at or below the SSI categorically needy income level (CNIL), the applicant or recipient is considered a SIPI spouse and is income eligible for noninstitutional CN coverage and MAC services;
 - (iii) If the applicant is employed and the applicant's countable income is at or below the standard under WAC 182-511-1060, the applicant is considered a SIPI spouse and is income eligible for noninstitutional CN coverage under the health care for workers with disabilities (HWD) program and MAC services.
- (b) For TSOA, see WAC 182-513-1635.

(5) Once a person no longer receives MAC services, eligibility is redetermined without using spousal impoverishment protections under WAC 182-504-0125.

(6) If the applicant's separate countable income is above the standards described in subsection (4) of this section, the applicant is not income eligible for MAC or TSOA services.

(7) The spousal impoverishment protections described in this section are time-limited and expire on September 30, 2023.

(8) Standards described in this chapter are located at (~~www.heca.wa.gov/health-care-services-supports/program-standard-income-and-resources~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Consolidated Appropriations Act of 2021, H.R. 133, Division CC, Title II, Sec. 204 (b) (1) (A) and Sec. 205. WSR 21-10-051, § 182-513-1660, filed 4/29/21, effective 5/30/21. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 1st sp.s. c 36 § 213 (1)(e), section 1115 of the Social Security Act, and 42 C.F.R. §§ 431.400 through 431.428. WSR 17-12-019, § 182-513-1660, filed 5/30/17, effective 7/1/17.]

OTS-4176.1

AMENDATORY SECTION (Amending WSR 16-04-087, filed 1/29/16, effective 2/29/16)

WAC 182-514-0230 Purpose. (1) This chapter describes eligibility requirements for the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care program (LTC) for children and adults who have been admitted to an institution as defined in WAC 182-500-0050 for at least (~~thirty~~) 30 days. The rules are stated in the following sections:

- (a) WAC 182-514-0240 General eligibility;
- (b) WAC 182-514-0245 Resource eligibility;
- (c) WAC 182-514-0250 Program for adults age (~~nineteen~~) 19 and older;
- (d) WAC 182-514-0260 Program for children under age (~~nineteen~~) 19;
- (e) WAC 182-514-0263 Non-SSI-related institutional medically needy coverage for pregnant women and people age (~~twenty~~) 20 and younger.
- (f) WAC 182-514-0270 Involuntary commitment to Eastern or Western State Hospital.

(2) A noninstitutional WAH program recipient does not need to submit a new application for LTC coverage if admitted to an institution under this section. Admission to an institution constitutes a change of circumstances. Eligibility is based on institutional status under WAC 182-513-1320.

(3) In this chapter, "medicaid agency" or "agency" means the Washington state health care authority and includes the agency's designee. See chapter 182-500 WAC for additional definitions.

(4) Income standards used in this chapter are listed at (~~http://www.heca.wa.gov/medicaid/eligibility/pages/standards.aspx~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-04-087, § 182-514-0230, filed 1/29/16, effective 2/29/16. Statutory Authority:

RCW 41.05.021 and Patient Protection and Affordable Care Act (P.L. 111-148), 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-06-068, § 182-514-0230, filed 2/28/14, effective 3/31/14. WSR 12-02-034, recodified as § 182-514-0230, filed 12/29/11, effective 1/1/12. Statutory Authority: RCW 74.04.055, 74.04.057, 74.08.090, 74.09.530, and 42 C.F.R. 441.151. WSR 09-06-029, § 388-505-0230, filed 2/24/09, effective 3/27/09.]

OTS-4175.1

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-515-1506 Home and community based (HCB) waiver services authorized by home and community services (HCS)—General eligibility.

(1) To be eligible for home and community based (HCB) waiver services a person must:

- (a) Meet the program and age requirements for the specific program:
 - (i) Community options program entry system (COPES), under WAC 388-106-0310;
 - (ii) Residential support waiver (RSW), under WAC 388-106-0310; or
 - (iii) New Freedom, under WAC 388-106-0338.
- (b) Meet the disability criteria for the supplemental security income (SSI) program under WAC 182-512-0050;
- (c) Require the level of care provided in a nursing facility under WAC 388-106-0355;
- (d) Reside in a medical institution as defined in WAC 182-500-0050, or be likely to be placed in one within the next (~~thirty~~) 30 days without HCB waiver services provided under one of the programs listed in (a) of this subsection;
- (e) Attain institutional status under WAC 182-513-1320;
- (f) Assessed for HCB waiver services, be approved for a plan of care, and receiving an HCB waiver service under (a) of this subsection;
- (g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted alternate living facility under WAC 182-513-1100.

(2) A person is not eligible for home and community based (HCB) waiver services if the person:

- (a) Is subject to a penalty period of ineligibility for the transfer of an asset under WAC 182-513-1363; or
- (b) Has a home with equity in excess of the requirements under WAC 182-513-1350.

(3) See WAC 182-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care (LTC) services.

(4) Current income and resource standards are found at (~~http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R § 155. WSR 17-03-116, § 182-515-1506, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as WAC 182-515-1506, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1). WSR 12-21-091, § 388-515-1506, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530 and Washington state 2007-09 operating budget (SHB 1128). WSR 08-22-052, § 388-515-1506, filed 11/3/08, effective 12/4/08.]

AMENDATORY SECTION (Amending WSR 17-23-039, filed 11/8/17, effective 1/1/18)

WAC 182-515-1507 Home and community based (HCB) waiver services authorized by home and community services (HCS)—Financial eligibility if a client is eligible for an SSI-related noninstitutional categorically needy (CN) medicaid program. (1) A client is financially eligible for home and community based (HCB) waiver services if the client:

(a) Is receiving coverage under one of the following categorically needy (CN) medicaid programs:

(i) SSI program under WAC 182-510-0001. This includes SSI clients under Section 1619(b) of the Social Security Act;

(ii) SSI-related noninstitutional CN program under chapter 182-512 WAC; or

(iii) Health care for workers with disabilities program (HWD) under chapter 182-511 WAC.

(b) Does not have a penalty period of ineligibility for the transfer of an asset under WAC 182-513-1363; and

(c) Does not own a home with equity in excess of the requirements under WAC 182-513-1350.

(2) A client eligible under this section does not pay toward the cost of care, but must pay room and board if living in an alternate living facility (ALF) under WAC 182-513-1100.

(3) A client eligible under this section who lives in a department-contracted ALF described under WAC 182-513-1100:

(a) Keeps a personal needs allowance (PNA) under WAC 182-513-1105; and

(b) Pays towards room and board under WAC 182-513-1105.

(4) A client who is eligible under the HWD program must pay the HWD premium under WAC 182-511-1250, in addition to room and board, if residing in an ALF.

(5) Current resource, income, PNA, and room and board standards are found at (~~www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 c 270. WSR 17-23-039, § 182-515-1507, filed 11/8/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R § 155. WSR 17-03-116, § 182-515-1507, filed

1/17/17, effective 2/17/17. WSR 13-01-017, recodified as WAC 182-515-1507, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1). WSR 12-21-091, § 388-515-1507, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, and section 1915(c) of the Social Security Act. WSR 09-14-043, § 388-515-1507, filed 6/24/09, effective 7/25/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530 and Washington state 2007-09 operating budget (SHB 1128). WSR 08-22-052, § 388-515-1507, filed 11/3/08, effective 12/4/08.]

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-515-1508 Home and community based (HCB) waiver services authorized by home and community services (HCS)—Financial eligibility using SSI-related institutional rules. (1) If a person is not eligible for a categorically needy (CN) program under WAC 182-515-1507, the agency determines eligibility for home and community based (HCB) waiver services authorized by home and community services (HCS) using institutional medicaid rules. This section explains how a person may qualify using institutional rules.

(2) A person must meet:

(a) General eligibility requirements under WAC 182-513-1315 and 182-515-1506;

(b) The resource requirements under WAC 182-513-1350;

(c) The following income requirements:

(i) Available income must be at or below the special income level (SIL), defined under WAC 182-513-1100; or

(ii) If available income is above the SIL, net available income is no greater than the effective one-person medically needy income level (MNIL). Net income is calculated by reducing available income by:

(A) Medically needy (MN) disregards found under WAC 182-513-1345;

(B) The average monthly nursing facility state rate;

(C) Health insurance premiums, other than medicare; and

(D) Outstanding medical bills, prorated monthly over a (~~twelve-month~~) 12-month certification period, that meet the requirements of WAC 182-513-1350.

(3) The agency determines available income and income exclusions under WAC 182-513-1325, 182-513-1330, and 182-513-1340.

(4) A person eligible under this section is responsible to pay toward the cost of care and room and board, as described under WAC 182-515-1509.

(5) Current resource, income standards, and the average state nursing facility rate for long-term care are found at (~~http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, §

182-515-1508, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as WAC 182-515-1508, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1). WSR 12-21-091, § 388-515-1508, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530 and Washington state 2007-09 operating budget (SHB 1128). WSR 08-22-052, § 388-515-1508, filed 11/3/08, effective 12/4/08.]

AMENDATORY SECTION (Amending WSR 22-16-040, filed 7/27/22, effective 8/27/22)

WAC 182-515-1509 Home and community based (HCB) waiver services authorized by home and community services (HCS)—Client financial responsibility. (1) A client eligible for home and community based (HCB) waiver services authorized by home and community services (HCS) under WAC 182-515-1508 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a client's responsibility towards cost of care.

(b) Room and board is a term that refers to a client's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a client must pay toward the cost of care for HCB waiver services authorized by HCS when living in their own home:

(a) A single client who lives in their own home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to 300% of the federal benefit rate (FBR) for the supplemental security income (SSI) cash grant program and must pay the remaining available income toward cost of care after allowable deductions described in subsection (4) of this section. The Washington apple health income and resource standards chart identifies 300% of the FBR as the medical special income level (SIL).

(b) A married client who lives with the client's spouse in their own home (as defined in WAC 388-106-0010) keeps a PNA of up to the effective one-person medically needy income level (MNIL) and pays the remainder of the client's available income toward cost of care after allowable deductions under subsection (4) of this section.

(c) A married client who lives in their own home and apart from the client's spouse keeps a PNA of up to the SIL but must pay the remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living in their own home where each client receives HCB waiver services is each allowed to keep a PNA of up to the SIL but must pay remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(e) A married couple living in their own home where each client receives HCB waiver services, one spouse authorized by the developmental disabilities administration (DDA) and the other authorized by HCS, is allowed the following:

(i) The client authorized by DDA pays toward the cost of care under WAC 182-515-1512 or 182-515-1514; and

(ii) The client authorized by HCS retains the SIL and pays the remainder of the available income toward cost of care after allowable deductions under subsection (4) of this section.

(3) The agency determines how much a client must pay toward the cost of care for HCB waiver services authorized by HCS and room and board when living in a department contracted alternate living facility (ALF) defined under WAC 182-513-1100. A client:

(a) Keeps a PNA of under WAC 182-513-1105;

(b) Pays room and board up to the room and board standard under WAC 182-513-1105; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of care after it is reduced by deductions in the following order:

(a) An earned income deduction of the first \$65 plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed under chapter 388-79A WAC;

(c) Current or back child support garnished or withheld from the client's income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse as determined under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the community spouse's income to the community spouse's PNA, as calculated under WAC 182-513-1385;

(e) A monthly maintenance-needs allowance for each dependent of the institutionalized client, or the client's spouse, as calculated under WAC 182-513-1385;

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are under WAC 182-513-1350.

(5) The total of the following deductions cannot exceed the special income level (SIL) defined under WAC 182-513-1100:

(a) The PNA allowed in subsection (2) or (3) of this section, including room and board;

(b) The earned income deduction in subsection (4)(a) of this section; and

(c) The guardianship fees and administrative costs in subsection (4)(b) of this section.

(6) A client may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

(7) A client must pay the client's provider the sum of the room and board amount, and the cost of care after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

(8) A client on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the client has received in a month.

(10) Standards described in this section are found at (~~www.hea.wa.gov/health-care-services-supports/program-standard-income-and-resources~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, and 2022 c 164. WSR 22-16-040, § 182-515-1509, filed 7/27/22, effective 8/27/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-08-082, § 182-515-1509, filed 3/27/20, effective 4/27/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 c 270. WSR 17-23-039, § 182-515-1509, filed 11/8/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R § 155. WSR 17-03-116, § 182-515-1509, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as WAC 182-515-1509, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1). WSR 12-21-091, § 388-515-1509, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530 and Washington state 2007-09 operating budget (SHB 1128). WSR 08-22-052, § 388-515-1509, filed 11/3/08, effective 12/4/08.]

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-515-1511 Home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA)—
General eligibility. (1) To be eligible for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA), a person must:

- (a) Meet specific program requirements under chapter 388-845 WAC;
- (b) Be an eligible client of the DDA;
- (c) Meet the disability criteria for the supplemental security income (SSI) program under WAC 182-512-0050;
- (d) Need the level of care provided in an intermediate care facility for the intellectually disabled (ICF/ID);
- (e) Have attained institutional status under WAC 182-513-1320;
- (f) Be able to reside in the community and choose to do so as an alternative to living in an ICF/ID;
- (g) Be assessed for HCB waiver services, be approved for a plan of care, and receive HCB waiver services under (a) of this subsection, and:
 - (i) Be able to live at home with HCB waiver services; or
 - (ii) Live in a department-contracted facility with HCB waiver services, such as:
 - (A) A group home;
 - (B) A group training home;
 - (C) A child foster home, group home, or staffed residential facility;
 - (D) An adult family home (AFH); or
 - (E) An adult residential care (ARC) facility.
 - (iii) Live in the person's own home with supported living services from a certified residential provider; or

(iv) Live in the home of a contracted companion home provider.

(2) A person is not eligible for home and community based (HCB) waiver services if the person:

(a) Is subject to a penalty period of ineligibility for the transfer of an asset under WAC 182-513-1363; or

(b) Has a home with equity in excess of the requirements under WAC 182-513-1350.

(3) See WAC 182-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care (LTC) services.

(4) Current income and resource standard charts are found at (~~http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R § 155. WSR 17-03-116, § 182-515-1511, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as WAC 182-515-1511, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1). WSR 12-21-091, § 388-515-1511, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, and Washington state 2007-09 operating budget (SHB 1128). WSR 08-11-083, § 388-515-1511, filed 5/20/08, effective 6/20/08.]

AMENDATORY SECTION (Amending WSR 17-23-039, filed 11/8/17, effective 1/1/18)

WAC 182-515-1512 Home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA)—Financial eligibility if a client is eligible for a noninstitutional SSI-related categorically needy (CN) program. (1) A client is financially eligible for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) if:

(a) The client is receiving coverage under one of the following categorically needy (CN) medicaid programs:

(i) Supplemental security income (SSI) program under WAC 182-510-0001. This includes SSI clients under 1619(b) status; or

(ii) Health care for workers with disabilities (HWD) under chapter 182-511 WAC; or

(iii) SSI-related noninstitutional (CN) program under chapter 182-512 WAC; or

(iv) The foster care program under WAC 182-505-0211 and the client meets disability requirements under WAC 182-512-0050.

(b) The client does not have a penalty period of ineligibility for the transfer of an asset as under WAC 182-513-1363; and

(c) The client does not own a home with equity in excess of the requirements under WAC 182-513-1350.

(2) A client eligible under this section does not pay toward the cost of care, but must pay room and board if living in an alternate living facility (ALF) under WAC 182-513-1100.

(3) A client eligible under this section who lives in a department-contracted ALF described under WAC 182-513-1100:

(a) Keeps a personal needs allowance (PNA) under WAC 182-513-1105; and

(b) Pays towards room and board up to the room and board standard under WAC 182-513-1105.

(4) A client who is eligible under the HWD program must pay the HWD premium under WAC 182-511-1250, in addition to room and board if residing in an ALF.

(5) Current resource, income, PNA and room and board standards are found at (~~www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 c 270. WSR 17-23-039, § 182-515-1512, filed 11/8/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R § 155. WSR 17-03-116, § 182-515-1512, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as WAC 182-515-1512, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1). WSR 12-21-091, § 388-515-1512, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.575, 74.09.500, 74.09.530. WSR 08-24-069, § 388-515-1512, filed 12/1/08, effective 1/1/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, and Washington state 2007-09 operating budget (SHB 1128). WSR 08-11-083, § 388-515-1512, filed 5/20/08, effective 6/20/08.]

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-515-1513 Home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA)—Financial eligibility using SSI-related institutional rules. (1) If a person is not eligible for a categorically needy (CN) program under WAC 182-515-1512, the agency determines eligibility for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) using institutional medicaid rules. This section explains how a person may qualify using institutional rules.

(2) A person must meet:

(a) General eligibility requirements under WAC 182-513-1315 and 182-515-1511;

(b) Resource requirements under WAC 182-513-1350; and

(c) Have available income at or below the special income level (SIL) defined under WAC 182-513-1100.

(3) The agency determines available income and income exclusions according to WAC 182-513-1325, 182-513-1330, and 182-513-1340.

(4) A person eligible under this section is responsible to pay income toward the cost of care and room and board, as described under WAC 182-515-1514.

(5) Current resource, income standards are found at (~~<http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources>~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-515-1513, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as § 182-515-1513, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1). WSR 12-21-091, § 388-515-1513, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, and Washington state 2007-09 operating budget (SHB 1128). WSR 08-11-083, § 388-515-1513, filed 5/20/08, effective 6/20/08.]

AMENDATORY SECTION (Amending WSR 20-08-082, filed 3/27/20, effective 4/27/20)

WAC 182-515-1514 Home and community based (HCB) services authorized by the developmental disabilities administration (DDA)—Client financial responsibility. (1) A client eligible for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) under WAC 182-515-1513 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a client's responsibility towards cost of care.

(b) Room and board is a term that refers to a client's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a client must pay toward the cost of care for home and community based (HCB) waiver services authorized by the DDA when the client is living at home, as follows:

(a) A single client who lives at home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to the special income level (SIL) defined under WAC 182-513-1100.

(b) A single client who lives at home on the roads to community living program authorized by DDA keeps a PNA up to the SIL but must pay any remaining available income toward cost of care after allowable deductions described in subsection (4) of this section.

(c) A married client who lives with the client's spouse at home (as defined in WAC 388-106-0010) keeps a PNA of up to the SIL but must pay any remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living at home where each client receives HCB waiver services, one authorized by DDA and the other authorized by home and community services (HCS) is allowed the following:

(i) The client authorized by DDA keeps a PNA of up to the SIL but must pay any remaining available income toward the client's cost of care after allowable deductions in subsection (4) of this section; and

(ii) The client authorized by HCS pays toward the cost of care under WAC 182-515-1507 or 182-515-1509.

(3) The agency determines how much a client must pay toward the cost of care for HCB waiver services authorized by DDA and room and board when the client is living in a department-contracted ALF defined under WAC 182-513-1100. A client:

(a) Keeps a PNA under WAC 182-513-1105;

(b) Pays room and board up to the room and board standard under WAC 182-513-1105; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of care after it is reduced by allowable deductions in the following order:

(a) An earned income deduction of the first \$65, plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed under chapter 388-79A WAC;

(c) Current or back child support garnished or withheld from the client's income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse under WAC 182-513-1385. If the community spouse is on long-term care services, the allocation is limited to an amount that brings the community spouse's income to the community spouse's PNA;

(e) A monthly maintenance-needs allowance for each dependent of the institutionalized client, or the client's spouse, as calculated under WAC 182-513-1385; and

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are under WAC 182-513-1350.

(5) The total of the following deductions cannot exceed the SIL defined under WAC 182-513-1100:

(a) The PNA described in subsection (2) or (3) of this section, including room and board;

(b) The earned income deduction in subsection (4)(a) of this section; and

(c) The guardianship fees and administrative costs in subsection (4)(b) of this section.

(6) A client may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

(7) A client must pay the client's provider the sum of the room and board amount, the cost of care after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

(8) A client on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the client has received in a month.

(10) Standards described in this section are found at (~~www.hea.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-08-082, § 182-515-1514, filed 3/27/20, effective 4/27/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 c 270. WSR 17-23-039, § 182-515-1514, filed 11/8/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-515-1514, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as § 182-515-1514, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1). WSR 12-21-091, § 388-515-1514, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.575, 74.09.500, 74.09.530. WSR 08-24-069, § 388-515-1514, filed 12/1/08, effective 1/1/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, and Washington state 2007-09 operating budget (SHB 1128). WSR 08-11-083, § 388-515-1514, filed 5/20/08, effective 6/20/08.]

OTS-4212.1

AMENDATORY SECTION (Amending WSR 22-21-043, filed 10/11/22, effective 1/1/23)

WAC 182-517-0100 Federal medicare savings programs. (1) Available programs. The medicaid agency offers eligible clients the following medicare savings programs (MSPs):

- (a) The qualified medicare beneficiary (QMB) program;
- (b) The specified low-income medicare beneficiary (SLMB) program;
- (c) The qualified individual (QI-1) program; and
- (d) The qualified disabled and working individuals (QDWI) program.

(2) Eligibility requirements.

(a) To be eligible for an MSP, a client must:

- (i) Be entitled to medicare Part A; and
- (ii) Meet the general eligibility requirements under WAC

182-503-0505.

(b) To be eligible for QDWI, a client must be under age 65.

(c) Income limits.

(i) Income limits for all MSPs are found at (~~https://www.hca.wa.gov/health-care-services-and-supports/program-administration/program-standard-income-and-resources~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

(ii) If a client's countable income is less than or equal to 100 percent of the federal poverty level (FPL), the client is income eligible for the QMB program.

(iii) If a client's countable income is over 100 percent of the FPL, but does not exceed 120 percent of the FPL, the client is income eligible for the SLMB program.

(iv) If a client's countable income is over 120 percent of the FPL, but does not exceed 135 percent of the FPL, the client is income eligible for the QI-1 program.

(v) If a client's countable income is over 135 percent of the FPL, but does not exceed 200 percent of the FPL, the client is income eligible for the QDWI program if the client is employed and meets disability requirements described in WAC 182-512-0050.

(d) The federal MSPs do not require a resource test.

(3) MSP income eligibility determinations.

(a) The agency has two methods for determining if a client is eligible for an MSP:

(i) The agency first determines if the client is eligible based on SSI-rated methodologies under chapter 182-512 WAC. Under this method, the agency calculates the household's net countable income and compares the result to the one-person standard. However, if the spouse's income is deemed to the client, or if both spouses are applying, the household's net countable income is compared to the two-person standard.

(ii) If the client is not eligible under the methodology described in (a)(i) of this subsection, the agency compares the same countable income, as determined under (a)(i) of this subsection, to the appropriate FPL standard based on family size. The number of individuals that count for family size include:

(A) The client;

(B) The client's spouse who lives with the client;

(C) The client's dependents who live with the client;

(D) The spouse's dependents who live with the spouse, if the spouse lives with the client; and

(E) Any unborn children of the client, or of the spouse if the spouse lives with the client.

(b) Under both eligibility determinations, the agency follows the rules for SSI-related people under chapter 182-512 WAC for determining:

(i) Countable income;

(ii) Availability of income;

(iii) Allowable income deductions and exclusions; and

(iv) Deemed income from and allocated income to a nonapplying spouse and dependents.

(c) The agency uses the eligibility determination that provides the client with the highest level of coverage.

(i) If the MSP applicant is eligible for QMB coverage under (a)(i) of this subsection, the agency approves the coverage.

(ii) If the MSP applicant is not eligible for QMB coverage, the agency determines if the applicant is eligible under (a)(ii) of this subsection.

(iii) If neither eligibility determination results in QMB coverage, the agency uses the same process to determine if the client is eligible under any other MSP.

(d) When calculating income under this section:

(i) The agency subtracts client participation from a long-term care client's countable income under WAC 182-513-1380, 182-515-1509, or 182-515-1514.

(ii) The agency counts the annual Social Security cost-of-living increase beginning April 1st each year.

(4) Covered costs.

(a) The QMB program pays:

(i) Medicare Part A and Part B premiums using the start date in WAC 182-504-0025; and

(ii) Medicare coinsurance, copayments, and deductibles for Part A, Part B, and Part C, subject to the limitations in WAC 182-502-0110.

(b) If the client is eligible for both SLMB and another medicaid program:

(i) The SLMB program pays the Part B premiums using the start date in WAC 182-504-0025; and

(ii) The medicaid program pays medicare coinsurance, copayments, and deductibles for Part A, Part B, and Part C subject to the limitations in WAC 182-502-0110.

(c) If the client is only eligible for SLMB, the SLMB program covers medicare Part B premiums using the start date in WAC 182-504-0025.

(d) The QI-1 program pays medicare Part B premiums using the start date in WAC 182-504-0025 until the agency's federal funding allotment is spent. The agency resumes QI-1 benefit payments the beginning of the next calendar year.

(e) The QDWI program covers medicare Part A premiums using the start date in WAC 182-504-0025.

(5) MSP eligibility. Medicaid eligibility may affect MSP eligibility:

(a) QMB and SLMB clients may receive medicaid and still be eligible to receive QMB or SLMB benefits.

(b) QI-1 and QDWI clients who begin receiving medicaid are no longer eligible for QI-1 or QDWI benefits, but may be eligible for the state-funded medicare buy-in program under WAC 182-517-0300.

(6) Right to request administrative hearing. A person who disagrees with agency action under this section may request an administrative hearing under chapter 182-526 WAC.

[Statutory Authority: RCW 41.05.021, 41.05.160, and 2022 c 297 § 211(79). WSR 22-21-043, § 182-517-0100, filed 10/11/22, effective 1/1/23. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-12-085, § 182-517-0100, filed 6/4/19, effective 7/15/19; WSR 16-13-157, § 182-517-0100, filed 6/22/16, effective 7/23/16. WSR 11-23-091, recodified as § 182-517-0100, filed 11/17/11, effective 11/21/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500 and 42 U.S.C. 9902(2). WSR 06-16-026, § 388-478-0085, filed 7/24/06, effective 8/24/06; WSR 05-17-157, § 388-478-0085, filed 8/22/05, effective 9/22/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 42 U.S.C. 9902(2). WSR 04-17-076, § 388-478-0085, filed 8/13/04, effective 9/13/04. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.057, 74.09.530, and Section 673(2) (42 U.S.C. 9902(2)). WSR 01-18-056, § 388-478-0085, filed 8/30/01, effective 9/30/01; WSR 00-17-085, § 388-478-0085, filed 8/14/00, effective 9/14/00; WSR 99-19-005, § 388-478-0085, filed 9/3/99, effective 10/4/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0085, filed 7/31/98, effective 9/1/98. Formerly WAC 388-517-1715, 388-517-1730, 388-517-1750 and 388-517-1770.]

WSR 23-04-035

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed January 25, 2023, 11:34 a.m., effective February 25, 2023]

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

Purpose: The agency is amending the rule to correct the website address at which individuals will learn how to determine the value of a life estate. The correct address is <https://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/determining-value-life-estates>.

Citation of Rules Affected by this Order: Amending WAC 182-513-1445.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-23-083 on November 14, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 25, 2023.

Wendy Barcus
Rules Coordinator

OTS-4177.1

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1445 Designating a protected asset and required proof. (1) Complete a department of social and health services (DSHS) 10-438 long-term care partnership (LTCP) asset designation form listing assets and the full fair market value that are earmarked as protected at the time of initial application for long-term services and supports under medicaid.

(a) The full fair market value (FMV) of real property or interests in real property will be based on the current assessed value for property tax purposes for real property. A professional appraisal by a licensed appraiser can establish the current value if the assessed value is disputed.

(b) The value of a life estate in real property is determined using the life estate tables found at (~~<http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/determining-value-life-estates>~~) www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/determining-value-life-estates.

(c) If you own an asset with others, you can designate the value of your pro rata equity share.

(d) If the dollar amount of the benefits paid under a LTC policy is greater than the fair market value of all assets protected at the time of the application for long-term care medicaid, you may designate additional assets for protection under this section. The DSHS LTC asset designation form must be submitted with the updated assets indicated along with proof of the current value of designated assets.

(e) The value of your assets protected for you under your LTC partnership policy do not carry over to your spouse should the spouse need medicaid LTC services during or after your lifetime. If your surviving spouse has an LTC partnership policy the spouse may designate assets based on the dollar amount paid under the spouse's own policy.

(f) Assets designated as protected under this subsection will not be subject to transfer penalties under WAC 182-513-1363.

(2) Proof of the current fair market value of all protected assets is required at the initial application and each annual review.

(3) Submit current verification from the issuer of the LTC policy of the current dollar value paid toward LTC benefits. This verification is required at application and each annual eligibility review.

(4) Any person or the personal representative of the person's estate who asserts that an asset is protected has the initial burden of:

(a) Documenting and proving by convincing evidence that the asset or source of funds for the asset in question was designated as protected;

(b) Demonstrating the value of the asset and the proceeds of the asset beginning from the time period the LTC partnership has paid out benefits to the present; and

(c) Documenting that the asset or proceeds of the asset remained protected at all times.

[Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1445, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as § 182-513-1445, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, section 6014 of the Deficit Reduction Act of 2005, WAC 284-83-140, 284-83-400, 284-83-405, 284-83-410, 284-83-415, 284-83-420, and chapter 48.83 RCW. WSR 11-23-106, § 388-513-1445, filed 11/18/11, effective 12/19/11.]

WSR 23-04-040
PERMANENT RULES
BELLEVUE COLLEGE

[Filed January 25, 2023, 5:05 p.m., effective February 25, 2023]

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

Purpose: Chapter 132H-126 WAC, Student code of conduct, policy 2050, revisions to comply with federal and state changes. On August 10, 2021, a decision from a federal district vacated a portion of the 2020 amendments to the Title IX regulations related to cross-examination, 34 C.F.R. § 106.45 (b)(6)(i). This needs to be removed from the code. On March 15, 2022, President Biden signed the Violence Against Women Act Reauthorization Act of 2022 (VAWA) into law. This changed the definition of domestic violence and added definitions for different aspects of domestic abuse. VAWA takes effect on October 1, 2022. On March 30, 2022, Governor Inslee signed Sam's Law (HB [2SHB] 1751) into law. This bill requires the college to update the definition of hazing and extend the prohibition to include off-campus hazing.

Citation of Rules Affected by this Order: New WAC 132H-126-111; and amending WAC 132H-126-030, 132H-126-040, 132H-126-100, 132H-126-120, 132H-126-130, 132H-126-300, 132H-126-400, 132H-126-410, and 132H-126-460.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140.

Adopted under notice filed as WSR 22-20-105 on October 4, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 1 [0]; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 7, Repealed 0.

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

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

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

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

Date Adopted: January 25, 2023.

Loreen M. Keller
Associate Director
Policies and Special Projects

OTS-4125.2

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-030 Statement of jurisdiction. (1) The student conduct code shall apply to ((~~student~~)) conduct by students or student groups that occurs:

- (a) On college premises;
- (b) At or in connection with college-sponsored activities; or

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

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

(3) The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

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

(5) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

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

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 19-01-082, § 132H-126-030, filed 12/17/18, effective 1/17/19.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

WAC 132H-126-040 Definitions. The following definitions shall apply for the purposes of this student conduct code:

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

(2) "**College official**" is an employee of the college performing assigned administrative, security, professional, or paraprofessional duties.

(3) "**College premises**" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, other property owned, used, or controlled by the college, study abroad program, retreat, and conference sites, and college-sponsored and/or college-hosted online platforms.

(4) "**Complainant**" is a student or another member of the college community who is allegedly directly affected by a reported violation of this student conduct code. The complainant may be the reporting party, but not necessarily; witnesses or other third parties may report concerns. In any case involving a report of sexual misconduct as defined in this student conduct code, a complainant is afforded cer-

tain rights under this student conduct code including, but not limited to:

- (a) The right to be informed of all orders issued in the disciplinary case in which this person is a complainant;
- (b) The right to appeal a disciplinary decision; and
- (c) The right to be accompanied by a process advisor.
- (5) **"Conduct review officer"** is the provost for academic and student affairs or designee or other college administrator designated by the president to be responsible for receiving and reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.
- (6) **"Disciplinary action"** is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.
- (7) **"Disciplinary appeal"** is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of (~~ten~~) 10 instructional days or a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings (BAP).
- (8) **"Filing"** is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official. Unless otherwise provided, filing shall be accomplished by:
 - (a) Hand delivery of the document to the specified college official or college official's assistant; or
 - (b) Sending the document by email and first class mail to the specified college official's college email and office address.
- (9) **"Process advisor"** is a person selected by a respondent or a complainant to provide support and guidance during disciplinary proceedings under this student conduct code.
- (10) **"Respondent"** is a student against whom disciplinary action is initiated. Each respondent is afforded certain rights including, but not limited to:
 - (a) The right to be presumed not responsible for the reported misconduct unless or until a determination of responsibility is reached after completion of the disciplinary process;
 - (b) The right to be informed of all orders issued in the respondent's disciplinary case;
 - (c) The right to appeal a disciplinary decision; and
 - (d) The right to be accompanied by a process advisor.
- (11) **"Service"** is the process by which a document is officially delivered to a party. Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail. Unless otherwise provided, service upon a party shall be accomplished by:
 - (a) Hand delivery of the document to the party; or
 - (b) Sending the document by email and by certified mail or first class mail to the party's last known address.
- (12) **"Sexual misconduct"** includes prohibited sexual- or gender-based conduct by a student including, but not limited to, sexual harassment, sexual violence, sexual exploitation, indecent exposure, dating violence, or domestic violence.

(13) **"Student"** includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw, graduate, or complete courses after the date of a reported violation, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(14) **"Student conduct officer"** is a college administrator designated by the president or provost for academic and student affairs or designee to be responsible for implementing and enforcing the student conduct code. The president or provost for academic and student affairs or designee is authorized to reassign any and all of the student conduct officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

(15) **"Student group"** is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(16) **"The president"** is the president of the college. The president is authorized to delegate any and all of their responsibilities, as set forth in this chapter, as may be reasonably necessary.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-040, filed 12/2/20, effective 1/2/21; WSR 19-01-082, § 132H-126-040, filed 12/17/18, effective 1/17/19.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

WAC 132H-126-100 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits or attempts to commit, or aids, abets, incites, encourages, or assists another person to commit the following acts of misconduct:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) **Abuse in later life.**

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(b) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(c) Does not include self-neglect.

(3) **Abuse of the student conduct process.**

(a) Abuse of the student conduct process includes:

(i) Attempting to influence the impartiality or participation of any decision maker including a student conduct officer, conduct review officer, or presiding student conduct committee member;

(ii) Influencing or attempting to influence another person to commit an abuse of the student conduct process;

(iii) Harassment or intimidation of any participant in the student conduct process; or

(iv) Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in the conduct process.

(b) This provision does not apply to reports made or information provided in good faith, even if the respondent is ultimately found not responsible in that conduct proceeding.

~~((3))~~ (4) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic consequences, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic consequences for academic dishonesty can be found in the course syllabus and any applicable program handbook.

(a) **Cheating.** Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) **Plagiarism.** Taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. May also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) **Fabrication.** Falsifying data, information, or citations in completing an academic assignment. Fabrication also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) **Multiple submissions.** Submitting the same work in separate courses without the express permission of the instructor(s).

(e) **Deliberate damage.** Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

~~((4))~~ (5) **Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

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

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

(c) Furnishing false information, or failing to furnish correct information, in response to the reasonable request or requirement of a college official or employee.

~~((5))~~ (6) **Alcohol.** Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

~~((6))~~ (7) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, text messaging, social media sites, or applications (apps), to harass, abuse, bully, or engage in other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include,

but are not limited to, unauthorized monitoring of another's electronic communications or computer activities directly or through spyware, sending threatening emails or texts, disrupting electronic communications with spam or by sending a computer virus, or sending false emails or texts to third parties using another's identity (spoofing).

~~((7))~~ **(8) Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

~~((8))~~ **(9) Discriminatory harassment.**

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; honorably discharged veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

~~((9))~~ **(10) Disorderly conduct.** Conduct that is disorderly, lewd, or indecent; disturbing the peace; or assisting or encouraging another person to disturb the peace.

~~((10))~~ **(11) Disruption or obstruction.** Disruption or obstruction of any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity, or any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

~~((11))~~ **(12) Domestic violence.** ~~((Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person))~~ Use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psycholog-

ical, economic, or technological abuse that may or may not constitute criminal behavior, by a person:

(a) Who is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington;

(b) Who is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(c) Who shares a child in common with the victim; or

(d) Who commits acts against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

~~((12))~~ (13) **Economic abuse.** In the context of domestic violence dating violence, economic abuse includes behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:

(a) Restrict a person's access to money, assets, credit, or financial information;

(b) Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or

(c) Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

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

~~((13))~~ (15) **Failure to comply with directive.** Failure to comply with the reasonable direction of a college official or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

~~((14))~~ (16) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, or duration of the comments or actions.

~~((15))~~ (17) **Hazing.** ~~((Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is~~

likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.

~~(16))~~ (a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or

(ii) Any pastime or amusement engaged in with respect to such a student group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

(18) Indecent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

~~((17) **Marijuana**)~~ **(19) Cannabis or other drugs.**

(a) ~~((**Marijuana**))~~ **Cannabis.** The use, possession, growing, delivery, sale, or being visibly under the influence of ~~((**marijuana**))~~ cannabis or the psychoactive compounds found in ~~((**marijuana**))~~ cannabis and intended for human consumption, regardless of form, or the possession of ~~((**marijuana**))~~ cannabis paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of ~~((**marijuana**))~~ cannabis, federal law prohibits such use on college premises or in connection with college activities.

(b) **Drugs.** The use, possession, production, delivery, sale, or being under the influence of any prescription drug or possession of drug paraphernalia, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

~~((18))~~ **(20) Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized opening of a file, message, or other item;

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

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

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

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

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

(g) Use of computer time or resources in violation of applicable copyright or other law;

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

(i) Failure to comply with the college's electronic use policy.

~~((19))~~ (21) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism of, or other nonaccidental damaging or destruction of college property or the property of another person. Property, for purposes of this subsection, also includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

~~((20))~~ (22) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported a violation of this code or college policy, provided information about a reported violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

~~((21))~~ (23) **Safety violations.** Safety violations include committing any reckless or unsafe act that endangers others, failing to follow established safety procedures (e.g., failing to evacuate during a fire alarm), or interfering with or otherwise compromising any college equipment relating to the safety and security of the campus community including, but not limited to, tampering with fire safety or first-aid equipment, or triggering false alarms or other emergency response systems.

~~((22))~~ (24) **Sexual exploitation.** Taking nonconsensual or abusive sexual advantage of another for the respondent's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, when the behavior does not otherwise constitute one of the other sexual misconduct offenses described herein. Examples of sexual exploitation may include, but are not limited to:

(a) Invading another person's sexual privacy;

(b) Prostituting another person;

(c) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;

(d) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;

(e) Engaging in voyeurism. A person commits voyeurism if they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where the person has a reasonable expectation of privacy;

(f) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection; or

(g) Causing the nonconsensual indecent exposure of another person, as defined by subsection ~~((13))~~ (18) of this section.

~~((23))~~ (25) **Sexual harassment.** Unwelcome sexual- or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual- or gender-based nature that is sufficiently severe, persistent or pervasive as to:

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

(b) Alter the terms or conditions of employment; or

(c) Create an intimidating, hostile, or offensive environment for other campus community members.

For sexual harassment prohibited under Title IX, refer to WAC 132H-126-410.

~~((24))~~ (26) **Sexual violence.** A type of sexual harassment that includes nonconsensual intercourse, nonconsensual sexual contact, and sexual coercion.

(a) Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity.

(i) Effective consent cannot result from force, or threat of physical force, coercion, dishonesty, or intimidation.

(ii) Physical force means someone is physically exerting control of another person through violence. Physical force includes, but is not limited to, hitting, kicking, and restraining.

(iii) Threatening someone to obtain consent for a sexual act is a violation of this policy. Threats exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual activity to which they otherwise would not have consented.

(iv) Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(v) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

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

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

(d) **Sexual coercion.** Unreasonably pressuring another for sexual contact. When a complainant makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point is presumptively unreasonable and coercive. Other examples of coercion may include using blackmail or extortion, or administering drugs and/or alcohol to overcome resistance or gain consent to sexual activity. Sexual contact that is the result of coercion is nonconsensual.

(e) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of ~~((eighteen))~~ 18.

(f) **Statutory rape.** Consensual sexual intercourse between someone who is ~~((eighteen))~~ 18 years of age or older and someone who is under the age of ~~((sixteen))~~ 16.

~~((25))~~ (27) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

~~((26))~~ (28) **Technological abuse.** An act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology including, but not limited to: Internet-enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.

(29) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products is prohibited in any building owned, leased, or operated by the college or in any location where such use is prohibited, including ~~((twenty-five))~~ 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

~~((27))~~ (30) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

~~((28))~~ (31) **Unauthorized recording.** The following conduct is prohibited:

(a) Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where that person has a reasonable expectation of privacy (e.g., restroom or residence hall room).

(b) Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.

~~((29))~~ (32) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including on-campus housing policies and college traffic and parking rules.

~~((30))~~ (33) **Weapons.**

(a) Possessing, holding, wearing, transporting, storing, or exhibiting any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(i) Commissioned law enforcement personnel; or

(ii) Legally authorized military personnel while in performance of their official duties.

(b) Students with legally issued concealed weapons permits may store their weapons in vehicles parked in accordance with RCW 9.41.050 on campus provided the vehicle is locked and the weapon is concealed from view.

(c) The president or delegate may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to any terms or conditions incorporated therein.

(d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-100, filed 12/2/20, effective 1/2/21; WSR 19-01-082, § 132H-126-100, filed 12/17/18, effective 1/17/19.]

NEW SECTION

WAC 132H-126-115 Hazing prohibited—Sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 132H-126-100(17).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(d) Student groups found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

[]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

WAC 132H-126-120 Initiation of disciplinary action. (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) Upon receipt, a student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) **Student on student sexual misconduct.** The college's Title IX coordinator or designee shall investigate complaints or other reports of sexual misconduct by a student against a student.

(b) **Sexual misconduct involving an employee.** The college's human resource office or designee shall investigate complaints or other reports of sexual misconduct in which an employee is either the complainant or respondent.

(c) Hazing by student groups. A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(d) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for student disciplinary action.

~~((d))~~ (e) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done in compliance with federal and state laws and without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community.

(3) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time.

(4) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(a) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

(b) The student conduct officer, prior to initiating disciplinary action in cases involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

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

(6) A student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting.

(a) The notice shall briefly describe the factual allegations, the provision(s) of the student conduct code the respondent is reported to have violated, the range of possible sanctions for the reported violation(s), and it will specify the time and location of the meeting.

(b) At the disciplinary meeting, the student conduct officer will present the allegations to the respondent, and the respondent shall be afforded an opportunity to explain what occurred.

(c) If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(7) Within (~~ten~~) 10 days of the initial disciplinary meeting and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting the decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended if the student conduct officer, based on information presented at the disciplinary meeting, concludes that additional investigation is necessary. If the period is extended, the student conduct officer will notify the respondent, and the complainant in cases involving allegations of sexual misconduct, of this extension, the reason(s), and the anticipated extension time frame.

(8) A student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), with or without condition(s), as described in WAC 132H-126-110 and 132H-126-115.

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

(9) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant of the decision, the reasons for the decision, and any disciplinary sanctions and/or conditions that may have been imposed upon the respondent, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-120, filed 12/2/20, effective 1/2/21; WSR 19-01-082, § 132H-126-120, filed 12/17/18, effective 1/17/19.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

WAC 132H-126-130 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within (~~twenty-one~~) 21 days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

(3) The parties to an appeal shall be the respondent and the student conduct officer. If a case involves allegations of sexual misconduct, a complainant also has a right to appeal a disciplinary decision or to intervene in the respondent's appeal of a disciplinary decision to the extent the disciplinary decision, sanctions or conditions relate to allegations of sexual misconduct against the respondent.

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

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

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

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

(a) The imposition of disciplinary suspensions in excess of (~~ten~~) 10 instructional days or, for a student group, suspensions in excess of two academic quarters;

(b) Dismissals or, for a student group, deprivation of recognition or approval granted by the college; and

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

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

(a) Residence hall dismissals;

(b) Residence hall suspensions;

(c) Suspensions of (~~ten~~) 10 instructional days or less;

(d) Disciplinary probation;

(e) Written reprimands;

(f) Sanctions against a student group, other than those set forth in subsection (7) (a) and (b) of this section;

(g) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and

(~~(g)~~) (h) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to the respondent.

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

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

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

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

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

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

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-130, filed 12/2/20, effective 1/2/21; WSR 19-01-082, § 132H-126-130, filed 12/17/18, effective 1/17/19.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

WAC 132H-126-400 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132H-126-100 through 132H-126-340, these supplemental procedures shall take precedence. Bellevue College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-400, filed 12/2/20, effective 1/2/21.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

WAC 132H-126-410 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

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

(c) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of ((eighteen)) 18.

(d) **Statutory rape.** Consensual sexual intercourse between someone who is ((eighteen)) 18 years of age or older and someone who is under the age of ((sixteen)) 16.

(4) **Domestic violence.** ~~((Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim))~~ Use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person:

(a) Who is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington;

(b) Who is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(c) Who shares a child in common((, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person)) with the victim; or

(d) Who commits acts against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

(6) **Economic abuse.** In the context of domestic violence dating violence, economic abuse includes behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:

(a) Restrict a person's access to money, assets, credit, or financial information;

(b) Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or

(c) Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

(7) **Technological abuse.** An act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology including, but not limited to: Internet-enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.

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

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-410, filed 12/2/20, effective 1/2/21.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

WAC 132H-126-460 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

~~((6))~~ (5) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-460, filed 12/2/20, effective 1/2/21.]

WSR 23-04-041

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed January 26, 2023, 6:53 a.m., effective April 1, 2023]

Effective Date of Rule: April 1, 2023.

Purpose: This rule making order amends chapter 16-228 WAC, General pesticide rules, by:

(1) Restructuring the **single** penalty schedule into three separate schedules based on the violation type and a flat \$250 penalty for repeat recordkeeping errors.

(2) Increasing the monetary penalties for certain types of penalties within the schedules, not only to account for inflation of the dollar since 1999, but also to match the civil penalty to the severity of the violation. The monetary penalty and license suspension days generally double at each level if someone repeats the same violation within a three-year period. These are indicated in the proposed rules as "first," "second," and "third or more violations." For the purpose of clarity, only the first violation penalties are noted in this CR-103P:

The recordkeeping penalty and three proposed schedules are:

(a) Recordkeeping—violations would be assessed a flat penalty of \$250.

(b) Licensing violations—violations would be assessed via the schedule in Table I. The table for unlicensed is separated into three columns:

(i) A commercial applicator operating unlicensed—the first level is \$2,500.

(ii) A pesticide dealer distributing restricted use pesticides unlicensed—the first level is \$1,000.

(iii) All other violations for operating unlicensed—the first level is \$1,000.

(c) Worker protection standard (WPS) violations would be assessed via the schedule in Table II. The table for WPS is separated into two columns:

(i) WPS violations assessed under the first column are for safety violations that could affect the health and safety of workers or handlers. The six specific WAC violations being enforced are listed in this column—first level of these violations is \$1,000.

(ii) WPS violations, all other violations that warrant a civil penalty—the first level is \$500.

(d) All other violations are assessed in Table III—Base penalties. The table is divided into three columns.

(i) Human exposure—the first level is \$1,500 and five-day license suspension.

(ii) Adverse effects probable (other than human exposure)—the first level is \$1,000 and four-day license suspension.

(iii) Adverse effects not probable—the first level is \$300.

The current penalty schedule has a "fourth or more" level of violation. The fourth level was removed from the proposed penalty schedules as this level of violation is seldom reached. The proposed penalty schedules instead will list "Third or more" level of violation.

(3) Clarifying, per existing statute RCW 15.58.330 and 17.21.315, that each violation is a separate and distinct violation, and that even though several violations may occur in a single incident, each

violation is individually and separately subject to the maximum civil penalty of \$7,500.

(4) Amending a section listing aggravating and mitigating factors that the department may consider when calculating penalties in accordance with the severity of the violation. Clarifies that the department may deviate from the penalty schedule, proportionally adjust, and may mitigate (decrease) or aggravate (increase) the penalty by 25 percent including, but not limited to, the factors listed in rule.

(5) Amending definitions specific to penalties:

(a) Amending "adverse effects" to include the terms "mishap, endangerment, and beneficial pollinating insects."

(6) Adding definitions specific to penalties—in order to clarify the meaning of terms found in penalty rules, the department is proposing:

(a) Adding a definition of beneficial pollinating insects, per RCW 17.21.445 (1)(d) passed in 2021, which states "Evaluate and, if necessary, update the pesticide civil penalty matrix related to pollinator death or damage due to the misuse of pesticides and ensure pollinator health protections are included."

(b) For clarity, adding definitions for the following terms and phrases that are found in the penalty rules: "Civil penalty," "human exposure," "license in good standing," "pesticide exposure," "revoke or revocation," "suspend or suspension," and "unlicensed."

(7) Amendments for consistent language; for all instances of wording similar to "... the provisions of chapter 15.58 or 17.21 RCW or the rules adopted thereunder ..." These instances were all changed to be identical.

(8) Amending the rule titles to a statement instead of a question format. For instance, "What are the definitions specific to penalties?" was changed to "Definitions specific to penalties."

(9) Correcting how numbers are displayed in rule, per new office of the code reviser standards. For instance, changing "one thousand dollars" to "\$1,000."

Citation of Rules Affected by this Order: New WAC 16-228-1126, 16-228-1127, 16-228-1128, 16-228-1129 and 16-228-1131; and amending WAC 16-228-1100, 16-228-1110, 16-228-1115, 16-228-1120, 16-228-1125, 16-228-1130, and 16-228-1150.

Statutory Authority for Adoption: RCW 15.58.040, 17.21.030.

Adopted under notice filed as WSR 22-24-081 on December 5, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 7, Repealed 0.

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

Date Adopted: January 25, 2023.

Derek I. Sandison
Director

OTS-4210.3

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1100 ((What is the)) Basis for penalties(?). For the purpose of fair, uniform determination of penalty as set forth in WAC 16-228-1110 through 16-228-1150, the director hereby declares:

(1) Regulatory action is necessary to deter violations of the pesticide laws and rules, and to educate persons about the consequences of such violation(s); and

(2) Any regulatory action taken by the department against any person who violates the provisions of (~~chapter 17.21 RCW,~~) chapter 15.58 (~~RCW, and/or~~) or 17.21 RCW, or the rules adopted thereunder shall be commensurate with the seriousness of the violation under the circumstances; and

(3) Each person shall be treated fairly in accordance with the rules set forth in this chapter.

[Statutory Authority: Chapters 17.21, 15.58, 34.05 RCW. WSR 03-22-029, § 16-228-1100, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 15.54, 15.58 and 17.21 RCW. WSR 99-22-002, § 16-228-1100, filed 10/20/99, effective 11/20/99.]

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1110 ((What are the)) Definitions specific to penalties(?). In addition to the definitions set forth in RCW 17.21.020, 15.58.030, and WAC 16-228-1010, the following shall apply to WAC 16-228-1100 through 16-228-1150:

(1) "Adverse effect(s)" means that the alleged activity or mishap actually causes(~~(r)~~) or creates the possibility of damage, injury, or a public health threat((r)) to, or endangerment of, humans, animals, plants, property (~~(e#)~~), the environment, or beneficial pollinating insects. (~~(In those situations involving)) This term includes circumstances when~~ a wood destroying organism inspection(~~(r, adverse effects exist when the inspection))~~ has been performed in a faulty, careless or negligent manner.

(2) "Beneficial pollinating insects" means those insects commonly considered as pollinators. This term does not include any of the following:

(a) Insects in any life stage that are presenting a current harm to humans, animals, plants, property, or the environment;

(b) Insects in any life stage normally considered to be a pest;

(c) Insects which the director declares to be a pest; and

(d) Any pollinating insect that may be incidentally adversely affected by any properly licensed public health vector control program as a result of that program's normal operations done in compliance with the law and which operates with reasonable care.

(3) "Civil penalty" means a monetary penalty administratively issued by a regulatory agency for noncompliance with state or federal law, or rules. The term does not include any criminal penalty, damage

assessment, wages, premiums, or taxes owed, or interest or late fees on any existing obligation.

(4) "Human exposure" means a pesticide exposure to humans caused by a violation of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder.

(5) "Level of violation" means that the alleged violation is a first, second, third, (~~fourth,~~) or more violation(s). For purposes of calculating the level of violation, prior incidences will be measured from the date that a final order or stipulated order resolved the prior violation(s), and not from the date that the incident(s) occurred.

(a) "First violation" (~~(. This)~~) means the alleged violator has committed no prior (~~(incident(s) which resulted in a violation or violations)~~) incident resulting in a notice of intent within three years of committing the current alleged violation.

(b) "Second violation" (~~(. This)~~) means the alleged violator committed one prior incident (~~(which resulted)~~) resulting in a (~~(violation or violations)~~) notice of intent within three years of committing the current alleged violation.

(c) "Third violation" (~~(. This)~~) means the alleged violator committed two or more prior incidents (~~(which resulted in a violation or violations)~~) resulting in a notice of intent within three years of committing the current alleged violation.

~~((d) Fourth violation. This means the alleged violator committed three prior incidents which resulted in a violation or violations within three years of committing the current alleged violation.~~

~~(e) For purposes of calculating the level of violation, prior incidents will be measured from the date that a final order or stipulated order resolved the prior violation(s), and not from the date that the incident(s) occurred.~~

~~(3))~~ (6) "License in good standing" means an unexpired license that is not currently suspended or revoked by the director.

(7) "Not probable" means that the alleged violator's conduct more likely than not did not or would not have caused an adverse effect.

~~((4))~~ (8) "Notice of correction" means a document issued by the department that describes a condition or conduct that is not in compliance with chapter 15.58 or 17.21 RCW, or the rules adopted thereunder, but that is not subject to civil penalties as provided for in RCW 43.05.110. A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.

(9) "Notice of intent" means a document issued by the department that alleges specific violations of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder. A notice of intent is a formal enforcement document issued with the intent to assess civil penalties to the alleged violator and/or to suspend, deny, or revoke the alleged violator's pesticide license.

(10) "Pesticide exposure" means intentional or unintentional contact with pesticides caused by a violation of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder.

(11) "Probable" means that the alleged violator's conduct more likely than not did or would have caused an adverse effect.

~~((5))~~ (12) "Revoke" or "revocation" means the termination of a license for violations of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder. The department will not reactivate revoked licenses.

(13) "Suspend" or "suspension" means the abeyance of a license for a specific period of time for violations of chapter 15.58 or 17.21

RCW, or the rules adopted thereunder. The department may reactivate suspended licenses following the period of suspension.

(14) "Unlicensed" means any person or apparatuses that does not hold or has not been issued a license in good standing for an activity where a license is required by chapter 15.58 or 17.21 RCW, or the rules adopted thereunder.

(15) "Violation" means commission of an act or acts prohibited by ((chapter 17.21 RCW, chapter 15.58 RCW, and/or rules adopted thereunder.

(6) "Civil penalty" means a monetary penalty administratively issued by a regulatory agency for noncompliance with state or federal law, or rules. The term does not include any criminal penalty, damage assessment, wages, premiums, or taxes owed, or interest or late fees on any existing obligation.

(7) "Notice of Correction" means a document issued by the department that describes a condition or conduct that is not in compliance with chapter 15.58 or 17.21 RCW, or the rules adopted under the authority of chapter 15.58 or 17.21 RCW and is not subject to civil penalties as provided for in RCW 43.05.110. A notice of correction is not a formal enforcement action, is not subject to appeal and is a public record.

(8) "Notice of intent" means a document issued by the department that alleges specific violations of chapter 15.58 or 17.21 RCW, or any rules adopted under the authority of those chapters. A notice of intent is a formal enforcement document issued with the intent to assess civil penalties to the alleged violator and/or to suspend, deny or revoke the alleged violator's pesticide license) chapter 15.58 or 17.21 RCW, or the rules adopted thereunder.

[Statutory Authority: Chapters 17.21, 15.58, 34.05 RCW. WSR 03-22-029, § 16-228-1110, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 17.21 and 15.58 RCW. WSR 01-01-058, § 16-228-1110, filed 12/12/00, effective 1/12/01. Statutory Authority: Chapters 15.54, 15.58 and 17.21 RCW. WSR 99-22-002, § 16-228-1110, filed 10/20/99, effective 11/20/99.]

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1115 ~~((When can the department issue a civil penalty without first issuing))~~ **Civil penalty may be issued prior to a notice of correction((?)**.

(1) Pursuant to RCW 43.05.100 a notice of correction may be issued by the department when they become aware of conditions ~~((and/or))~~ or conduct or both that are not in compliance with the applicable laws and rules enforced by the department. The issuance of a notice of correction by the department shall not constitute a previous violation for purposes of WAC 16-228-1110 ~~((+2))~~ (5), but may, at the discretion of the department, be considered as an aggravating factor for the purposes of WAC 16-228-1120(2).

(2) Prior to issuing a civil penalty for a violation of chapter 15.58 or 17.21 RCW, ~~((and))~~ or the rules adopted ~~((under the authority of chapter 15.58 or 17.21 RCW))~~ thereunder, the department shall comply with the requirements of RCW 43.05.110. RCW 43.05.110 provides that the department of agriculture may issue a civil penalty provided for by law without first issuing a notice of correction if: ~~((+1))~~

(a) The person has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule or has been given previous notice of the same or similar type of violation of the same statute or rule; or ~~((+2))~~ (b) compliance is not achieved by the date established by the department in a previously issued notice of correction, if the department has responded to any request for review of such date by reaffirming the original date or establishing a new date; ~~((+3))~~ (c) the violation has a probability of placing a person in danger of death or bodily harm, has a probability of causing more than minor environmental harm, or has a probability of causing physical damage to the property of another in an amount exceeding ~~((one thousand dollars))~~ \$1,000; or ~~((+4))~~ (d) the violation was committed by a business that employed ~~((fifty))~~ 50 or more employees on at least one day in each of the preceding ~~((twelve))~~ 12 months.

[Statutory Authority: Chapters 17.21, 15.58, 34.05 RCW. WSR 03-22-029, § 16-228-1115, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 17.21 and 15.58 RCW. WSR 01-01-058, § 16-228-1115, filed 12/12/00, effective 1/12/01.]

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1120 ((How are penalties calculated?)) Calculation of penalties. ~~((+1) Median penalty selection. In the disposition of administrative cases, the department shall use the penalty assignment schedule listed in WAC 16-228-1130 to determine appropriate penalties. The department shall calculate the appropriate penalty based on the level of violation and the adverse effect(s) or potential adverse effects at the time of the incident(s) giving rise to the violation. The median penalty shall be assessed unless a proportionate adjustment is warranted and/or there are aggravating or mitigating factors present. The median penalty as listed in WAC 16-228-1130 may be proportionately adjusted and/or aggravated to a level more than the maximum penalty listed for the violation in the penalty assignment schedule table. The median penalty under the penalty assignment schedule may not be proportionately adjusted and/or mitigated to a level less than the minimum penalty listed for the violation.~~

~~(2) Proportionate adjustment of median penalty.~~

~~(a) The department reserves the right to proportionately increase the civil penalty and proportionately decrease the licensing action under certain circumstances. Such circumstances include situations where licensing action(s) as a deterrent are ineffective and include, but are not limited to:~~

~~(i) Violations by persons who are not licensed; and~~

~~(ii) Situations where the civil penalty assessed is not substantially equivalent to the violator's economic benefit derived from the violation.~~

~~(b) The department also reserves the right to proportionately decrease the civil penalty and increase the licensing action in circumstances that demonstrate the ineffectiveness of a civil penalty as a deterrent. Nothing shall prevent the department from proportionally adjusting a licensing action to a level greater than the maximum licensing action listed in the penalty assignment schedule.~~

~~(3) Aggravating factors. The department may consider circumstances enhancing the penalty based on the seriousness of the violation. Aggravating factors include, but are not limited to, the following:~~

~~(a) The number of separate alleged violations contained within a single notice of intent.~~

~~(b) The high magnitude of the harm, or potential harm, including quantity and/or degree, to humans, animals, plants, property or the environment caused by the violation(s).~~

~~(c) The similarity of the current alleged violation to previous violations committed within the last three years.~~

~~(d) The extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.~~

~~(4) When the department determines that one or more aggravating factors are present, the department may assess the maximum penalty as listed within the level of violation or may, in its discretion, increase the penalty to a level greater than the maximum penalty, including but not limited to revocation of the license.~~

~~(5) Mitigating factors. The department may consider circumstances reducing the penalty based upon the seriousness of the violation. Mitigating factors include but are not limited to, the following:~~

~~(a) Voluntary disclosure of a violation.~~

~~(b) The low magnitude of the harm, or potential harm, including quantity and/or degree, caused by the violation.~~

~~(c) Voluntary taking of remedial measures that will result in increased public protection, or that will result in a decreased likelihood that the violation will be repeated.~~

~~(6) When the department determines that one or more mitigating factors are present, the department may assess the minimum penalty for the violation from the penalty schedule.~~

~~(7) The department considers each violation to be a separate and distinct event. When a person has committed multiple violations, the violations are cumulative for purposes of calculating the appropriate penalty. Penalties are added together.~~

~~(8) Violation(s) committed during the period when an individual's license is suspended or revoked shall be subject to the maximum civil penalty of seven thousand five hundred dollars and/or revocation of the license for a period of up to five years. Violation(s) committed by unlicensed individuals are subject to the provisions of this chapter, including the penalty provision.)) (1) For recordkeeping violations described in WAC 16-228-1126, licensing violations described in WAC 16-228-1127, and violations of chapter 16-233 WAC described in WAC 16-228-1128, the department will assess the civil penalty according to the schedule unless circumstances warrant a deviation from the penalty calculation rules as allowed under subsection (5) of this section.~~

~~(2) For the penalties assessed under WAC 16-228-1129, the department will select the level of violation and use the appropriate base penalty according to the type of pesticide violation as the starting point for calculating penalties. The base penalty shall be assessed unless either an adjustment is warranted, or there are aggravating or mitigating factors present, or both.~~

~~(3) Adjustment of base penalty for violations calculated under WAC 16-228-1129:~~

~~(a) The department reserves the right to increase the civil penalty and decrease the licensing action under certain circumstances. Such circumstances include situations where the licensing actions(s) are ineffective as a deterrent and include, but are not limited to:~~

(i) Violations involving unlicensed or during a license suspension;

(ii) Situations where the civil penalty assessed is not substantially equivalent to the economic benefit derived by the violator from the violation; and

(iii) Where the violation is the result of a business or other management decision(s).

(b) The department may decrease the civil penalty and increase the licensing action in circumstances that demonstrate the ineffectiveness of a civil penalty as a deterrent.

(4) Each violation of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder, are separate and distinct violations. When a person has committed multiple violations in a single incident, each violation is individually and separately subject to the maximum civil penalty of \$7,500. Penalties for separate violations related to a single event are added together for the purpose of the notice of intent.

(5) The department may, in its discretion, deviate from the penalty calculation rules adopted in this chapter. The department has complied with these rules if it acknowledges the deviation and states its reasons for deviating from the penalty calculation rules in this chapter, in the notice of intent.

(6) Nothing in this chapter shall prevent the department from:

(a) Adjusting either a licensing action to a level greater than the maximum licensing action listed in any penalty assignment schedule, or a civil penalty to a level greater than the maximum civil penalty listed in any penalty assignment schedule; or

(b) Aggravating either a licensing action or civil penalty, or both, to either a level greater than the maximum licensing action listed in any penalty assignment schedule or a civil penalty to a level greater than the maximum civil penalty in any penalty assignment schedule or both.

(7) When adjusting a penalty, the department may aggravate, mitigate, or proportionally adjust either the civil penalty or the license suspension, or both. Generally, the department will aggravate, mitigate, or proportionally adjust both the civil penalty and the license suspension when the department determines such factors are present; however, the department retains the discretion to aggravate, mitigate, or proportionally adjust a civil penalty without also aggravating, mitigating, or proportionally adjusting the license suspension, and may aggravate, mitigate, or proportionally adjust the license suspension without aggravating, mitigating, or proportionally adjusting the civil penalty. In the event the department aggravates, mitigates, or proportionally adjusts either the civil penalty or the license suspension without aggravating, mitigating, or proportionally adjusting the other, the department will indicate its basis for doing so in the notice of intent.

[Statutory Authority: Chapters 17.21, 15.58, 34.05 RCW. WSR 03-22-029, § 16-228-1120, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 17.21 and 15.58 RCW. WSR 01-01-058, § 16-228-1120, filed 12/12/00, effective 1/12/01. Statutory Authority: Chapters 15.54, 15.58 and 17.21 RCW. WSR 99-22-002, § 16-228-1120, filed 10/20/99, effective 11/20/99.]

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-228-1125 (~~(When can the department revoke or deny)~~) Revocation or denial of a license(?). (1) The department retains the sole discretion to determine when an individual license should be revoked rather than suspended. (~~(Revocation of a license shall be an option for the department in those circumstances where:)~~)

(a) The department may revoke a license when:

(i) The penalty schedule allows for revocation; ((and/or)) or ((b)) (ii) One or more aggravating factors are present;

~~((and/or~~

~~(c) The duration of the licensure action exceeds six months.~~

~~In circumstances where the department determines revocation to be appropriate, the period of revocation shall be determined at the discretion of the department, but in no instance shall the revocation exceed five years.) or~~

(iii) The circumstances surrounding the violation are such that a suspension of the license will not serve as an adequate deterrent for future conduct.

(b) The department may in its discretion, revoke any or all licenses held by the person when this section permits revocation. Where the circumstances warrant revocation of more than one license held by the person, the department shall explain its reasons for revoking each license in its notice of intent.

(c) In circumstances where the department revokes a license, the department may order that person will not be granted new licensure or new license categories for a period of time. This period of ineligibility for the person to be granted a new license or category shall be determined at the discretion of the department, but shall not exceed five years.

(2) The department may deny an applicant a license when the applicant has committed a violation(s) of chapter((s)) 15.58 ((and)) or 17.21 RCW ((and/or)), or the rules adopted ((under those chapters)) thereunder. The duration of denial shall be determined based upon the penalty provisions of this chapter. (~~(In circumstances where the department determines denial to be appropriate, the period of denial shall not exceed five years.~~

~~(3)) (a) Nothing shall prevent the department from denying an applicant a license when the applicant has an outstanding civil penalty owed to the department from a previous violation(s).~~

~~((4)) (b) The department may deny an application for a license when that person's license was revoked under subsection (1) of this section or when the department has prohibited a person from being issued a license for a period of time, and that time has not expired.~~

(3) The department may, at its discretion, suspend a license without also seeking a civil penalty. Such circumstances include, but are not limited to, those incidents where a civil penalty is not available as an appropriate penalty pursuant to RCW 43.05.110. The appropriate period of suspension shall be determined ((from the)) in accordance with the appropriate penalty schedule and the penalty provisions of this chapter.

[Statutory Authority: Chapters 17.21, 15.58, and 34.05 RCW. WSR 07-11-041A, § 16-228-1125, filed 5/9/07, effective 6/9/07; WSR 03-22-029, § 16-228-1125, filed 10/28/03, effective 11/28/03. Statuto-

ry Authority: Chapters 17.21 and 15.58 RCW. WSR 01-01-058, § 16-228-1125, filed 12/12/00, effective 1/12/01.]

NEW SECTION

WAC 16-228-1126 Penalties for certain recordkeeping violations.

The department will assess a penalty of \$250 for failing to properly record the information required by RCW 17.21.100 (1)(a) through (j), WAC 16-228-1320 (1)(a) through (n), and WAC 16-228-1300 (1) through (8) unless circumstances warrant a deviation as allowed under WAC 16-228-1120(5), or the application of aggravating and mitigating factors as allowed by WAC 16-228-1131. Violations of other subsections of RCW 17.21.100, WAC 16-228-1320 and 16-228-1300 are assessed under WAC 16-228-1129.

[]

NEW SECTION

WAC 16-228-1127 Penalties for unlicensed using, handling, applying, distributing, or consulting about pesticides. (1) Violations committed during the period when an individual's license is suspended shall be subject to the maximum civil penalty of \$7,500 or suspension of the license for a period of up to five years, or both.

(2) Violations committed following the revocation of a license, and where the previous licensee has not successfully obtained a new license, shall be subject to the maximum civil penalty of \$7,500 or an extension of the time during which the person is ineligible for reissuance of a license, or both. Violations are considered to be "operating without a license" for the purpose of RCW 17.21.320(4).

(3) Penalties for unlicensed use will be assessed according to the penalty assignment schedule in WAC 16-228-1130 Table I. The penalty schedule in WAC 16-228-1130 Table I does not apply to violations described in subsections (1) and (2) of this section.

(4) Nothing herein shall prevent the department from seeking an injunction against persons operating without a license as allowed under RCW 17.21.320(4).

[]

NEW SECTION

WAC 16-228-1128 Penalties for violations of chapter 16-233 WAC—Worker protection standard. (1) Violations of WAC 16-233-211(1) are assessed under WAC 16-228-1129.

(2) Except for violations described in (1) of this section, violations of chapter 16-233 WAC are assessed in accordance with the penalty assignment schedule in WAC 16-228-1130 Table II.

[]

NEW SECTION

WAC 16-228-1129 Penalties for other violations of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder. (1) This section covers all violations of chapter 15.58 or 17.21 RCW, or the rules adopted thereunder, that do not have a more specific penalty assignment schedule described in WAC 16-228-1126, 16-228-1127, and 16-228-1128.

(2) The penalties in this section will be calculated by selecting the appropriate level of violation, then selecting the appropriate base penalty, and then adjusting the base penalty for aggravating and mitigating factors. The base penalty shall be assessed unless either a deviation is warranted or there are either aggravating or mitigating factors present, or both.

(3) Except as provided in WAC 16-228-1120(5), when penalties are calculated under this section, and the department determines that one or more aggravating factors are present, the department may increase the penalty by a factor of no more than 25 percent of the base penalty for each aggravating factor.

(4) Except as provided in WAC 16-228-1120(5), when penalties are calculated under this section, and the department determines that one or more mitigating factors are present, the department may decrease the penalty by a factor of no more than 25 percent of the base penalty for each mitigating factor.

(5) Violations described in this section are assessed in accordance with the penalty assignment schedule in WAC 16-228-1130 Table III.

[]

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1130 ((What is the)) Penalty assignment ((schedule?)) schedules—Tables I, II, and III. ((This assignment schedule shall be used for violations of chapter 17.21 or 15.58 RCW or chapter 16-228 WAC. (See WAC 16-228-1150 for other dispositions of alleged violations, including Notice of Corrections.)

LEVEL OF VIOLATION	ADVERSE EFFECTS NOT PROBABLE			ADVERSE EFFECTS PROBABLE		
	MINIMUM	MEDIAN	MAXIMUM	MINIMUM	MEDIAN	MAXIMUM
FIRST	\$200 and or 2 days license suspension	\$300 and or 3 days license suspension	\$500 and or 6 days license suspension	\$350 and or 5 days license suspension	\$450 and or 7 days license suspension	\$550 and or 9 days license suspension
SECOND	\$350 and or 3 days license suspension	\$500 and or 6 days license suspension	\$1000 and or 9 days license suspension	\$600 and 10 days license suspension denial or revocation	\$1300 and 20 days license suspension denial or revocation	\$2000 and 30 days license suspension denial or revocation
THIRD	\$700 and or 4 days license suspension	\$1000 and or 9 days license suspension	\$2000 and or 12 days license suspension	\$800 and 30 days license suspension denial or revocation	\$2400 and 40 days license suspension denial or revocation	\$4000 and 50 days license suspension denial or revocation
FOURTH OR MORE	\$900 and or 5 days license suspension denial or revocation	\$2000 and or 12 days license suspension denial or revocation	\$3000 and or 15 days license suspension denial or revocation	\$1000 and 50 days license suspension denial or revocation	\$4250 and 70 days license suspension denial or revocation	\$7500 and 90 days license suspension denial or revocation))

Table I Licensing Violations			
<u>Level of Violation</u>	<u>Commercial Applicator Operating Unlicensed</u>	<u>Pesticide Dealer Distributing Restricted Use Pesticides Unlicensed</u>	<u>All Other Violations for Operating Unlicensed</u>
<u>First</u>	<u>\$2,500</u>	<u>\$1,000</u>	<u>\$1,000</u>
<u>Second</u>	<u>\$5,000</u>	<u>\$2,500</u>	<u>\$2,500</u>
<u>Third or more</u>	<u>\$7,500</u>	<u>\$5,000</u>	<u>\$5,000</u>

Table II Worker Protection Standard Violations		
<u>Level of Violation</u>	<u>WAC 16-233-021(6) providing emergency assistance. WAC 16-233-201 failure to provide sufficient training to handlers prior to mixing or applying category I pesticides, unless handler is exempt from training requirements. WAC 16-233-211 (3) and (4) monitoring handlers applying highly toxic and enclosed space fumigants. WAC 16-233-216 PPE for handlers. WAC 16-233-221 decontamination and eye flush for handlers. WAC 16-233-311 protection of early-entry workers.</u>	<u>All other violations of chapter 16-233 WAC, excluding WAC 16-233-211(1), that warrant a civil penalty</u>
<u>First</u>	<u>\$1,000</u>	<u>\$500</u>
<u>Second</u>	<u>\$2,000</u>	<u>\$750</u>
<u>Third or more</u>	<u>\$3,000</u>	<u>\$1,000</u>

Table III Base Penalties			
<u>Level of Violation</u>	<u>Human Exposure</u>	<u>Adverse Effects Probable (Other than Human Exposure)</u>	<u>Adverse Effects Not Probable</u>
<u>First</u>	<u>\$1,500 and five-day license suspension</u>	<u>\$1,000 and four-day license suspension</u>	<u>\$300</u>
<u>Second</u>	<u>\$3,000 and 10-day license suspension, denial, or revocation</u>	<u>\$2,000 and eight-day license suspension, denial, or revocation</u>	<u>\$600</u>
<u>Third or more</u>	<u>\$6,000 and 20-day license suspension, denial, or revocation</u>	<u>\$4,000 and 16-day license suspension, denial, or revocation</u>	<u>\$1,200 and three-day license suspension, denial, or revocation</u>

[Statutory Authority: Chapters 17.21, 15.58, 34.05 RCW. WSR 03-22-029, § 16-228-1130, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 17.21 and 15.58 RCW. WSR 01-01-058, § 16-228-1130, filed 12/12/00, effective 1/12/01. Statutory Authority: Chapters 15.54, 15.58 and 17.21 RCW. WSR 99-22-002, § 16-228-1130, filed 10/20/99, effective 11/20/99.]

NEW SECTION

WAC 16-228-1131 Aggravating and mitigating factors. The department may consider the following factors when calculating penalties under WAC 16-228-1130. The department is not required to apply every aggravating or mitigating factor that may be present or relevant to a

particular violation, and will only apply those factors that the department determines significantly affect a case or contribute to a particular violation.

(1) Aggravating factors. When calculating penalties under WAC 16-228-1130, the department may consider circumstances that warrant enhancing the penalty above base penalty. Aggravating factors include, but are not limited to, the following:

(a) The number of separate alleged violations contained within a single notice of intent.

(b) The high magnitude of the harm, or potential harm, including either the quantity or degree, or both, to humans, animals, plants, property, or the environment caused by the violation(s).

(i) Number of individuals directly exposed as a result of the violation. The department may aggravate the penalty for each individual exposed.

(ii) Number of individuals reporting verifiable health symptoms to the department or to the state department of health. The department may aggravate the penalty for each individual that reported verifiable symptoms.

(iii) Number of individuals requiring emergency medical treatment. The department may aggravate the penalty for each individual that required emergency medical treatment.

(c) The similarity of the current alleged violation to previous violations committed within the last six years, regardless of whether those violations resulted in notices of correction or notices of intent, and regardless of whether a notice of intent was resolved by a settlement unless otherwise expressly indicated in the agreement.

(d) The extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.

(e) Lack of, or deficiency in, either training or supervision of operator(s), or both, regardless of whether the pesticide(s) applied required direct supervision of uncertified applicators.

(f) High pesticide toxicity. This may be indicated by a product's signal word or words on any pesticide label involved in the offending investigation including, but are not limited to, "Danger/Poison."

(g) One or more pesticides involved in the incident were state or federal restricted use pesticides.

(h) The high degree of visible and accessible damage that was not reported in conjunction with a complete wood destroying organism inspection, when the damage was located in an area that was not allowably excluded from inspection.

(i) The violation involved a careless or negligent operation.

(j) Inappropriate or insufficient equipment safeguards or operation including, but not limited to, the failure to properly calibrate and configure application equipment prior to application.

(k) Extent to which the location of the violation, including near sensitive areas or areas near human population, creates the potential for harm to the environment or human health or safety.

(l) False information provided to the department during an investigation of the violation.

(m) Applicator failed to follow advisory precautionary language on label, which impacted the violation.

(n) Except as exempted in WAC 16-228-1110(2), the violation had a direct adverse effect on bees, honey bees, or other beneficial pollinating insects.

(2) Mitigating factors. When calculating a penalty under WAC 16-228-1130, the department may consider circumstances that warrant

reducing the penalty below the base penalty. Mitigating factors include, but are not limited to, the following:

- (a) Voluntary disclosure by the violator of a violation.
- (b) The low magnitude of the harm, or potential harm, including quantity and/or degree, caused by the violation.
- (c) Safety protocol established and prevention measures taken prior to incident.
- (d) Voluntary taking of remedial measures following the violation that will result in increased public protection or that will result in a decreased likelihood that the violation will be repeated.
- (e) Good faith efforts of the violator to comply with the pesticide laws and rules that are applicable to the violation and the application was made in a careful and safe manner.
- (f) Violator did not, and could not with exercise of reasonable diligence, have known the risk of the application to safety, human health, or property.
- (g) Low toxicity of pesticide involved. This may be indicated by the lack of a label signal word, or the signal word "Caution" on all pesticides involved.
- (h) Applicator followed advisory precautionary language on label, which impacted the violation.

[]

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1150 ((What are the)) Other dispositions of alleged violations that the department may choose((?)). Nothing herein shall prevent the department from:

- (1) Choosing not to pursue a civil penalty, license suspension or license revocation.
- (2) Issuing a notice of correction in lieu of pursuing a civil penalty, license suspension or license revocation.
- (3) Negotiating settlement(s) of cases on such terms and for such reasons as it deems appropriate. ~~((Prior))~~ Violation(s) covered by a ((prior)) settlement agreement for a previous violation may be used by the department for the purpose of determining the appropriate penalty for the current alleged violation(s) if not expressly prohibited by the agreement.
- (4) Referring violations or alleged violations, to any federal, state or county authority with jurisdiction over the activities in question ~~((r))~~ including, but not limited to, the Environmental Protection Agency (EPA) ~~((and))~~ the Federal Aviation Administration (FAA), or criminal prosecutors for criminal dispositions.

[Statutory Authority: Chapters 17.21, 15.58, 34.05 RCW. WSR 03-22-029, § 16-228-1150, filed 10/28/03, effective 11/28/03. Statutory Authority: Chapters 17.21 and 15.58 RCW. WSR 01-01-058, § 16-228-1150, filed 12/12/00, effective 1/12/01. Statutory Authority: Chapters 15.58, 17.21 RCW. WSR 00-22-073, § 16-228-1150, filed 10/30/00, effective 11/30/00. Statutory Authority: Chapters 15.54, 15.58 and 17.21 RCW. WSR 99-22-002, § 16-228-1150, filed 10/20/99, effective 11/20/99.]

WSR 23-04-048

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed January 26, 2023, 2:38 p.m., effective February 26, 2023]

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

Purpose: The agency is adopting a new rule and revising other rules to provide for telemedicine and store and forward technology, in alignment with ESHB 1196 (67th legislature, 2021 regular session).

Citation of Rules Affected by this Order: New WAC 182-501-0300 and 182-538-195; repealing WAC 182-531-1730; and amending WAC 182-531-0100, 182-537-0200, 182-551-2010, 182-551-2040, 182-551-2210, and 182-551-2125.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: ESHB 1196, 67th legislature, 2021 regular session.

Adopted under notice filed as WSR 22-19-092 [22-22-068] on September 21, 2022 [October 31, 2022].

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
WAC 182-501-0300(6)		
Proposed	(6) Client consent. (a) To receive payment for an audio-only telemedicine service, a provider must obtain client consent before delivering the service to the client. (b) The client's consent to receive services must: (i) Acknowledge the provider will bill the agency or the agency's designee, including an agency-contracted managed care entity (managed care organization or behavioral health administrative services organization) for the service; and (ii) Be documented in the client's medical record. (c) A provider may only bill a client for services if they comply with the requirements in WAC 182-502-0160.	The agency revised language in subsection (6) to clarify that the client consent requirement applies to audio-only telemedicine services.
Adopted	(6) Client consent for audio-only telemedicine services. (a) To receive payment for an audio-only telemedicine service, a provider must obtain client consent before delivering the service to the client. (b) The client's consent to receive services <u>via audio-only telemedicine</u> must: (i) Acknowledge the provider will bill the agency or the agency's designee, including an agency-contracted managed care entity (managed care organization or behavioral health administrative services organization) for the service; and (ii) Be documented in the client's medical record. (c) A provider may only bill a client for services if they comply with the requirements in WAC 182-502-0160.	
WAC 182-501-0300 (8)(b)(vii)		
Proposed	(vii) Client's consent for the telemedicine technology used to deliver the health care service. In extenuating circumstances when consent cannot be obtained, the provider must document the reason.	The agency revised this subsection to clarify that the client consent requirement applies to audio-only telemedicine services.
Adopted	(vii) Client's consent for the <u>billing of audio-only telemedicine services</u> telemedicine technology used to deliver the health care service. In extenuating circumstances when consent cannot be obtained, the provider must document the reason.	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0,

Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 7, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 7, Repealed 1.

Date Adopted: January 26, 2023.

Wendy Barcus
Rules Coordinator

OTS-3973.3

NEW SECTION

WAC 182-501-0300 Telemedicine and store and forward technology.

(1) Purpose and scope.

(a) This section identifies the requirements and limitations for coverage, authorization, and payment of health care services provided through telemedicine or store and forward technologies as defined in subsection (2) of this section.

(b) This section applies to health care services, including behavioral health services, provided to clients enrolled in:

(i) An agency-contracted managed care organization (MCO) and fee-for-service programs; and

(ii) Other agency-contracted programs, including grant-funded health care services and health care services administered by behavioral health administrative services organizations (BH-ASOs).

(2) **Definitions.** The following definitions and those found in RCW 71.24.335, 74.09.325, and chapter 182-500 WAC apply to this section.

(a) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only technology, permitting real-time communication between the client at the originating site and the provider, for the purposes of diagnosis, consultation, or treatment.

(b) "Distant site" means the same as in RCW 71.24.335 or 74.09.325.

(c) "Established relationship" means the same as in RCW 71.24.335 or 74.09.325.

(d) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW.

(e) "In person" means the client and the provider are in the same location.

(f) "Originating site" means the same as in RCW 71.24.335 or 74.09.325.

(g) "Store and forward technology" see RCW 71.24.335 or 74.09.325.

(h) "Telemedicine" means the delivery of health care services using interactive audio and video technology, permitting real-time com-

munication between the client at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. Telemedicine includes audio-only telemedicine, but does not include the following services:

- (i) Email and facsimile transmissions;
- (ii) Installation or maintenance of any telecommunication devices or systems;
- (iii) Purchase, rental, or repair of telemedicine equipment; and
- (iv) Incidental services or communications that are not billed separately, such as communicating laboratory results.

(3) Requirements and authorized use of telemedicine and store and forward technology.

(a) **Governing authority.** The medicaid agency determines the health care services that may be paid for when provided through telemedicine or store and forward technology as authorized by state law, including RCW 71.24.335, 74.09.325, and 74.09.327.

(b) **Coverage, authorization, and payment.** Health care services approved for delivery through telemedicine or store and forward technology must comply with the agency's program rules. The program rules include coverage, authorization, and payment by the agency or the agency's designee, including an agency-contracted managed care entity (managed care organization or behavioral health administrative services organization).

(c) **Billing requirements.** Providers must bill for health care services as required by the program rules and provider guides of the agency or the agency's designee, including a contracted managed care entity.

(d) Criteria for health care services.

(i) The agency determines the health care services that may be provided through telemedicine or store and forward technology based on whether the health care service is:

- (A) A covered service when provided in person by the provider;
- (B) Medically necessary;
- (C) Determined to be safely and effectively provided through telemedicine or store and forward technology based on generally accepted health care practices and standards; and
- (D) Provided through a technology that meets the standards required by state and federal laws governing the privacy and security of protected health information.

(ii) For health care services provided by audio-only telemedicine, the provider and client must have an established relationship.

(iii) For behavioral health services authorized for delivery through store and forward technology, there must be an associated visit between the referring provider and the client.

(4) Health care services authorized for telemedicine and store and forward technology.

(a) Health care services that are authorized to be provided through telemedicine or store and forward technology are identified in the agency's provider guides and fee schedules.

(b) For covered health care services approved for delivery through telemedicine or store and forward technology, the agency or the agency's designee, including an agency-contracted managed care entity (managed care organization (MCO) or behavioral health administrative services organization (BH-ASO)), may require:

- (i) Utilization review;
- (ii) Prior authorization; and

(iii) Deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable in-person health care service.

(5) Payment of health care services delivered through telemedicine or store and forward technology.

(a) The agency's designee, including an agency-contracted managed care entity (managed care organization (MCO) or behavioral health administrative services organization (BH-ASO)), pays providers for health care services delivered through telemedicine or store and forward technology in the same amount as when the health care services are provided in person, except as provided in these rules, RCW 71.24.335, and 74.09.325.

(b) The agency or the agency's designee, including an agency-contracted managed care entity (managed care organization or behavioral health administrative services organization) pays for encounter-eligible health care services authorized for delivery through telemedicine at the encounter rate when provided by:

- (i) Rural health clinics;
- (ii) Federally qualified health centers; or
- (iii) Direct Indian health service clinics, tribal clinics, or tribal federally qualified health centers.

(6) Client consent for audio-only telemedicine services.

(a) To receive payment for an audio-only telemedicine service, a provider must obtain client consent before delivering the service to the client.

(b) The client's consent to receive services via audio-only telemedicine must:

(i) Acknowledge the provider will bill the agency or the agency's designee, including an agency-contracted managed care entity (managed care organization or behavioral health administrative services organization) for the service; and

(ii) Be documented in the client's medical record.

(c) A provider may only bill a client for services if they comply with the requirements in WAC 182-502-0160.

(7) Originating site and distant site.

(a) Originating sites and distant sites must be located within the 50 United States, the District of Columbia, or United States territories.

(b) Originating sites may be paid facility fee for infrastructure and client preparation except as noted in (c) of this subsection.

(c) Originating sites facility fees are not paid when the:

- (i) Service is provided by audio-only telemedicine;
- (ii) Service is store and forward;
- (iii) Originating site is:
 - (A) The client's home;
 - (B) A hospital, for inpatient services;
 - (C) A hospital or a hospital provider-based clinic that is an originating site for audio-only telemedicine;
 - (D) A skilled nursing facility;
 - (E) Any other location receiving payment for the client's room and board;
 - (F) Unable to qualify as a provider as defined in WAC 182-500-0085; or
 - (G) A provider employed by or affiliated with the same entity as the distant site.

(d) A facility fee payment may be subject to a negotiated agreement between the originating site and the managed care organization or the behavioral health administrative services organization.

(e) A distant site may not charge or be paid a facility fee for infrastructure and client preparation.

(8) **Recordkeeping.**

(a) Providers who furnish a health care service through telemedicine or store and forward technology must comply with the recordkeeping requirements in WAC 182-502-0020.

(b) Providers using telemedicine or store and forward technology must document in the client's medical record the:

(i) Technology used to deliver the health care service by telemedicine or store and forward technology (audio, visual, or other means) and any assistive technologies used;

(ii) Client's location for telemedicine only. This information is not required when a provider uses store and forward technology;

(iii) People attending the appointment with the client (e.g., family, friends, or caregivers) during the delivery of the health care service;

(iv) Provider's location;

(v) Names and credentials (MD, ARNP, RN, PA, CNA, LMHP, etc.) of all originating and distant site providers involved in the delivery of the health care service;

(vi) Start and end time or duration of service when billing is based on time;

(vii) Client's consent for the billing of audio-only telemedicine services.

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OTS-3974.1

AMENDATORY SECTION (Amending WSR 19-22-017, filed 10/25/19, effective 11/25/19)

WAC 182-531-0100 Scope of coverage for physician-related and health care professional services—General and administrative. (1) The medicaid agency covers health care services, equipment, and supplies listed in this chapter, according to agency rules and subject to the limitations and requirements in this chapter, when they are:

(a) Within the scope of an eligible client's Washington apple health program. Refer to WAC 182-501-0060 and 182-501-0065; and

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

(2) The agency evaluates a request for a service that is in a covered category under the provisions of WAC 182-501-0165.

(3) The agency evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions as described in WAC 182-501-0169.

(4) The agency covers the following physician-related services and health care professional services, subject to the conditions in subsections (1), (2), and (3) of this section:

(a) Alcohol and substance misuse counseling (refer to WAC 182-531-1710);

(b) Allergen immunotherapy services;

- (c) Anesthesia services;
 - (d) Dialysis and end stage renal disease services (refer to chapter 182-540 WAC);
 - (e) Emergency physician services;
 - (f) ENT (ear, nose, and throat) related services;
 - (g) Early and periodic screening, diagnosis, and treatment (EPSDT) services (refer to WAC 182-534-0100);
 - (h) Habilitative services (refer to WAC 182-545-400);
 - (i) Reproductive health services (refer to chapter 182-532 WAC);
 - (j) Hospital inpatient services (refer to chapter 182-550 WAC);
 - (k) Maternity care, delivery, and newborn care services (refer to chapter 182-533 WAC);
 - (l) Office visits;
 - (m) Vision-related services (refer to chapter 182-544 WAC for vision hardware for clients (~~twenty~~) 20 years of age and younger);
 - (n) Osteopathic treatment services;
 - (o) Pathology and laboratory services;
 - (p) Psychiatry and other rehabilitation services (refer to chapter 182-550 WAC);
 - (q) Foot care and podiatry services (refer to WAC 182-531-1300);
 - (r) Primary care services;
 - (s) Psychiatric services;
 - (t) Psychotherapy services (refer to WAC 182-531-1400);
 - (u) Pulmonary and respiratory services;
 - (v) Radiology services;
 - (w) Surgical services;
 - (x) Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects (e.g., congenital or as a result of illness or physical trauma), or for mastectomy reconstruction for post cancer treatment;
 - (y) Telemedicine (refer to WAC (~~182-531-1730~~) 182-501-0300);
 - (z) Tobacco/nicotine cessation counseling (refer to WAC 182-531-1720);
 - (aa) Vaccines for adults, adolescents, and children in the United States administered according to the current advisory committee on immunization practices (ACIP) recommended immunization schedule published by the Centers for Disease Control and Prevention (CDC). Vaccines outside the regular schedule may be covered if determined to be medically necessary;
 - (bb) Other outpatient physician services.
- (5) The agency covers physical examinations for Washington apple health clients only when the physical examination is for one or more of the following:
- (a) A screening exam covered by the EPSDT program (see WAC 182-534-0100);
 - (b) An annual exam for clients of the division of developmental disabilities; or
 - (c) A screening pap smear, mammogram, or prostate exam.
- (6) By providing covered services to a client eligible for Washington apple health, a provider who meets the requirements in WAC 182-502-0005(3) accepts the agency's rules and fees which includes federal and state law and regulations, billing instructions, and provider notices.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-22-017, § 182-531-0100, filed 10/25/19, effective 11/25/19; WSR 18-21-058, § 182-531-0100, filed 10/9/18, effective 11/9/18; WSR 15-03-041, §

182-531-0100, filed 1/12/15, effective 2/12/15. Statutory Authority: RCW 41.05.021. WSR 13-18-035, § 182-531-0100, filed 8/28/13, effective 9/28/13. Statutory Authority: RCW 41.05.021 and 42 C.F.R. 455.410. WSR 13-04-095, § 182-531-0100, filed 2/6/13, effective 3/9/13. Statutory Authority: RCW 41.05.021 and section 1927 of the Social Security Act. WSR 12-18-062, § 182-531-0100, filed 8/31/12, effective 10/1/12. WSR 11-14-075, recodified as § 182-531-0100, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 11-14-055, § 388-531-0100, filed 6/29/11, effective 7/30/11. Statutory Authority: RCW 74.09.521. WSR 08-12-030, § 388-531-0100, filed 5/29/08, effective 7/1/08. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-531-0100, filed 11/30/06, effective 1/1/07. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 01-01-012, § 388-531-0100, filed 12/6/00, effective 1/6/01.]

OTS-3984.1

AMENDATORY SECTION (Amending WSR 20-14-062, filed 6/26/20, effective 7/27/20)

WAC 182-537-0200 Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter:

"Agency" - See WAC 182-500-0010.

"Assessment" - For the purposes of this chapter, an assessment is made-up of medically necessary tests given to an individual child by a licensed health care provider to evaluate whether a child with a disability is in need of early intervention services or special education and related services. Assessments are a part of the individualized education program (IEP) and individualized family service plan (IFSP) evaluation and reevaluation processes.

"Charter school" - A public school governed by a charter school board and operated according to the terms of the charter school contract. Charter schools are open to all students, do not charge tuition, and do not have special entrance requirements.

"Child with a disability" - For purposes of this chapter, a child with a disability is a child evaluated and determined to need early intervention services or special education and related services because of a disability in one or more of the following eligibility categories:

- Autism;
- Deaf-blindness;
- Developmental delay for children ages three through nine, with an adverse educational impact, the results of which require special education and related direct services;
- Hearing loss (including deafness);
- Intellectual disability;
- Multiple disabilities;
- Orthopedic impairment;
- Other health impairment;
- Serious emotional disturbance (emotional behavioral disturbance);
- Specific learning disability;
- Speech or language impairment;

- Traumatic brain injury; and
- Visual impairment (including blindness).

"Core provider agreement" - See WAC 182-500-0020.

"Early intervention services" - Means developmental services provided to children ages birth through two. For the purposes of this chapter, early intervention services include:

- Audiology services;
- Health services;
- Nursing services;
- Occupational therapy;
- Physical therapy;
- Psychological services; and
- Speech-language pathology.

"Educational service district" - A regional agency which provides cooperative and informal services to local school districts within defined regions of the state.

"Electronic signature" - See WAC 182-500-0030.

"Evaluation" - Procedures used to determine whether a child has a disability, and the nature and extent of the early intervention or special education and related services needed. (See WAC 392-172A-01070 and 34 C.F.R. Sec. 303.321.)

"Fee-for-service" - See WAC 182-500-0035.

"Handwritten signature" - A scripted name or legal mark of an individual on a document to signify knowledge, approval, acceptance, or responsibility of the document.

"Health care-related services" - For the purposes of this chapter, means developmental, corrective, and other supportive services required to assist a student ages three through twenty eligible for special education and include:

- Audiology;
- Counseling;
- School health services and school nurse services;
- Occupational therapy;
- Physical therapy;
- Psychological assessments and services; and
- Speech-language therapy.

"Individualized education program (IEP)" - A written educational program for a child who is age three through twenty-one and eligible for special education. An IEP is developed, reviewed and revised according to WAC 392-172A-03090 through 392-172A-03115.

"Individualized family service plan (IFSP)" - A plan for providing early intervention services to a child birth through age two, with a disability or developmental delay and the child's family. The IFSP:

- Is based on the evaluation and assessment described in 34 C.F.R. Sec. 303.321;
- Includes the content specified in 34 C.F.R. Sec. 303.344; and
- Is developed under the IFSP procedures in 34 C.F.R. Secs. 303.342, 303.343, and 303.345.

"Medically necessary" - See WAC 182-500-0070.

"National provider identifier (NPI)" - See WAC 182-500-0075.

"Reevaluation" - Procedures used to determine whether a child continues to need early intervention services or special education and related services. (See WAC 392-172A-03015 and 34 C.F.R. Secs. 303.342 and 303.343.)

"Related services" - See WAC 392-172A-01155.

"School-based health care services contract" - A contract that describes and defines the relationship between the agency, the school-

based health care services program, and the school district, ESD, charter, or tribal school.

"School-based health care services program" or "SBHS" - Is an agency-administered program that pays contracted school districts, educational service districts (ESDs), charter schools, and tribal schools for providing early intervention services or special education health-related services to children ages birth through twenty who have an IEP or IFSP.

"School district" - A group of schools administered by a particular authority within defined geographical division.

"Signature log" - A typed list that verifies a licensed provider's identity by associating each provider's signature with their name, handwritten initials, credentials, license and national provider identifier (NPI).

"Special education" - See WAC 392-172A-01175.

"Supervision" - Means supervision provided by a licensed health care provider either directly or indirectly to assist the supervisee in the administration of early intervention or health care-related services outlined in the IEP or IFSP.

"Telemedicine" - See WAC (~~182-531-1730~~) 182-501-0300.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-14-062, § 182-537-0200, filed 6/26/20, effective 7/27/20; WSR 19-04-095, § 182-537-0200, filed 2/5/19, effective 3/8/19; WSR 16-07-141, § 182-537-0200, filed 3/23/16, effective 4/23/16. Statutory Authority: RCW 41.05.021, 34 C.F.R. 300.154(d), and chapter 182-502 WAC. WSR 13-21-079, § 182-537-0200, filed 10/17/13, effective 11/17/13. Statutory Authority: RCW 41.05.021. WSR 13-05-017, § 182-537-0200, filed 2/7/13, effective 3/10/13. WSR 11-14-075, recodified as § 182-537-0200, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500, and 42 C.F.R. 440.110. WSR 09-07-004, § 388-537-0200, filed 3/4/09, effective 4/4/09.]

OTS-3976.1

NEW SECTION

WAC 182-538-195 Telemedicine and store and forward technology.

The medicaid agency's rules related to the authorized use of telemedicine and store and forward technology are found in WAC 182-501-0300 and are applicable to the benefits (including behavioral health services) administered by agency-contracted managed care entities (managed care organizations and behavioral health administrative service organizations) and fee-for-service programs.

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OTS-3977.1

AMENDATORY SECTION (Amending WSR 22-05-048, filed 2/9/22, effective 3/12/22)

WAC 182-551-2010 Definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC apply to subchapter II:

"Acute care" means care provided by a home health agency for clients who are not medically stable or have not attained a satisfactory level of rehabilitation. These clients require frequent intervention by a registered nurse or licensed therapist.

"Authorized practitioner" means:

(a) A physician, nurse practitioner, clinical nurse specialist, or physician assistant who may order and conduct home health services, including face-to-face encounter services; or

(b) A certified nurse midwife under 42 C.F.R. 440.70 when furnished by a home health agency that meets the conditions of participation for medicare who may conduct home health services, including face-to-face encounter services.

"Brief skilled nursing visit" means a registered nurse, or a licensed practical nurse under the supervision of a registered nurse, performs only one of the following activities during a visit to a client:

- (a) An injection;
- (b) Blood draw; or
- (c) Placement of medications in containers.

"Chronic care" means long-term care for medically stable clients.

"Full skilled nursing visit" means a registered nurse, or a licensed practical nurse under the supervision of a registered nurse, performs one or more of the following activities during a visit to a client:

- (a) Observation;
- (b) Assessment;
- (c) Treatment;
- (d) Teaching;
- (e) Training;
- (f) Management; and
- (g) Evaluation.

"Home health agency" means an agency or organization certified under medicare to provide comprehensive health care on an intermittent or part-time basis to a patient in any setting where the patient's normal life activities takeplace.

"Home health aide" means a person registered or certified as a nursing assistant under chapter 18.88 RCW who, under the direction and supervision of a registered nurse or licensed therapist, assists in the delivery of nursing or therapy related activities, or both.

"Home health aide services" means services provided by a home health aide only when a client has an acute, intermittent, short-term need for the services of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract with a home health agency. These services are provided under the supervision of the previously identified authorized practitioners and include, but are not limited to, ambulation and exercise, assistance with self-administered medications, reporting changes in a client's condition and needs, and completing appropriate records.

"Home health skilled services" means skilled health care (nursing, specialized therapy, and home health aide) services provided on an intermittent or part-time basis by a medicare-certified home health

agency with a current provider number in any setting where the client's normal life activities take place. See also WAC 182-551-2000.

"Long-term care" is a generic term referring to various programs and services, including services provided in home and community settings, administered directly or through contract by the department of social and health services' (DSHS) division of developmental disabilities (DDD) or aging and long-term support administration (AL TSA) through home and community services (HCS).

"Medical social services" are services delivered by a medical social worker that are intended to resolve social or emotional problems that are expected to be an impediment to the effective treatment of the client's medical condition or rate of recovery. Medical social services include assessment of the social and emotional factors related to the client's illness, need for care, response to treatment, and adjustment to care; evaluation of the client's home situation, financial resources, and availability of community resources; assistance in obtaining available community resources and financial resources; and counseling the client and family to address emotional issues related to the illness.

"Medical social worker" has the same meaning given for "social worker" in WAC 246-335-510.

"Plan of care (POC)" (also known as **"plan of treatment (POT)"**) means a written plan of care that is established and periodically reviewed and signed by both an authorized practitioner and a home health agency provider. The plan describes the home health care to be provided in any setting where the client's normal life activities take place. See WAC 182-551-2210.

"Review period" means the three-month period the medicaid agency assigns to a home health agency, based on the address of the agency's main office, during which the medicaid agency reviews all claims submitted by that home health agency.

"Specialized therapy" means skilled therapy services provided to clients that include:

- (a) Physical;
- (b) Occupational; or
- (c) Speech/audiology services.

(See WAC 182-551-2110.)

"Telemedicine" - (~~For the purposes of WAC 182-551-2000 through 182-551-2220, means the use of telemonitoring to enhance the delivery of certain home health skilled nursing services through:~~

~~(a) The collection and transmission of clinical data between a patient at a distant location and the home health provider through electronic processing technologies. Objective clinical data that may be transmitted includes, but is not limited to, weight, blood pressure, pulse, respirations, blood glucose, and pulse oximetry; or~~

~~(b) The provision of certain education related to health care services using audio, video, or data communication instead of a face-to-face visit)) See WAC 182-501-0300.~~

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-05-048, § 182-551-2010, filed 2/9/22, effective 3/12/22; WSR 21-23-044, § 182-551-2010, filed 11/9/21, effective 12/10/21. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Section 440.70. WSR 18-24-023, § 182-551-2010, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-03-035, § 182-551-2010, filed 1/12/16, effective 2/12/16. WSR 11-14-075, recodified as § 182-551-2010, filed 6/30/11, effective 7/1/11. Statutory Authority:

RCW 74.08.090, chapter 74.09 RCW, and 2009 c 326. WSR 10-10-087, § 388-551-2010, filed 5/3/10, effective 6/3/10. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.530, and 74.09.500. WSR 02-15-082, § 388-551-2010, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 74.08.090 and 74.09.530. WSR 99-16-069, § 388-551-2010, filed 8/2/99, effective 9/2/99.]

AMENDATORY SECTION (Amending WSR 18-24-023, filed 11/27/18, effective 1/1/19)

WAC 182-551-2125 Home health services delivered ((through)) using telemedicine. (1) The medicaid agency covers the delivery of home health services through telemedicine for clients who have been diagnosed with an unstable condition who may be at risk for hospitalization or a more costly level of care. The client must have a diagnosis or diagnoses where there is a high risk of sudden change in clinical status which could compromise health outcomes.

(2) The medicaid agency pays for one telemedicine interaction, per eligible client, per day, based on the ordering physician's home health plan of care.

(3) To receive payment for the delivery of home health services through telemedicine, the services must involve:

(a) An assessment, problem identification, and evaluation which includes:

(i) Assessment and monitoring of clinical data including, but not limited to, vital signs, pain levels and other biometric measures specified in the plan of care. Also includes assessment of response to previous changes in the plan of care; and

(ii) Detection of condition changes based on the telemedicine encounter that may indicate the need for a change in the plan of care; and

(b) Implementation of a management plan through one or more of the following:

(i) Teaching regarding medication management, as appropriate (~~(based on the telemedicine findings for that encounter)~~);

(ii) Teaching regarding other interventions as appropriate to both the patient and the caregiver;

(iii) Management and evaluation of the plan of care including changes in visit frequency or addition of other skilled services;

(iv) Coordination of care with the ordering physician regarding (~~telemedicine~~) findings;

(v) Coordination and referral to other medical providers as needed; and

(vi) Referral to the emergency room as needed.

(4) The medicaid agency does not require prior authorization for the delivery of home health services through telemedicine.

(5) The medicaid agency does not pay for the purchase, rental, or repair of telemedicine equipment.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Section 440.70. WSR 18-24-023, § 182-551-2125, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-03-035, § 182-551-2125, filed 1/12/16, effective 2/12/16. WSR 11-14-075, recodified as § 182-551-2125, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, chapter 74.09 RCW, and

2009 c 326. WSR 10-10-087, § 388-551-2125, filed 5/3/10, effective 6/3/10.]

OTS-3982.1

AMENDATORY SECTION (Amending WSR 21-12-051, filed 5/26/21, effective 6/26/21)

WAC 182-551-2040 Face-to-face encounter requirements. (1) The face-to-face encounter requirements of this section may be met using telemedicine (~~or telehealth~~) services. See WAC 182-551-2125.

(2) The medicaid agency pays for home health services provided under this chapter only when the face-to-face encounter requirements in this section are met.

(3) For initiation of home health services, with the exception of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires home health services and must occur within (~~ninety~~) 90 days before or within the (~~thirty~~) 30 days after the start of the services.

(4) For the initiation of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires medical equipment and must occur no more than six months before the start of services.

(5) The face-to-face encounter may be conducted by:

- (a) A physician;
- (b) A nurse practitioner;
- (c) A clinical nurse specialist;

(d) A certified nurse midwife under 42 C.F.R. 440.70 when furnished by a home health agency that meets the conditions of participation for medicare;

(e) A physician assistant; or

(f) The attending acute, or post-acute physician, for beneficiaries admitted to home health immediately after an acute or post-acute stay.

(6) Services may be ordered by:

- (a) Physicians;
- (b) Nurse practitioners;
- (c) Clinical nurse specialists; or
- (d) Physician assistants.

(7) For all home health services except medical equipment under WAC 182-551-2122, the physician, nurse practitioner, clinical nurse specialist, or physician assistant responsible for ordering the services must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection (3) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

(8) For medical equipment under WAC 182-551-2122, except as provided in (b) of this subsection, an ordering physician, nurse practitioner, clinical nurse specialist, physician assistant, or the attend-

ing physician when a client is discharged from an acute hospital stay, must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection (4) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. § 440.70. WSR 21-12-051, § 182-551-2040, filed 5/26/21, effective 6/26/21; WSR 18-24-023, § 182-551-2040, filed 11/27/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 21-23-044, filed 11/9/21, effective 12/10/21)

WAC 182-551-2210 Provider requirements. For any delivered home health service to be payable, the medicaid agency requires home health providers to develop and implement an individualized plan of care (POC) for the client.

(1) The POC must:

(a) Be documented in writing and be located in the client's home health medical record;

(b) Be developed, supervised, and signed by a licensed registered nurse or licensed therapist;

(c) Reflect the authorized practitioner's orders and client's current health status;

(d) Contain specific goals and treatment plans;

(e) Be reviewed and revised by an authorized practitioner at least every 60 calendar days, signed by the authorized practitioner within 45 days of the verbal order, and returned to the home health agency's file; and

(f) Be available to medicaid agency staff or its designated contractor(s) on request.

(2) The provider must include all the following in the POC:

(a) The client's name, date of birth, and address (to include name of residential care facility, if applicable);

(b) The primary diagnosis (the diagnosis that is most related to the reason the client qualifies for home health services) or the diagnosis that is the reason for the visit frequency;

(c) All secondary medical diagnoses, including date or dates of onset or exacerbation;

(d) The prognosis;

(e) The type or types of equipment required (~~(, including telemedicine as appropriate)~~);

(f) A description of each planned service and goals related to the services provided;

(g) Specific procedures and modalities;

(h) A description of the client's mental status;

(i) A description of the client's rehabilitation potential;

(j) A list of permitted activities;

(k) A list of safety measures taken on behalf of the client; and

(l) A list of medications which indicates:

(i) Any new prescription; and

- (ii) Which medications are changed for dosage or route of administration.
- (3) The provider must include in or attach to the POC:
 - (a) A description of the client's functional limits and the effects;
 - (b) Documentation that justifies why the medical services should be provided in any setting where the client's life activities take place instead of an authorized practitioner's office, clinic, or other outpatient setting;
 - (c) Significant clinical findings;
 - (d) Dates of recent hospitalization;
 - (e) Notification to the department of social and health services (DSHS) case manager of admittance;
 - (f) A discharge plan, including notification to the DSHS case manager of the planned discharge date and client disposition at time of discharge; and
 - (g) Order for the delivery of home health services through telemedicine or telemonitoring, as appropriate.
- (4) The individual client medical record must comply with community standards of practice, and must include documentation of:
 - (a) Visit notes for every billed visit;
 - (b) Supervisory visits for home health aide services as described in WAC 182-551-2120(3);
 - (c) All medications administered and treatments provided;
 - (d) All authorized practitioner's orders, new orders, and change orders, with notation that the order was received before treatment;
 - (e) Signed authorized practitioner's new orders and change orders;
 - (f) Home health aide services as indicated by a registered nurse or licensed therapist in a home health aide care plan;
 - (g) Interdisciplinary and multidisciplinary team communications;
 - (h) Inter-agency and intra-agency referrals;
 - (i) Medical tests and results;
 - (j) Pertinent medical history; and
 - (k) Notations and charting with signature and title of writer.
- (5) The provider must document at least the following in the client's medical record:
 - (a) Skilled interventions per the POC;
 - (b) Client response to the POC;
 - (c) Any clinical change in client status;
 - (d) Follow-up interventions specific to a change in status with significant clinical findings;
 - (e) Any communications with the attending authorized practitioner; and
 - (f) Telemedicine findings, as appropriate.
- (6) The provider must include the following documentation in the client's visit notes when appropriate:
 - (a) Any teaching, assessment, management, evaluation, client compliance, and client response;
 - (b) Weekly documentation of wound care, size (dimensions), drainage, color, odor, and identification of potential complications and interventions provided;
 - (c) If a client's wound is not healing, the client's authorized practitioner has been notified, the client's wound management program has been appropriately altered and, if possible, the client has been referred to a wound care specialist; and

(d) The client's physical system assessment as identified in the POC.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-23-044, § 182-551-2210, filed 11/9/21, effective 12/10/21. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Section 440.70. WSR 18-24-023, § 182-551-2210, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-03-035, § 182-551-2210, filed 1/12/16, effective 2/12/16. WSR 11-14-075, recodified as § 182-551-2210, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, chapter 74.09 RCW, and 2009 c 326. WSR 10-10-087, § 388-551-2210, filed 5/3/10, effective 6/3/10. Statutory Authority: RCW 74.08.090, 74.09.520, 74.09.530, and 74.09.500. WSR 02-15-082, § 388-551-2210, filed 7/15/02, effective 8/15/02. Statutory Authority: RCW 74.08.090 and 74.09.530. WSR 99-16-069, § 388-551-2210, filed 8/2/99, effective 9/2/99.]

OTS-3983.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-531-1730 Telemedicine.

WSR 23-04-049

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed January 26, 2023, 2:45 p.m., effective February 26, 2023]

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

Purpose: The health care authority (HCA) is changing the name of the chemical-using pregnant women program to substance-using pregnant people program. Due to this name change, HCA is fixing all references to the old program name in the above-mentioned rules.

Citation of Rules Affected by this Order: Amending WAC 182-550-1100, 182-550-1200, 182-550-3000, 182-550-3850, and 182-550-4300.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-23-106 on November 16, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: January 26, 2023.

Wendy Barcus
Rules Coordinator

OTS-4213.2

AMENDATORY SECTION (Amending WSR 21-15-128, filed 7/21/21, effective 8/21/21)

WAC 182-550-1100 Hospital care—General. (1) The medicaid agency:

(a) Pays for an eligible Washington apple health client's admission to a hospital only when the client's attending physician orders admission and when the admission and treatment provided:

(i) Are covered under WAC 182-501-0050, 182-501-0060 and 182-501-0065;

(ii) Are medically necessary as defined in WAC 182-500-0070;

(iii) Are determined according to WAC 182-501-0165 when prior authorization is required;

(iv) Are authorized when required under this chapter; and

(v) Meet applicable state and federal requirements.

(b) For hospital admissions, defines "attending physician" as the client's primary care provider, or the primary provider of care to the client at the time of admission.

(2) Medical record documentation of hospital services must meet the requirements in WAC 182-502-0020.

(3) The agency:

(a) Pays for a hospital covered service provided to an eligible apple health client enrolled in an agency-contracted managed care organization (MCO) plan, under the fee-for-service program if the service is excluded from the MCO's capitation contract with the agency and meets prior authorization requirements. (See WAC 182-550-2600 for inpatient psychiatric services.)

(b) Does not pay for nonemergency services provided to an apple health client from a nonparticipating hospital in a selective contracting area (SCA) unless exclusions in WAC 182-550-4700 apply. The agency's selective contracting program and selective contracting payment limitations end for hospital claims with dates of admission before July 1, 2007.

(4) The agency pays up to (~~(twenty-six)~~) 26 days of inpatient hospital care for hospital-based withdrawal management, medical stabilization, and drug treatment for chemical dependent pregnant clients eligible under the (~~(chemical-using pregnant (CUP) women)~~) substance-using pregnant people (SUPP) program.

See WAC 182-533-0701 through 182-533-0730.

(5) The agency pays for inpatient hospital withdrawal management of acute alcohol or other drug intoxication when the services are provided to an eligible client:

(a) In a withdrawal management unit in a hospital that has a withdrawal management provider agreement with the agency to perform these services and the services are approved by the division of behavioral health and recovery (DBHR) within the health care authority (HCA); or

(b) In an acute hospital and all the following criteria are met:

(i) The hospital does not have a withdrawal management specific provider agreement with DBHR;

(ii) The hospital provides the care in a medical unit;

(iii) Nonhospital-based withdrawal management is not medically appropriate for the client;

(iv) The client does not require medically necessary inpatient psychiatric care and it is determined that an approval from the agency or the agency's designee as an inpatient stay is not indicated;

(v) The client's stay qualifies as an inpatient stay;

(vi) The client is not participating in the agency's (~~(chemical-using pregnant (CUP) women)~~) substance-using pregnant people (SUPP) program; and

(vii) The client's principal diagnosis meets the agency's medical inpatient withdrawal management criteria listed in the agency's published billing instructions.

(6) The agency covers medically necessary dental-related services provided to an eligible client in a hospital-based dental clinic when the services:

(a) Are provided under chapter 182-535 WAC; and

(b) Are billed on the American Dental Association (ADA) or health care financing administration (HCFA) claim form.

(7) The agency pays a hospital for covered dental-related services, including oral and maxillofacial surgeries, that are provided in the hospital's operating room, when:

(a) The covered dental-related services are medically necessary and provided under chapter 182-535 WAC;

- (b) The covered dental-related services are billed on a UB claim form; and
- (c) At least one of the following is true:
- (i) The dental-related service(s) is provided to an eligible apple health client on an emergency basis;
 - (ii) The client is eligible under the division of developmental disability program;
 - (iii) The client is age eight or younger; or
 - (iv) The dental service is prior authorized by the agency.
- (8) For inpatient voluntary or involuntary psychiatric admissions, see WAC 182-550-2600.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-15-128, § 182-550-1100, filed 7/21/21, effective 8/21/21. Statutory Authority: RCW 41.05.021, 41.05.160, 2014 c 225. WSR 16-06-053, § 182-550-1100, filed 2/24/16, effective 4/1/16. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-18-065, § 182-550-1100, filed 8/27/15, effective 9/27/15. WSR 11-14-075, recodified as § 182-550-1100, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 07-14-053, § 388-550-1100, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. WSR 01-16-142, § 388-550-1100, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090. WSR 01-02-075, § 388-550-1100, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-1100, filed 12/18/97, effective 1/18/98.]

AMENDATORY SECTION (Amending WSR 14-16-019, filed 7/24/14, effective 8/24/14)

WAC 182-550-1200 Restrictions on hospital coverage. A hospital covered service provided to a person eligible under a Washington apple health (WAH) program that is paid by the agency's fee-for-services payment system must be within the scope of the person's WAH program. Coverage restriction includes, but is not limited to the following:

- (1) Persons enrolled with the agency's managed care organization (MCO) plans are subject to the respective plan's policies and procedures for coverage of hospital services;
- (2) Persons covered by primary care case management are subject to the persons' primary care physicians' approval for hospital services;
- (3) For emergency care exemptions for persons described in subsections (1) and (2) of this section, see WAC 182-538-100;
- (4) Health care services provided by a hospital located out-of-state are:
 - (a) Not covered for persons eligible under the medical care services (MCS) program. However, persons eligible for MCS are covered for that program's scope of care in bordering city and critical border hospitals.
 - (b) Covered for:
 - (i) Emergency care for eligible medicaid and CHIP persons without prior authorization, based on the medical necessity and utilization review standards and limits established by the agency.

(ii) Nonemergency out-of-state care for medicaid and CHIP persons when prior authorized by the agency based on the medical necessity and utilization review standards and limits.

(iii) Hospitals in bordering cities and critical border hospitals, based on the same client eligibility criteria and authorization policies as for instate hospitals. See WAC 182-501-0175 for a list of bordering cities.

(c) Covered for out-of-state voluntary inpatient psychiatric hospital services for eligible medicaid and CHIP clients based on authorization by a division of behavioral health and recovery (DBHR) designee.

(5) See WAC 182-550-1100 for hospital services for (~~chemical-using pregnant (CUP) women~~) substance-using pregnant people (SUPP) program clients;

(6) All psychiatric inpatient hospital admissions, length of stay extensions, and transfers must be prior authorized by a DBHR designee. See WAC 182-550-2600;

(7) For persons eligible for both medicare and medicaid (dual eligibles), the agency pays deductibles and coinsurance, unless the person has exhausted his or her medicare Part A benefits. If medicare benefits are exhausted, the agency pays for hospitalization for such persons subject to agency rules. See also chapter 182-502 WAC;

(8) The agency does not pay for covered inpatient hospital services for a WAH client:

(a) Who is discharged from a hospital by a physician because the person no longer meets medical necessity for acute inpatient level of care; and

(b) Who chooses to stay in the hospital beyond the period of medical necessity.

(9) If the hospital's utilization review committee determines the person's stay is beyond the period of medical necessity, as described in subsection (8) of this section, the hospital must:

(a) Inform the person in a written notice that the agency is not responsible for payment (42 C.F.R. 456);

(b) Comply with the requirements in WAC 182-502-0160 in order to bill the person for the service(s); and

(c) Send a copy of the written notice in (a) of this subsection to the agency.

(10) Other coverage restrictions, as determined by the agency.

[Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-019, § 182-550-1200, filed 7/24/14, effective 8/24/14. WSR 11-14-075, recodified as § 182-550-1200, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 07-14-018, § 388-550-1200, filed 6/22/07, effective 8/1/07. Statutory Authority: RCW 74.08.090, 42 U.S.C. 1395 x(v), 42 C.F.R. 447.271, 447.11303, and 447.2652. WSR 99-06-046, § 388-550-1200, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-1200, filed 12/18/97, effective 1/18/98.]

AMENDATORY SECTION (Amending WSR 21-15-128, filed 7/21/21, effective 8/21/21)

WAC 182-550-3000 Payment method. (1) The medicaid agency uses the diagnosis-related group (DRG) payment method to pay for covered inpatient hospital services, except as specified in WAC 182-550-4300 and 182-550-4400.

(2) The agency assigns a DRG code to each claim for an inpatient hospital stay using 3M™ software (AP-DRG or APR-DRG) or other software currently in use by the agency. That DRG code determines the method used to pay claims for prospective payment system (PPS) hospitals. For the purpose of this section, PPS hospitals include all in-state and border area hospitals, except both of the following:

(a) Critical access hospitals (CAH), which the agency pays per WAC 182-550-2598; and

(b) Military hospitals, which the agency pays using the following payment methods depending on the revenue code billed by the hospital:

- (i) Ratio of costs-to-charges (RCC); and
- (ii) Military subsistence per diem.

(3) For each DRG code, the agency establishes an average length of stay (ALOS). The agency may use the DRG ALOS as part of its authorization process and payment methods as specified in this chapter.

(4) An inpatient claim payment includes all hospital covered services provided to a client during days the client is eligible. This includes, but is not limited to:

(a) The inpatient hospital stay;

(b) Outpatient hospital services, including preadmission, emergency department, and observation services related to an inpatient hospital stay and provided within one calendar day of a client's inpatient hospital stay. These outpatient services must be billed on the inpatient hospital claim;

(c) Any hospital covered service for which the admitting hospital sends the client to another facility or provider during the client's inpatient hospital stay, and the client returns as an inpatient to the admitting hospital.

(5) The agency's claim payment for an inpatient stay is determined by the payment method. The agency pays hospitals for inpatient hospital covered services provided to clients using the following methods:

Payment Method	General Description of Payment Formula	WAC Reference
DRG (Diagnostic Related Group)	DRG specific relative weight times hospital specific DRG rate times maximum service adjustor	182-550-3000
Per Diem	Hospital-specific daily rate for the service (psych, rehab, withdrawal management, or ((EUP)) SUPP) times covered allowable days	182-550-2600 and 182-550-3381
Fixed Per Diem for Long Term Acute Care (LTAC)	Fixed LTAC rate per day times allowed days plus ratio of cost to charges times allowable covered ancillaries not included in the daily rate	182-550-2595 and 182-550-2596
Ratio of Costs-to-Charges (RCC)	RCC times billed covered allowable charges	182-550-4500

Payment Method	General Description of Payment Formula	WAC Reference
Cost Settlement with Ratio of Costs-to-Charges	RCC times billed covered allowable charges (subject to hold harmless and other settlement provisions of the Certified Public Expenditure program)	182-550-4650 and 182-550-4670
Cost Settlement with Weighted Costs-to-Charges (WCC)	WCC times billed covered allowable charges subject to Critical Access Hospital settlement provisions	182-550-2598
Military	Depending on the revenue code billed by the hospital: • RCC times billed covered allowable charges; and • Military subsistence per diem.	182-550-4300
Administrative Day	Standard administrative day rate times days authorized by the agency combined with RCC times ancillary charges that are allowable and covered for administrative days	182-550-3381

(6) For claims paid using the DRG method, the payment may not exceed the billed amount.

(7) The agency may adjust the initial allowable calculated for a claim when one or more of the following occur:

- (a) A claim qualifies as a high outlier (see WAC 182-550-3700);
- (b) A claim is paid by the DRG method and a client transfers from one acute care hospital or distinct unit per WAC 182-550-3600;
- (c) A client is not eligible for a Washington apple health program on one or more days of the hospital stay;
- (d) A client has third-party liability coverage at the time of admission to the hospital or distinct unit;
- (e) A client is eligible for Part B medicare, the hospital submitted a timely claim to medicare for payment, and medicare has made a payment for the Part B hospital charges;
- (f) A client is discharged from an inpatient hospital stay and, within (~~fourteen~~) 14 calendar days, is readmitted as an inpatient to the same hospital or an affiliated hospital. The agency or the agency's designee performs a retrospective utilization review (see WAC 182-550-1700) on the initial admission and all readmissions to determine which inpatient hospital stays qualify for payment. The review may determine:
 - (i) If both admissions qualify for separate reimbursement;
 - (ii) If both admissions must be combined to be reimbursed as one payment; or
 - (iii) Which inpatient hospital stay qualifies for individual payment.

(g) A readmission is due to a complication arising from a previous admission (e.g., provider preventable condition described in WAC 182-502-0022). The agency or the agency's designee performs a retrospective utilization review to determine if both admissions are appropriate and qualify for individual payments; or

(h) The agency identifies an enhanced payment due to a provider preventable condition, hospital-acquired condition, serious reportable event, or a condition not present on admission.

(8) In response to direction from the legislature, the agency may change any one or more payment methods outlined in chapter 182-550 WAC for the purpose of achieving the legislature's targeted expenditure levels. The legislative direction may take the form of express lan-

guage in the Biennial Appropriations Act or may be reflected in the level of funding appropriated to the agency in the Biennial Appropriations Act. In response to this legislative direction, the agency may calculate an adjustment factor (known as an "inpatient adjustment factor") to apply to inpatient hospital rates.

(a) The inpatient adjustment factor is a specific multiplier calculated by the agency and applied to existing inpatient hospital rates to meet targeted expenditure levels as directed by the legislature.

(b) The agency will apply the inpatient adjustment factor when the agency determines that its expenditures on inpatient hospital rates will exceed the legislature's targeted expenditure levels.

(c) The agency will apply any such inpatient adjustment factor to each affected rate.

(9) The agency does not pay for a client's day of absence from the hospital.

(10) The agency pays an interim billed hospital claim for covered inpatient hospital services provided to an eligible client only when the interim billed claim meets the criteria in WAC 182-550-2900.

(11) The agency applies to the allowable for each claim all applicable adjustments for client responsibility, any third-party liability, medicare payments, and any other adjustments as determined by the agency.

(12) The agency pays hospitals in designated bordering cities for allowed covered services as described under WAC 182-550-3900.

(13) The agency pays out-of-state hospitals for allowed covered services as described under WAC 182-550-4000.

(14) The agency's annual aggregate payments for inpatient hospital services, including payments to state-operated hospitals, will not exceed the estimated amounts that the agency would have paid using medicare payment principles.

(15) When hospital ownership changes, the agency's payment to the hospital will not exceed the amount allowed under 42 U.S.C. Section 1395x (v) (1) (O).

(16) Hospitals participating in the apple health program must annually submit to the agency:

(a) A copy of the hospital's CMS medicare cost report (Form 2552 version currently in use by the agency) that is the official "as filed" cost report submitted to the medicare fiscal intermediary; and

(b) A disproportionate share hospital (DSH) application if the hospital wants to be considered for DSH payments. See WAC 182-550-4900 for the requirements for a hospital to qualify for a DSH payment.

(17) Reports referred to in subsection (16) of this section must be completed according to:

(a) Medicare's cost reporting requirements;

(b) The provisions of this chapter; and

(c) Instructions issued by the agency.

(18) The agency requires hospitals to follow generally accepted accounting principles.

(19) Participating hospitals must permit the agency to conduct periodic audits of their financial records, statistical records, and any other records as determined by the agency.

(20) The agency limits payment for private room accommodations to the semiprivate room rate. Room charges must not exceed the hospital's usual and customary charges to the general public as required by 42 C.F.R. Sec. 447.271.

(21) For psychiatric hospitals and psychiatric hospital units, when a claim groups to a DRG code that pays by the DRG method, the

agency may manually price the claim at the hospital's psychiatric per diem rate.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-15-128, § 182-550-3000, filed 7/21/21, effective 8/21/21; WSR 19-04-004, § 182-550-3000, filed 1/23/19, effective 3/1/19; WSR 18-11-074, § 182-550-3000, filed 5/16/18, effective 7/1/18; WSR 15-24-096, § 182-550-3000, filed 12/1/15, effective 1/1/16. Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-12-047, § 182-550-3000, filed 5/29/14, effective 7/1/14. WSR 11-14-075, recodified as § 182-550-3000, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 2009-11 Omnibus Operating Budget (ESHB 1244). WSR 09-12-063, § 388-550-3000, filed 5/28/09, effective 7/1/09. Statutory Authority: RCW 74.08.090 and 74.09.500. WSR 07-14-055, § 388-550-3000, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 05-11-077, § 388-550-3000, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 42 U.S.C. 1395 x(v), 42 C.F.R. 447.271, 447.11303, and 447.2652. WSR 99-06-046, § 388-550-3000, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-3000, filed 12/18/97, effective 1/18/98.]

AMENDATORY SECTION (Amending WSR 14-14-049, filed 6/25/14, effective 7/26/14)

WAC 182-550-3850 Budget neutrality adjustment and measurement.

(1) The medicaid agency measures the effectiveness of budget neutral rebasing by applying a budget neutrality adjustment factor to the base payment rates for both inpatient and outpatient hospitals as needed to maintain aggregate payments under rebased payment systems.

(a) The agency performs budget-neutrality adjustments and measurement by prospectively adjusting conversion factors and rates to offset unintentional aggregate payment system decreases or increases. The agency publishes conversion factors and rates which reflect any required budget neutrality adjustment.

(b) The following rates and factors are not adjusted by the BNAF:

- (i) Inpatient per diem;
- (ii) Ratio of costs-to-charges (RCC);
- (iii) Critical access hospital (CAH) weighted costs-to-charges (WCC);
- (iv) Inpatient pain management and rehabilitation (PM&R);
- (v) Per-case rates;
- (vi) Administrative day rates;
- (vii) Long-term acute care (LTAC);
- (viii) (~~Chemical-using pregnant women (CUP)~~) Substance-using pregnant people (SUPP);
- (ix) Outlier parameters;
- (x) Outpatient services paid at the resource-based relative value scale (RBRVS) fee;
- (xi) Outpatient corneal transplants; and
- (xii) Diabetic education.

(2) The agency measures budget neutrality on an ongoing basis after rebased system implementation as follows:

(a) The agency gathers inpatient and outpatient claims and encounter data from the rebased system implementation date to the end of the measurement period.

(i) The first measurement period is the initial six months following rebased payment system implementation.

(ii) Additional measurement periods occur no more frequently than quarterly thereafter.

(iii) The agency performs a final measurement period for data received through June 30, 2016.

(b) The agency sums the aggregate payment amounts separately for inpatient and outpatient services. The agency will make the following adjustments to the base data:

(i) The agency removes any reductions due to third-party liability (TPL), client responsibility, and client spenddown from the payment summary;

(ii) The agency removes any increase awarded by RCW 74.09.611(2) from inpatient services;

(iii) The agency includes any outpatient service lines which are bundled under the enhanced ambulatory patient group (EAPG) system, but would be otherwise payable under the ambulatory payment classification (APC) system; and

(iv) Other adjustments as necessary.

(c) The agency processes all claims and encounters using the rates, factors, and policies which were in effect on June 30, 2014, with the following exceptions:

(i) The agency uses the RCC effective on the date of service;

(ii) The agency uses the most recent RBRVS values for any outpatient service paid using the RBRVS; and

(iii) The agency updates APC relative weights to reflect the most recent relative weights supplied by CMS;

(iv) The agency adjusts the outpatient budget target adjuster (BTA) to offset the inflation factor applied to OPSS in the CMS OPSS final rule; and

(v) The agency may include other adjustments as necessary to ensure accurate payment determination.

(d) The agency aggregates payment amounts calculated under (c) of this subsection separately for inpatient and outpatient services.

(3) The agency will modify the conversion factors and rates to reflect aggregate changes in the overall payment system as follows:

(a) If the amount calculated in subsection (2)(b) of this section is between (~~ninety-nine~~) 99 percent and (~~one hundred one~~) 101 percent of the amount calculated in subsection (2)(d) of this section, no adjustment will be made to the conversion factors and rates currently in effect;

(b) If the amount calculated in subsection (2)(b) of this section is greater than (~~one hundred one~~) 101 percent of the amount calculated in subsection (2)(d) of this section, the conversion factors and rates will be adjusted to reach a target expenditure of (~~one hundred one~~) 101 percent from the rebased payment system implementation date to the end of the subsequent six-month period;

(c) If the amount calculated in subsection (2)(b) of this section is less than (~~ninety-nine~~) 99 percent of the amount calculated in subsection (2)(d) of this section, the conversion factors and rates will be adjusted to reach a target expenditure decrease of (~~ninety-nine~~) 99 percent from the rebased payment system implementation date to the end of the subsequent six-month period.

(4) The agency applies adjustments to the BNAF to rates prospectively at the beginning of the calendar quarter following the measurement.

[Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-14-049, § 182-550-3850, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 22-03-007, filed 1/6/22, effective 2/6/22)

WAC 182-550-4300 Hospitals and units exempt from the DRG payment method.

(1) Except when otherwise specified, inpatient services provided by hospitals and units that are exempt from the diagnosis-related group (DRG) payment method are paid under the ratio of costs-to-charges (RCC) payment method described in WAC 182-550-4500, the per diem payment method described in WAC 182-550-3000, the per case rate payment method described in WAC 182-550-3000, or other payment methods identified in this chapter (e.g., long term acute care (LTAC), certified public expenditure (CPE), critical access hospital (CAH), etc.). Inpatient services provided by hospitals and units are exempt from the DRG payment method only if they qualify for payment methods specifically mentioned in other sections of this chapter or in this section.

(2) The agency exempts the following hospitals, units, and services from the DRG payment method for inpatient services provided to clients eligible for Washington apple health:

(a) Hospitals participating in the agency's certified public expenditure (CPE) payment program (see WAC 182-550-4650);

(b) Hospitals participating in the agency's critical access hospital program (see WAC 182-550-2598);

(c) Rehabilitation services. All rehabilitation services are paid through the per diem payment method except as indicated in (a), (b), and (d) of this subsection (see WAC 182-550-3000);

(d) Military hospitals when no other specific arrangements have been made with the agency. The agency, or the military hospital, may elect or arrange for one of the following payment methods in lieu of the RCC payment method:

(i) Per diem payment method; or

(ii) DRG payment method; and

(e) Psychiatric services. All psychiatric services are paid through the per diem payment method except as indicated in (a), (b), and (d) of this subsection (see WAC 182-550-3000). An agency designee that arranges to directly pay a hospital and/or a designated distinct psychiatric unit of a hospital may use the agency's payment methods or contract with the hospital to pay using different methods.

(3) Inpatient psychiatric services, Involuntary Treatment Act services, and withdrawal management services provided in out-of-state hospitals are not covered or paid by the agency or the agency's designee. The agency does not cover or pay for other hospital services provided to clients eligible for those services in the following programs, when the services are provided in out-of-state hospitals that are not in designated bordering cities:

(a) Medical care services; and

(b) Other state-administered programs.

(4) The agency has established an average length of stay (ALOS) for each DRG classification and publishes it on the agency's website.

The agency uses the DRG ALOS as a benchmark to authorize and pay inpatient hospital stays exempt from the DRG payment method. When an inpatient hospital stay exceeds the agency's DRG ALOS benchmark or prior authorized LOS:

(a) For a psychiatric inpatient stay, the hospital must obtain approval for additional days beyond the prior authorized days from the agency or the agency's designee who prior authorized the admission. See WAC 182-550-2600;

(b) For an acute physical medicine and rehabilitation (PM&R) or a long term acute care (LTAC) stay, the hospital must obtain approval for additional days beyond the prior authorized days from the agency unit that prior authorized the admission. See WAC 182-550-2561 and 182-550-2590;

(c) For an inpatient hospital stay for withdrawal management for a ~~((chemical using pregnant (CUP) client))~~ substance-using pregnant people (SUPP) program client, see WAC 182-550-1100;

(d) For other medical inpatient stays for withdrawal management, see WAC 182-550-1100;

(e) For an inpatient stay in a certified public expenditure (CPE) hospital, see WAC 182-550-4690; and

(f) For an inpatient hospital stay not identified in (a) through (e) of this subsection, the agency may perform retrospective utilization review to determine if the LOS was medically necessary and at the appropriate level of care.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-03-007, § 182-550-4300, filed 1/6/22, effective 2/6/22; WSR 21-15-128, § 182-550-4300, filed 7/21/21, effective 8/21/21. Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-12-047, § 182-550-4300, filed 5/29/14, effective 7/1/14. WSR 11-14-075, recodified as § 182-550-4300, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500 and 2005 c 518. WSR 07-14-051, § 388-550-4300, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 06-08-046, § 388-550-4300, filed 3/30/06, effective 4/30/06. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 05-12-132, § 388-550-4300, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. WSR 01-16-142, § 388-550-4300, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-4300, filed 12/18/97, effective 1/18/98.]

WSR 23-04-052

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed January 27, 2023, 9:11 a.m., effective February 27, 2023]

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

Purpose: The agency revised this section to consolidate all telemedicine in one section for all programs. Additionally, "speech language pathology services by telemedicine when not available in person" was removed. This was added in a rule making during the public health emergency in error. The consolidated telemedicine rule applies to all programs and resides in new WAC 182-501-0300, filed on January 26, 2023, under WSR 23-04-048.

Citation of Rules Affected by this Order: Amending WAC 182-531A-1200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: ESHB 1196, 67th legislature, 2021 regular session.

Adopted under notice filed as WSR 22-23-147 on November 22, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 27, 2023.

Wendy Barcus
Rules Coordinator

OTS-3975.2

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

WAC 182-531A-1200 Applied behavior analysis (ABA)—Services provided via telemedicine. (~~Telemedicine, as defined in chapter 182-531 WAC, may be used to provide the following authorized services:~~

- ~~(1) Program supervision when the client is present;~~
- ~~(2) Family/caregiver training, which does not require the client's presence; and~~
- ~~(3) Speech language pathology services when otherwise not available in person.)~~ Applied behavior analysis (ABA) services delivered using telemedicine may be reimbursed by the agency when billed in accordance with the rules regarding telemedicine and store-and-forward technology in WAC 182-501-0300 and the agency's published billing instructions.

[Statutory Authority: RCW 41.05.021, 41.05.160, and Thurston County Superior Court in J.C. and H.S. v. Washington State Health Care Authority, no. 20-2-01813-34. WSR 22-08-035, § 182-531A-1200, filed 3/29/22, effective 4/29/22. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 15-19-121, § 182-531A-1200, filed 9/21/15, effective 10/22/15; WSR 14-24-083, § 182-531A-1200, filed 12/1/14, effective 1/1/15.]

WSR 23-04-063

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed January 27, 2023, 3:44 p.m., effective February 27, 2023]

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

Purpose: WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions. This rule making updates the federal regulations publication date from 2021 to the most recently adopted 2022 version previously adopted by reference. This amendment makes no changes to any requirements previously adopted, but is required for the department of health to receive delegation of the Radionuclide Air Emissions Program from the United States Environmental Protection Agency.

Citation of Rules Affected by this Order: Amending WAC 246-247-035.

Statutory Authority for Adoption: RCW 70A.388.040 and 70A.388.050(5).

Adopted under notice filed as WSR 22-21-130 on October 18, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 27, 2023.

January 27, 2023
Kristen Petersen, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-4000.1

AMENDATORY SECTION (Amending WSR 21-22-118, filed 11/3/21, effective 12/4/21)

WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions. (1) In addition to other requirements of this chapter, the following federal standards, as in effect on July 1, ((2021)) 2022, are adopted by reference except as provided in subsection (2) of this section.

(a) For federal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart H - National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.

(iii) 40 C.F.R. Part 61, Subpart I - National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.

(iv) 40 C.F.R. Part 61, Subpart Q - National Emission Standards for Radon Emissions From Department of Energy Facilities.

(b) For nonfederal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart B - National Emission Standards for Radon Emissions From Underground Uranium Mines.

(iii) 40 C.F.R. Part 61, Subpart K - National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants.

(iv) 40 C.F.R. Part 61, Subpart R - National Emissions Standards for Radon from Phosphogypsum Stacks.

(v) 40 C.F.R. Part 61, Subpart T - National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings.

(vi) 40 C.F.R. Part 61, Subpart W - National Emission Standards for Radon Emissions From Operating Mill Tailings.

(2) References to "Administrator" or "EPA" in 40 C.F.R. Part 61 include the department of health except in any section of 40 C.F.R. Part 61 for which a federal rule or delegation indicates that the authority will not be delegated to the state.

[Statutory Authority: RCW 70A.388.040, 70A.388.050(5) and 2020 c 20. WSR 21-22-118, § 246-247-035, filed 11/3/21, effective 12/4/21. Statutory Authority: RCW 70.98.050 and 70.98.080(5). WSR 19-23-039, § 246-247-035, filed 11/12/19, effective 12/13/19. Statutory Authority: RCW 70.98.050, 70.98.080(5) and 40 C.F.R. 63.91. WSR 19-04-042, § 246-247-035, filed 1/29/19, effective 3/1/19. Statutory Authority: RCW 70.98.050 and 70.98.080(5). WSR 18-12-075, § 246-247-035, filed 6/1/18, effective 7/2/18; WSR 17-13-037, § 246-247-035, filed 6/13/17, effective 7/14/17. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 16-15-083, § 246-247-035, filed 7/19/16, effective 8/19/16; WSR 16-06-003, § 246-247-035, filed 2/17/16, effective 3/19/16. Statutory Authority: RCW 70.98.050 and 70.98.080(5). WSR 12-01-071, § 246-247-035, filed 12/19/11, effective 1/19/12. Statutory Authority: RCW 70.98.050. WSR 05-12-059, § 246-247-035, filed 5/26/05, effective 6/26/05.]

WSR 23-04-071

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed January 30, 2023, 3:20 p.m., effective March 2, 2023]

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

Purpose: The agency amended these rules with housekeeping changes to modernize language. The housekeeping fixes are required to align the definition of "Residential habilitation center" with the definition written in RCW 71A.10.020(11), updated "chemical dependency professional" to "substance use disorder professional" as written in chapters 18.205 RCW and 246-811 WAC, and updated "detoxification" to "withdrawal management" with certification done by the department of health, as written in chapter 246-341 WAC.

Citation of Rules Affected by this Order: Amending WAC 182-500-0050 and 182-502-0002.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: RCW 71A.10.020(11); chapter 18.205 RCW.

Adopted under notice filed as WSR 22-23-009 on November 3, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: January 30, 2023.

Wendy Barcus
Rules Coordinator

OTS-4186.1

AMENDATORY SECTION (Amending WSR 22-07-105, filed 3/23/22, effective 4/23/22)

WAC 182-500-0050 Washington apple health definitions—I. "Ineligible spouse" see "spouse" in WAC 182-500-0100.

"Institution" means an entity that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more people unrelated to the proprietor. Eligibility for a Washington apple health program may vary depending upon the type of institution in which an individual resides. For the purposes of apple health programs, "institution" includes all the following:

(1) **"Institution for mental diseases (IMD)"** - A hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment or care of people with mental diseases, including medical attention, nursing care and related

services. An IMD may include inpatient substance use disorder (SUD) facilities of more than 16 beds which provide residential treatment for SUD.

(2) **"Intermediate care facility for individuals with intellectual disabilities (ICF/IID)"** - An institution or distinct part of an institution that is:

(a) Defined in 42 C.F.R. 440.150;

(b) Certified to provide ICF/IID services under 42 C.F.R. 483, Subpart I; and

(c) Primarily for the diagnosis, treatment, or rehabilitation for people with intellectual disabilities or a related condition.

(3) **"Medical institution"** - An entity that is organized to provide medical care, including nursing and convalescent care. The terms "medical facility" and "medical institution" are sometimes used interchangeably throughout Title 182 WAC.

(a) To meet the definition of medical institution, the entity must:

(i) Be licensed as a medical institution under state law;

(ii) Provide medical care, with the necessary professional personnel, equipment, and facilities to manage the health needs of the patient on a continuing basis under acceptable standards; and

(iii) Include adequate physician and nursing care.

(b) Medical institutions include:

(i) "Hospice care center" - An entity licensed by the department of health (DOH) to provide hospice services. Hospice care centers must be medicare-certified, and approved by the agency or the agency's designee to be considered a medical institution.

(ii) "Hospital" - Defined in WAC 182-500-0045.

(iii) "Nursing facility (NF)" - An entity certified to provide skilled nursing care and long-term care services to medicaid recipients under Social Security Act Sec. 1919(a), 42 U.S.C. Sec. 1396r. Nursing facilities that may become certified include nursing homes licensed under chapter 18.51 RCW, and nursing facility units within hospitals licensed by DOH under chapter 70.41 RCW. This includes the nursing facility section of a state veteran's facility.

(iv) "Psychiatric hospital" - An institution, or a psychiatric unit located in a hospital, licensed as a hospital under applicable Washington state laws and rules, that is primarily engaged to provide psychiatric services for the diagnosis and treatment of mentally ill people under the supervision of a physician.

(v) "Psychiatric residential treatment facility (PRTF)" - A non-hospital residential treatment center licensed by DOH, and certified by the agency or the agency's designee to provide psychiatric inpatient services to medicaid-eligible people age 21 and younger. A PRTF must be accredited by the Joint Commission on Accreditation of Health care Organizations (JCAHO) or any other accrediting organization with comparable standards recognized by Washington state. A PRTF must meet the requirements in 42 C.F.R. 483, Subpart G, regarding the use of restraint and seclusion.

(vi) "Residential habilitation center (RHC)" - (~~A residence operated by the state under chapter 71A.20 RCW that serves people who have exceptional care and treatment needs due to their developmental disabilities by providing residential care designed to develop individual capacities to their optimum. RHCs provide residential care and may be certified to provide ICF/MR services and nursing facility services.~~) A state-operated facility for persons with developmental disabilities governed by chapter 71A.20 RCW.

(c) Medical institutions do not include entities licensed by the agency or the agency's designee as adult family homes (AFHs) and boarding homes. AFHs and boarding homes include assisted living facilities, adult residential centers, enhanced adult residential centers, and developmental disability group homes.

(4) **"Public institution"** means an entity that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(a) Public institutions include:

(i) Correctional facility - An entity such as a state prison, or city, county, or tribal jail, or juvenile rehabilitation or juvenile detention facility.

(ii) Eastern and Western State mental hospitals. (Medicaid coverage for these institutions is limited to people age 21 and younger, and people age 65 and older.)

(iii) Certain facilities administered by Washington state's department of veteran's affairs (see (b) of this subsection for facilities that are not considered public institutions).

(b) Public institutions do not include intermediate care facilities, entities that meet the definition of medical institution (such as Harborview Medical Center and University of Washington Medical Center), or facilities in Retsil, Orting, and Spokane that are administered by the department of veteran's affairs and licensed as nursing facilities.

"Institution for mental diseases (IMD)" see "institution" in this section.

"Institutional review board" - A board or committee responsible for reviewing research protocols and determining whether:

- (1) Risks to subjects are minimized;
- (2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result;
- (3) Selection of subjects is equitable;
- (4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative;
- (5) Informed consent will be appropriately documented;
- (6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects;
- (7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data; and
- (8) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant people, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

"Institutionalized spouse" see "spouse" in WAC 182-500-0100.

"Intermediate care facility for individuals with intellectual disabilities (ICF/IID)" see "institution" in this section.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-07-105, § 182-500-0050, filed 3/23/22, effective 4/23/22; WSR 21-19-141, § 182-500-0050, filed 9/22/21, effective 10/23/21; WSR 17-12-017, § 182-500-0050, filed 5/30/17, effective 6/30/17; WSR 15-17-013, § 182-500-0050, filed 8/7/15, effective 9/7/15. WSR 11-14-075, recodified as § 182-500-0050, filed 6/30/11, effective 7/1/11. Statutory Au-

thority: RCW 74.08.090 and 2011 1st sp.s. c 15. WSR 11-14-053, § 388-500-0050, filed 6/29/11, effective 7/30/11.]

OTS-4187.1

AMENDATORY SECTION (Amending WSR 22-15-115, filed 7/20/22, effective 8/20/22)

WAC 182-502-0002 Eligible provider types. The following health care professionals, health care entities, suppliers or contractors of service may request enrollment with the Washington state health care authority (medicaid agency) to provide covered health care services to eligible clients. For the purposes of this chapter, health care services include treatment, equipment, related supplies, and drugs.

(1) Professionals:

(a) Advanced registered nurse practitioners;

(b) Anesthesiologists;

(c) Applied behavior analysis (ABA) professionals, as provided in WAC 182-531A-0800:

(i) Licensed behavior analyst;

(ii) Licensed assistant behavior analyst; and

(iii) Certified behavior technician.

(d) Audiologists;

(e) (~~Chemical dependency~~) Substance use disorder professionals:

(i) Mental health (~~care~~) providers; and

(ii) Peer counselors.

(f) Chiropractors;

(g) Dentists;

(h) Dental health aide therapists, as provided in chapter 70.350

RCW;

(i) Dental hygienists;

(j) Denturists;

(k) Dietitians or nutritionists;

(l) Hearing aid fitters/dispensers;

(m) Marriage and family therapists;

(n) Mental health counselors;

(o) Mental health care providers;

(p) Midwives;

(q) Naturopathic physicians;

(r) Nurse anesthetist;

(s) Occularists;

(t) Occupational therapists;

(u) Ophthalmologists;

(v) Opticians;

(w) Optometrists;

(x) Orthodontists;

(y) Orthotist;

(z) Osteopathic physicians;

(aa) Osteopathic physician assistants;

(bb) Peer counselors;

(cc) Podiatric physicians;

(dd) Pharmacists;

(ee) Physicians;

- (ff) Physician assistants;
- (gg) Physical therapists;
- (hh) Prosthetist;
- (ii) Psychiatrists;
- (jj) Psychologists;
- (kk) Radiologists;
- (ll) Registered nurse delegators;
- (mm) Registered nurse first assistants;
- (nn) Respiratory therapists;
- (oo) Social workers; and
- (pp) Speech/language pathologists.
- (2) Agencies, centers and facilities:
 - (a) Adult day health centers;
 - (b) Ambulance services (ground and air);
 - (c) Ambulatory surgery centers (medicare-certified);
 - (d) Birthing centers (licensed by the department of health);
 - (e) Cardiac diagnostic centers;
 - (f) Case management agencies;
 - (g) ~~((Chemical dependency))~~ Substance use disorder treatment facilities certified by the department of ((social and health services (DSHS) division of behavioral health and recovery (DBHR), and contracted through either:
 - ~~(i) A county under chapter 388-810 WAC; or~~
 - ~~(ii) DBHR to provide chemical dependency treatment services.~~
 - ~~(h) Centers for the detoxification of acute alcohol or other drug intoxication conditions (certified by DBHR-))~~ health (DOH);
 - (h) Withdrawal management treatment facilities certified by DOH;
 - (i) Community AIDS services alternative agencies;
 - (j) Community mental health centers;
 - (k) Diagnostic centers;
 - (l) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;
 - (m) Family planning clinics;
 - (n) Federally qualified health centers (designated by the federal department of health and human services);
 - (o) Genetic counseling agencies;
 - (p) Health departments;
 - (q) Health maintenance organization (HMO)/managed care organization (MCO);
 - (r) HIV/AIDS case management;
 - (s) Home health agencies;
 - (t) Hospice agencies;
 - (u) Hospitals;
 - (v) Indian health service facilities/tribal 638 facilities;
 - (w) Tribal or urban Indian clinics;
 - (x) Inpatient psychiatric facilities;
 - (y) Intermediate care facilities for individuals with intellectual disabilities (ICF-IID);
 - (z) Kidney centers;
 - (aa) Laboratories (CLIA certified);
 - (bb) Maternity support services agencies; maternity case managers; infant case management, first steps providers;
 - (cc) Neuromuscular and neurodevelopmental centers;
 - (dd) Nurse services/delegation;
 - (ee) Nursing facilities (approved by the DSHS aging and long-term support administration);
 - (ff) Pathology laboratories;

- (gg) Pharmacies;
- (hh) Private duty nursing agencies;
- (ii) Radiology - Stand-alone clinics;
- (jj) Rural health clinics (medicare-certified);
- (kk) School districts and educational service districts;
- (ll) Sleep study centers; and
- (mm) Washington state school districts and educational service districts.

(3) Suppliers of:

- (a) Blood, blood products, and related services;
 - (b) Durable and nondurable medical equipment and supplies;
 - (c) Complex rehabilitation technologies;
 - (d) Infusion therapy equipment and supplies;
 - (e) Prosthetics/orthotics;
 - (f) Hearing aids; and
 - (g) Respiratory care, equipment, and supplies.
- (4) Contractors:
- (a) Transportation brokers;
 - (b) Spoken language interpreter services agencies;
 - (c) Independent sign language interpreters; and
 - (d) Eyeglass and contact lens providers.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-15-115, § 182-502-0002, filed 7/20/22, effective 8/20/22; WSR 22-07-105, § 182-502-0002, filed 3/23/22, effective 4/23/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 415 § 211(49). WSR 19-20-046, § 182-502-0002, filed 9/25/19, effective 10/26/19. Statutory Authority: RCW 41.05.021, 2013 c 178, and 2013 2nd sp.s. c 4. WSR 14-06-054, § 182-502-0002, filed 2/27/14, effective 3/30/14. WSR 11-14-075, recodified as § 182-502-0002, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.080, and 74.09.290. WSR 11-11-017, § 388-502-0002, filed 5/9/11, effective 6/9/11.]

WSR 23-04-078
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed January 31, 2023, 8:16 a.m., effective April 1, 2023]

Effective Date of Rule: April 1, 2023.

Purpose: The purpose of this rule making is to lower the pension discount rate (PDR) to better align with the rate of return for long-term treasuries for self-insured pensions. The PDR is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. This rule lowers the PDR for self-insured employers from 5.7 percent to 5.6 percent, effective April 1, 2023.

Citation of Rules Affected by this Order: Amending WAC 296-14-8810.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), 51.44.080.

Adopted under notice filed as WSR 22-23-146 on November 22, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: January 31, 2023.

Joel Sacks
 Director

OTS-4163.1

AMENDATORY SECTION (Amending WSR 22-05-075, filed 2/15/22, effective 4/1/22)

WAC 296-14-8810 Pension tables, pension discount rate and mortality tables. (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

- (i) Mortality tables from nationally recognized sources;
- (ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients;
- (iii) A pension discount rate of 4.0 percent for state fund pensions;

(iv) A pension discount rate of (~~5.7~~) 5.6 percent for self-insured pensions, including the United States Department of Energy pensions; and

(v) The higher of the two pension discount rates so that pension benefits for both state fund and self-insured recipients use the same reduction factors for the calculation of death benefit options under RCW 51.32.067.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

[Statutory Authority: RCW 51.04.020, 51.44.070(1) and 51.44.080. WSR 22-05-075, § 296-14-8810, filed 2/15/22, effective 4/1/22; WSR 21-02-066, § 296-14-8810, filed 1/5/21, effective 4/1/21; WSR 20-02-114, § 296-14-8810, filed 1/2/20, effective 4/1/20; WSR 19-01-096, § 296-14-8810, filed 12/18/18, effective 4/1/19; WSR 18-05-081, § 296-14-8810, filed 2/20/18, effective 4/1/18; WSR 17-05-096, § 296-14-8810, filed 2/14/17, effective 4/1/17; WSR 16-05-087, § 296-14-8810, filed 2/16/16, effective 4/1/16; WSR 15-02-061, § 296-14-8810, filed 1/6/15, effective 4/1/15.]

WSR 23-04-079

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed January 31, 2023, 8:37 a.m., effective March 3, 2023]

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

Purpose: In May of 2022, the employment security department (ESD) received a petition requesting that ESD amend WAC 192-170-080 to eliminate WAC 192-170-080 (1)(a), which states, "If you are on a leave of absence, you are not unemployed and thus not eligible for benefits."

WAC 192-170-080 (1)(a), which states that someone on a leave of absence is not "unemployed," was determined to be "invalid" by the commissioner of ESD in 2011 under *In re Ausburn*, Empl. Sec. Comm'r Dec.2d 971 (2011). In 2021, the United States Department of Labor issued guidance stating an individual should be considered "unemployed" when the individual incurs a reduction in work hours and their wages are less than their weekly benefit amount. Unemployment Insurance Program Letter No. 3-22 (Nov. 22, 2021).

Citation of Rules Affected by this Order: Amending WAC 192-170-080.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to ESD. RCW 50.04.310 defines when an individual is "unemployed" and "not unemployed."

Adopted under notice filed as WSR 22-23-065 on November 9, 2022.

A final cost-benefit analysis is available by contacting Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 771, email rules@esd.wa.gov, website <https://www.esd.wa.gov/newsroom/ui-rulemaking/standard-occupational-code-reporting>.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: January 31, 2022.

Dan Zeitlin
Employment System Policy Director

OTS-4059.2

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-170-080 Leave of absence. (1) A leave of absence is an absence from work mutually and voluntarily agreed upon by you and your

employer or a collective bargaining agent, or leave to which you are entitled under federal or state law, where the employer-employee relationship is continued and you will be reinstated in the same or similar job when the leave expires.

(a) If you are on a leave of absence, you are (~~not unemployed and thus not eligible for benefits~~) eligible for unemployment insurance benefits as long as you meet:

(i) The definition of "unemployed" per RCW 50.04.310; and

(ii) All other eligibility requirements provided per RCW 50.20.010.

(b) If you choose not to return to work when the leave of absence ends, the separation is treated as a voluntary quit. The separation date will be the first working day after the leave expires.

(c) If no job is available with the employer when the leave of absence ends, the separation is treated as a layoff due to a lack of work.

(d) If you have been on medical leave and are released for work by your medical provider, but your employer refuses to permit you to return to work, you are considered to be laid off due to a lack of work and potentially eligible for benefits.

(2) A leave of absence does not exist if the employer offers you only a preference for rehire or a promise of a job if work exists at the end of the leave. An employee-initiated leave that only provides fringe benefits during the leave or preferential status for reemployment is not a leave of absence but a voluntary quit.

(3) A temporary or indefinite disciplinary suspension from work by the employer is not a leave of absence. The department will treat this as a suspension.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-170-080, filed 5/12/10, effective 6/12/10.]

WSR 23-04-082
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed January 31, 2023, 8:57 a.m., effective March 3, 2023]

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

Purpose: The department of children, youth, and families (DCYF) is repealing WAC 110-50-0310 and amending WAC 110-80-0260, 110-50-0300, and 110-50-0320. DCYF is making changes regarding referrals to the division of child support (DCS) when children are placed into the care of DCYF. DCYF had an automatic referral process to start collecting child support 72 hours after a child or youth is removed from the parents' or guardians' care and custody, unless good cause existed to not pursue collection. DCYF is revising good cause criteria to minimize the number of referrals to DCS. These changes are being made to alleviate financial hardship and other barriers families often experience, which in turn helps reunify and stabilize children and their families sooner. In addition, the governor's office has included minimized referrals as a cost-savings in the 2022 budget proposal.

Citation of Rules Affected by this Order: Repealing WAC 110-50-0310; and amending WAC 110-50-0300, 110-50-0320, and 110-80-0260.

Statutory Authority for Adoption: RCW 74.20.040.

Adopted under notice filed as WSR 22-23-093 on November 15, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 1.

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

Date Adopted: January 31, 2023.

Brenda Villarreal
Rules Coordinator

OTS-4046.2

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-50-0300 ((What)) When will cases ((must)) be referred to the division of child support (DCS)? ((Each case where the department participates in the payment of foster care must be referred to the division of child support, except when:

(1) ~~Collection would not be cost effective, including placements of seventy-two hours or less;~~

~~(2) Collection is exempt by law; or~~

~~(3) A child with developmental disabilities is eligible for admission to or discharged from a residential habilitation center as defined by RCW 71A.10.020(8), unless the child is placed as a result of an action taken under chapter 13.34 RCW.)~~ (1) The department will refer cases to DCS when a court has made a finding of abandonment as defined in RCW 13.34.030, unless good cause exists.

(2) Nothing in this section prohibits a parent, guardian, or relative from pursuing child support by contacting DCS directly.

[WSR 18-14-078, recodified as § 110-50-0300, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090, 2004 c 183, 74.20.040, and 74.13.020. WSR 05-06-091, § 388-25-0225, filed 3/1/05, effective 4/1/05. Statutory Authority: RCW 74.13.031. WSR 01-08-047, § 388-25-0225, filed 3/30/01, effective 4/30/01.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-50-0320 What constitutes good cause for not pursuing the collection or establishment of child support or paternity? ~~((Child-
ren's administration uses the following criteria to determine whether
sufficient good cause exists for requesting that DCS not pursue col-
lection or establish child support or paternity on foster care ca-
ses:))~~ Good cause for not pursuing the collection of child support or
establishing paternity exists when:

(1) It is not in the child's or youth's best interest; and

(2) The parent or ~~((other legally obligated person))~~ guardian, or the ~~((parent or other person's))~~ parent's or guardian's child or youth, spouse, or spouse's child or youth was the victim of the offense for which the child or youth was committed to the custody of the juvenile rehabilitation ~~((administration (JRA)))~~ division (JRD) and the child or youth is being placed directly into foster care from a ~~((JRA))~~ JRD facility until this placement episode closes;

(3) Adoption proceedings for the child or youth are pending in court or the custodial parent or guardian is being helped by a private or public agency to decide if the child or youth will be placed for adoption;

(4) The child or youth was conceived as a result of incest or rape ~~((and establishing paternity would not be in the child's best interest))~~;

(5) The juvenile or tribal court in ~~((the))~~ dependency proceedings or the department finds that the parents or guardians will be unable to comply with an agreed reunification plan with the child or youth due to ~~((the))~~ financial hardship caused by paying child support ~~((The social worker also may determine that financial hardship caused by paying child support will delay or prevent family reunification; or))~~;

(6) The custodial parent ~~((and/or))~~ or guardian or the child or youth may be placed in danger as a result of the presence of or potential for domestic abuse perpetrated by the ~~((person that the division of child support))~~ individual that DCS would be pursuing for collection action;

(7) The child support obligation would result in a financial hardship for parents or guardians because the child's or youth's household was low income at the time of removal; or

(8) The parent of a newborn child abandons the child by transferring the child to a qualified individual at an appropriate location, per RCW 26.20.030.

[WSR 18-14-078, recodified as § 110-50-0320, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090, 2004 c 183, 74.20.040, and 74.13.020. WSR 05-06-091, § 388-25-0227, filed 3/1/05, effective 4/1/05.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 110-50-0310 Does children's administration refer foster care cases to the division of child support where good cause exists?

OTS-4047.2

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0260 What are the consequences of an adopted child being placed in foster care? ~~((1) If a child is on active status with Washington state's adoption support program and the department places the child in foster care, the department is required to refer the case to the division of child support and the program may report that good cause exists for not pursuing collection of support payments.~~

~~(2))~~ The department may review the adoption support agreement and may renegotiate the amount of any cash payments to the adoptive parent during the child's out-of-home placement.

[WSR 18-14-078, recodified as § 110-80-0260, filed 6/29/18, effective 7/1/18. Statutory Authority: 42 U.S.C. § 671-675, RCW 26.33.340, 74.13A.020, 74.13A.030, 74.13A.040, 74.13A.045, 74.13A.047, 74.13A.060, 74.13A.075, 74.13A.085, 74.13A.100, 74.15.020, 45 C.F.R. § 1356.40. WSR 18-14-008, § 388-27-0265, filed 6/21/18, effective 7/22/18. Statutory Authority: RCW 74.13.031. WSR 01-08-045, § 388-27-0265, filed 3/30/01, effective 4/30/01.]

WSR 23-04-085

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed January 31, 2023, 10:04 a.m., effective March 3, 2023]

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

Purpose: Rule making is needed to add a definition for professional services and eliminate definitions that are no longer needed.

Citation of Rules Affected by this Order: Amending WAC 4-30-010.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 22-23-042 on November 8, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: January 27, 2023.

Michael J. Paquette, CPA
Executive Director

OTS-4189.1

AMENDATORY SECTION (Amending WSR 19-16-074, filed 7/31/19, effective 1/1/20)

WAC 4-30-010 Definitions. For purposes of these rules the following terms have the meanings indicated unless a different meaning is otherwise clearly provided in these rules:

"Act" means the Public Accountancy Act codified as chapter 18.04 RCW.

"Active individual participant" means an individual whose primary occupation is at the firm or affiliated entity's business. An individual whose primary source of income from the business entity is provided as a result of passive investment is not an active individual participant.

~~(**"Affiliated entity"** means any entity, entities or persons that directly or indirectly through one or more relationships influences or controls, is influenced or controlled by, or is under common influence or control with other entities or persons. This definition includes, but is not limited to, parents, subsidiaries, investors or investees, coinvestors, dual employment or management in joint ventures or brother-sister entities.)~~

"Applicant" means an individual who has applied:

(a) To take the national uniform CPA examination;

(b) For an initial individual license, an initial firm license, or initial registration as a resident nonlicensee owner;

(c) To renew an individual license, a CPA-Inactive certificate, a CPA firm license, or registration as a resident nonlicensee firm owner;

(d) To reinstate an individual license, a CPA-Inactive certificate, registration as a resident nonlicensee firm owner, or practice privileges.

"Attest" means providing the following services:

(a) Any audit or other engagement to be performed in accordance with the statements on auditing standards;

(b) Any review of a financial statement to be provided in accordance with the statements on standards for accounting and review services;

(c) Any engagement to be performed in accordance with the statements on standards for attestation engagements; and

(d) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards.

"Audit," "review," and **"compilation"** are terms reserved for use by licensees, as defined in this section.

~~(**"Authorized person"** means a person who is designated or has held out as the client's representative, such as a general partner, tax matters partner, majority shareholder, spouse, agent, or apparent agent.)~~

"Board" means the board of accountancy created by RCW 18.04.035.

"Breach of fiduciary responsibilities/duties" means when a person who has a fiduciary responsibility or duty acts in a manner adverse or contrary to the interests of the person to whom they owe the fiduciary responsibility or duty. Such actions would include profiting from their relationship without the express informed consent of the beneficiary of the fiduciary relationship, or engaging in activities that represent a conflict of interest with the beneficiary of the fiduciary relationship.

"Certificate" means a certificate as a CPA-Inactive issued in the state of Washington prior to July 1, 2001, as authorized by the act, unless otherwise defined in rule.

"Certificate holder" means the holder of a valid CPA-Inactive certificate where the individual is not a licensee and is prohibited from practicing public accounting.

"Client" means the person or entity that retains a licensee, as defined in this section, a CPA-Inactive certificate holder, a nonlicensee firm owner of a licensed firm, or an entity affiliated with a licensed firm to perform professional services through other than an employer/employee relationship.

~~(**"Commissions and referral fees"** are compensation arrangements where the primary contractual relationship for the product or service is not between the client and licensee, as defined in this section, CPA-Inactive certificate holder, nonlicensee firm owner of a licensed firm, or a person affiliated with a licensed firm; and~~

~~(a) Such persons are not primarily responsible to the client for the performance or reliability of the product or service; or~~

~~(b) Such persons add no significant value to the product or service; or~~

~~(c) A third party instead of the client pays the persons for the products or services.)~~

"Compilation" means providing a service to be performed in accordance with statements on standards for accounting and review serv-

ices that is presenting in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

~~("**Contingent fees**" are fees established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service.)~~

"CPA" or **"certified public accountant"** means an individual holding a license to practice public accounting under chapter 18.04 RCW or recognized by the board in the state of Washington, including an individual exercising practice privileges pursuant to RCW 18.04.350(2).

"CPA-Inactive" means an individual holding a CPA-Inactive certificate recognized in the state of Washington. An individual holding a CPA-Inactive certificate is prohibited from practicing public accounting and may only use the CPA-Inactive title if they are not offering accounting, tax, tax consulting, management advisory, or similar services to the public.

"CPE" means continuing professional education.

"Fiduciary responsibility/duty" means a relationship wherein one person agrees to act solely in another person's interests. Persons having such a relationship are fiduciaries and the persons to whom they owe the responsibility are principals. A person acting in a fiduciary capacity is held to a high standard of honesty and disclosure in regard to a principal. Examples of fiduciary relationships include those between broker and client, trustee and beneficiary, executors or administrators and the heirs of a decedent's estate, and an officer or director and the owners of the entity.

"Firm" means a sole proprietorship, a corporation, or a partnership. "Firm" also means a limited liability company or partnership formed under chapters 25.15 and 18.100 RCW and a professional service corporation formed under chapters 23B.02 and 18.100 RCW.

"Firm mobility" means an out-of-state firm that is not licensed by the board and meets the requirements of RCW 18.04.195

(1)(a)(iii)(A) through (D) exercising practice privileges in this state.

"Generally accepted accounting principles" (GAAP) is an accounting term that encompasses the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. It includes not only broad guidelines of general application, but also detailed practices and procedures. Those conventions, rules, and procedures provide a standard by which to measure financial presentations.

"Generally accepted auditing standards" (GAAS) are guidelines and procedures, promulgated by the AICPA, for conducting individual audits of historical financial statements.

"Holding out" means any representation to the public by the use of restricted titles as set forth in RCW 18.04.345 by a person that the person holds a license or practice privileges under the act and that the person offers to perform any professional services to the public. "Holding out" shall not affect or limit a person not required to hold a license under the act from engaging in practices identified in RCW 18.04.350.

"Inactive" means the individual held a valid certificate on June 30, 2001, has not met the current requirements of licensure and has been granted CPA-Inactive certificate holder status through the renewal process established by the board. A CPA-Inactive may not practice

public accounting nor may the individual use the CPA-Inactive title if they are offering accounting, tax, tax consulting, management advisory, or similar services to the public.

"Individual" means a living, human being.

"Independence" means an absence of relationships that impair a licensee's impartiality and objectivity in rendering professional services for which a report expressing assurance is prescribed by professional standards.

"Interactive self-study program" means a CPE program that provides feedback throughout the course.

"IRS" means Internal Revenue Service.

"License" means a license to practice public accounting issued to an individual or a firm under the act or the act of another state.

"Licensee" means an individual or firm holding a valid license to practice public accounting issued under the act, including out-of-state individuals exercising practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(a) and (b).

"Manager" means a manager of a limited liability company licensed as a firm under the act.

"Nano learning" is a stand-alone continuing professional education (CPE) course that is a minimum of (~~ten~~) 10 minutes (0.2 CPE credit hours) consisting of electronic self-study with a stated learning objective and a minimum of two final assessment questions.

"NASBA" means the National Association of State Boards of Accountancy.

"Nonlicensee firm owner" means an individual, not licensed in any state to practice public accounting, who holds an ownership interest in a firm permitted to practice public accounting in this state.

"PCAOB" means Public Company Accounting Oversight Board.

"Peer review" means a study, appraisal, or review of one or more aspects of the attest or compilation work of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed, including a peer review, or any internal review or inspection intended to comply with quality control policies and procedures, but not including the "quality assurance review" under this section.

"Person" means any individual, nongovernmental organization, or business entity regardless of legal form, including a sole proprietorship, firm, partnership, corporation, limited liability company, association, or not-for-profit organization, and including the sole proprietor, partners, members, and, as applied to corporations, the officers.

"Practice privileges" are the rights granted by chapter 18.04 RCW to a person who:

(a) Has a principal place of business outside of Washington state;

(b) Is licensed to practice public accounting in another substantially equivalent state;

(c) Meets the statutory criteria for the exercise of privileges as set forth in RCW 18.04.350(2) for individuals or RCW 18.04.195 (1)(b) for firms;

(d) Exercises the right to practice public accounting in this state individually or on behalf of a firm;

(e) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board in this state;

(f) Must comply with the act and all board rules applicable to Washington state licensees to retain the privilege; and

(g) Consents to the appointment of the issuing state board of another state as agent for the service of process in any action or proceeding by this state's board against the certificate holder or licensee.

"Principal place of business" means the office location designated by the licensee for purposes of substantial equivalency and reciprocity.

"Professional services" include all services requiring accountancy or related skills that are performed for a client, an employer, or on a volunteer basis. These services include, but are not limited to, accounting, audit and other attest services, tax, bookkeeping, management consulting, financial management, corporate governance, personal financial planning, business valuation, litigation support, educational, and those services for which standards are promulgated by the appropriate body for each services undertaken.

"Public practice" or the **"practice of public accounting"** means performing or offering to perform by a person or firm holding itself out to the public as a licensee, or as an individual exercising practice privileges, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "reports," or one or more kinds of management advisory, or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters. The "practice of public accounting" shall not include practices that are permitted under the provisions of RCW 18.04.350(10) by persons or firms not required to be licensed under the act.

"Quality assurance review or QAR" is the process, established by and conducted at the direction of the board, to study, appraise, or review one or more aspects of the audit, compilation, review, and other professional services for which a report expressing assurance is prescribed by professional standards of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed.

"Reciprocity" means board recognition of licenses, permits, certificates or other public accounting credentials of another jurisdiction that the board will rely upon in full or partial satisfaction of licensing requirements.

~~(**"Referral fees"** see definition of "commissions and referral fees" in this section.)~~

"Report," when used with reference to any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of the attested information or compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in the practice of public accounting. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is involved in the practice of public accounting, or from the language of the report itself. "Report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to and/or special competence of the part of the person or firm issuing such language; and it includes

any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence. "Report" does not include services referenced in RCW 18.04.350 (10) or (11) provided by persons not holding a license under this chapter as provided in RCW 18.04.350(14).

"Representing oneself" means having a license, practice privilege, certificate or registration that entitles the holder to use the title "CPA," "CPA-Inactive," or be a nonlicensee firm owner.

"Rules of professional conduct" means rules adopted by the board to govern the conduct of licensees, as defined in this section, while representing themselves to others as licensees. These rules also govern the conduct of CPA-Inactive certificate holders, nonlicensee firm owners, and persons exercising practice privileges pursuant to RCW 18.04.350(2).

"SEC" means the Securities and Exchange Commission.

"Sole proprietorship" means a legal form of organization owned by one person meeting the requirements of RCW 18.04.195.

"State" includes the states and territories of the United States, including the District of Columbia, Puerto Rico, Guam, and the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands at such time as the board determines that the Commonwealth of the Northern Mariana Islands is issuing licenses under the substantially equivalent standards of RCW 18.04.350 (2) (a).

"Statements on auditing standards (SAS)" are interpretations of the generally accepted auditing standards and are issued by the Auditing Standards Board of the AICPA. Licensees are required to adhere to these standards in the performance of audits of financial statements.

"Statements on standards for accounting and review services (SSARS)" are standards, promulgated by the AICPA, to give guidance to licensees who are associated with the financial statements of nonpublic companies and issue compilation or review reports.

"Statements on standards for attestation engagements (SSAE)" are guidelines, promulgated by the AICPA, for use by licensees in attesting to assertions involving matters other than historical financial statements and for which no other standards exist.

[Statutory Authority: RCW 18.04.055. WSR 19-16-074, § 4-30-010, filed 7/31/19, effective 1/1/20. Statutory Authority: RCW 18.04.055 and 2017 c 304. WSR 18-04-071, § 4-30-010, filed 2/2/18, effective 3/5/18. Statutory Authority: RCW 18.04.055. WSR 16-17-036, § 4-30-010, filed 8/9/16, effective 9/9/16. Statutory Authority: 18.04.055, 18.04.025, 18.04.350. WSR 10-24-009, amended and recodified as § 4-30-010, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 18.04.055, 18.04.025. WSR 08-18-016, § 4-25-410, filed 8/25/08, effective 9/25/08. Statutory Authority: RCW 18.04.055. WSR 05-01-137, § 4-25-410, filed 12/16/04, effective 1/31/05; WSR 03-24-033, § 4-25-410, filed 11/25/03, effective 12/31/03. Statutory Authority: RCW 18.04.055(16). WSR 02-04-064, § 4-25-410, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055(11). WSR 01-11-124, § 4-25-410, filed 5/22/01, effective 6/30/01; WSR 98-12-020, § 4-25-410, filed 5/27/98, effective 6/27/98; WSR 94-23-071, § 4-25-410, filed 11/15/94, effective 12/16/94.]

WSR 23-04-086

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed January 31, 2023, 10:05 a.m., effective April 1, 2023]

Effective Date of Rule: April 1, 2023.

Purpose: Rule making is needed to change the number of college credits required to sit for the Uniform CPA Examination to 120 semester credits (180 quarter credits) and to rename the rule.

Citation of Rules Affected by this Order: Amending WAC 4-30-060.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 22-23-043 on November 8, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: January 27, 2023.

Michael J. Paquette, CPA
Executive Director

OTS-4188.1

AMENDATORY SECTION (Amending WSR 16-10-018, filed 4/22/16, effective 5/23/16)

~~WAC 4-30-060 ((What are the education requirements to qualify to apply for the CPA examination?)) Education requirements. (1) Education requirements to sit for the exam: ((Effective July 1, 2000,)) To apply for the CPA examination you must have completed((+~~

~~(a)) at least ((one hundred fifty)) 120 semester hours ((two hundred twenty-five)) 180 quarter hours) of college education((+ including((+~~

~~(b)) , a baccalaureate or higher degree; and ((+e)) an accounting major or concentration as defined as at least:~~

~~((+i)) (a) Twenty-four semester hours ((thirty-six)) 36 quarter hours) or the equivalent in accounting subjects of which at least ((fifteen)) 15 semester hours must be at the upper level or graduate level (an upper level course is defined as a course that frequently carries completion of a lower level course(s) as a prerequisite); and~~

~~((+ii)) (b) Twenty-four semester hours ((thirty-six)) 36 quarter hours) or the equivalent in business administration subjects at the undergraduate or graduate level.~~

~~(2) ((One hundred eighty-day provision: If you expect to meet the education requirements of this section within one hundred eighty days~~

~~following the examination, you will be eligible to take the CPA examination provided you submit a signed Certificate of Enrollment from the educational institution in which you are enrolled stating that you will meet the board's education requirements within one hundred eighty days following the day you first sit for any one section of the examination. If you apply for the exam using the one hundred eighty-day provision, then within two hundred ten days of first sitting for any section of the exam, you must provide the examination administrator complete documentation demonstrating that you met the board's education requirements within one hundred eighty days of first sitting for any one section of the exam. If you do not provide such documentation within the required two hundred ten-day time period, your exam score(s) will not be released and you will not be given credit for any section(s) of the examination. Applicants failing to provide such documentation must reapply as a first-time applicant.)~~ **Education requirements to apply for a CPA license:** To apply for the CPA license you must have completed at least 150 semester hours (225 quarter hours) of college education; including, a baccalaureate or higher degree; and an accounting major or concentration as defined as at least:

(a) Twenty-four semester hours (36 quarter hours) or the equivalent in accounting subjects of which at least 15 semester hours must be at the upper level or graduate level (an upper level course is defined as a course that frequently carries completion of a lower level course(s) as a prerequisite); and

(b) Twenty-four semester hours (36 quarter hours) or the equivalent in business administration subjects at the undergraduate or graduate level.

(3) **Education obtained outside the United States:** If you obtained all or a portion of your education outside the United States you must have your education evaluated by a board approved foreign education credential evaluation service. The board will establish the criteria for board approval of foreign education credential evaluation services. The board does not provide education credential evaluation services.

(4) **Semester versus quarter hours:** As used in these rules, a "semester hour" means the conventional college semester hour. Your quarter hours will be converted to semester hours by multiplying them by two-thirds.

(5) **Accreditation standards:** For purposes of this rule, the board will recognize colleges and universities which are accredited in accordance with (a) through (c) of this subsection.

(a) The college or university must be accredited at the time your education was earned by a regionally or nationally accrediting agency recognized by the board.

(b) If an institution was not accredited at the time your education was earned but is so accredited at the time your application is filed with the board, the institution will be deemed to be accredited for the purpose of (a) of this subsection provided that it:

(i) Certifies that your total educational program would qualify the applicant for graduation with a baccalaureate degree during the time the institution has been accredited; and

(ii) Furnishes the board satisfactory proof, including college catalogue course numbers and descriptions, that the preaccrediting courses used to qualify you for a concentration in accounting are substantially equivalent to postaccrediting courses.

(c) If your degree was received at an accredited college or university as defined by (a) or (b) of this subsection, but the educa-

tional program which was used to qualify you for a concentration in accounting included courses taken at nonaccredited institutions, either before or after graduation, such courses will be deemed to have been taken at the accredited institution from which your degree was received, provided the accredited institution either:

(i) Has accepted such courses by including them in its official transcript; or

(ii) Certifies to the board that it will or would accept such courses for credit toward graduation.

(6) **Alternative to accreditation:** If you graduated from a degree-granting institution that was not accredited at the time your degree was received or at the time your application was filed, you will be deemed to be a graduate of an accredited college or university if a credentials evaluation service approved by the board certifies that your degree is equivalent to a degree from an accredited college or university as defined in subsection (5) of this section. The board does not provide education credential evaluation services.

[Statutory Authority: RCW 18.04.055, 18.04.105. WSR 16-10-018, § 4-30-060, filed 4/22/16, effective 5/23/16. Statutory Authority: RCW 18.04.055(5), 18.04.105(1). WSR 10-24-009, amended and recodified as § 4-30-060, filed 11/18/10, effective 12/19/10; WSR 05-01-137, § 4-25-710, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-710, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055(5). WSR 95-20-065, § 4-25-710, filed 10/3/95, effective 11/3/95; WSR 93-12-071, § 4-25-710, filed 5/27/93, effective 7/1/93.]

WSR 23-04-087

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed January 31, 2023, 10:07 a.m., effective March 3, 2023]

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

Purpose: Rule making is needed to reorganize the ethics and prohibited practice rule sections for clarity.

Citation of Rules Affected by this Order: New WAC 4-30-045 and 4-30-049.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 22-23-045 on November 8, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 0.

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

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

Date Adopted: January 27, 2023.

Michael J. Paquette, CPA
Executive Director

OTS-4193.1NEW SECTION

WAC 4-30-045 Commission and referral fees. (1) A licensee in public practice shall not for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the licensee or licensee's firm also performs for that client:

(a) An audit or review of a financial statement; or

(b) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

(c) An examination of prospective financial information.

(2) This prohibition applies during the period in which the licensee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in such listed services.

(3) Any licensee who is not prohibited by this rule from performing services for, or receiving a commission or referral fee must:

(a) Disclose the arrangement in writing and in advance of client acceptance;

(b) Disclose the method of calculating the fee or amount of fee;
(c) Specify the licensee's role as the client's advisor; and
(d) Obtain the client's consent to the fee arrangement in writing.

(4) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(2), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[]

OTS-4196.1

NEW SECTION

WAC 4-30-049 Accounting principles. (1) A licensee shall not (a) express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principles or (b) state that he or she is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles, if such statements or data contain any departure from an accounting principle promulgated by bodies appropriate to the service undertaken to establish such principles that has a material effect on the statements or data taken as a whole. If, however, the statements or data contain such a departure and the licensee can demonstrate that due to unusual circumstances the financial statements or data would otherwise have been misleading, the licensee can comply with the rule by describing the departure, its approximate effects, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

(2) For the purposes of this rule, "licensees" includes licensees, licensees with an inactive status, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(2), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[]

WSR 23-04-088

PERMANENT RULES

BOARD OF ACCOUNTANCY

[Filed January 31, 2023, 10:10 a.m., effective March 3, 2023]

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

Purpose: Rule making is needed for WAC 4-30-040, 4-30-042, 4-30-044, 4-30-046, 4-30-048, 4-30-050, 4-30-052, 4-30-054, 4-30-056, and 4-30-058 to: (1) Simplify the rules by paralleling the rules with the AICPA Code of Professional Conduct (ACIPA Code) and specifically listing any exceptions to the AICPA Code; and (2) rename the rules (with the exception of WAC 4-30-050).

The board of accountancy proposes repealing WAC 4-30-051 as the information contained in this rule was included throughout the ethics and prohibited practices rule sections amended above.

Citation of Rules Affected by this Order: Repealing WAC 4-30-051; and amending WAC 4-30-040, 4-30-042, 4-30-044, 4-30-046, 4-30-048, 4-30-050, 4-30-052, 4-30-054, 4-30-056, and 4-30-058.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 22-23-050 on November 8, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 10, Repealed 1.

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

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

Date Adopted: January 27, 2023.

Michael J. Paquette, CPA
Executive Director

OTS-4190.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

~~WAC 4-30-040 ((What are the requirements concerning integrity and objectivity?)) Integrity and objectivity. ((When offering or performing services, licensees, CPA-Inactive certificate holders, nonlicensee firm owners, and employees of such persons must:~~

- ~~• Remain honest and objective;~~
- ~~• Not misrepresent facts;~~
- ~~• Not subordinate their judgment to others; and~~
- ~~• Remain free of conflicts of interest unless such conflicts are specifically permitted by board rule or professional standards listed in WAC 4-30-048.~~

If the language of the professional standards listed in WAC 4-30-048 differ from or conflict with specific board rules, board rules prevail.) (1) In the performance of any professional service, a licensee shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.

(2) For the purposes of this rule, "licensees" includes licensees, licensees with an inactive status, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(2), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055(2). WSR 10-24-009, amended and recodified as § 4-30-040, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-620, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-620, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-620, filed 1/31/02, effective 3/15/02; WSR 98-12-048, § 4-25-620, filed 5/29/98, effective 6/29/98. Statutory Authority: RCW 18.40.055 [18.04.055]. WSR 93-22-046, § 4-25-620, filed 10/28/93, effective 11/28/93.]

OTS-4191.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-042 ((When is independence required?)) Independence.

((When performing professional services for which a report expressing assurance is prescribed by professional standards, licensees, as defined in WAC 4-30-010, CPA inactive certificate holders, nonlicensee firm owners, and employees of such persons must evaluate and maintain their independence so that opinions, reports, conclusions, and judgments will be impartial and viewed as impartial by parties expected to rely on any report expressing assurance by such persons. Such persons are required:

(1) ~~To comply with all applicable independence rules, regulations, and the AICPA code of conduct as referenced in and required by WAC 4-30-048; and~~

(2) ~~To decline engagements for which a report expressing assurance is prescribed by professional standards when such persons have a relationship that could lead a reasonable and foreseeable user to conclude that such persons are not independent.~~

Independence is not required when performing a compilation engagement provided the report discloses a lack of independence.) (1) A licensee in public practice shall be independent in the performance of professional services as required by standards promulgated by the appropriate body for each service undertaken.

(2) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(2), and out-of-state firms permitted to offer or render cer-

tain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055(2). WSR 10-24-009, amended and recodified as § 4-30-042, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-622, filed 8/25/08, effective 9/25/08; WSR 03-24-034, § 4-25-622, filed 11/25/03, effective 12/31/03; WSR 98-12-049, § 4-25-622, filed 5/29/98, effective 6/29/98. Statutory Authority: RCW 18.40.055 [18.04.055]. WSR 93-22-046, § 4-25-622, filed 10/28/93, effective 11/28/93.]

OTS-4192.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-044 (~~What restrictions govern commissions, referral, and contingent fees?~~) **Contingent fees.** ((For the purposes of this section, the term "licensed firm" includes any affiliated entity(ies) and the term "firm owner" includes the owner(s) of any affiliated entity(ies)).

~~(1) Licensees and/or their employees must not for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when such persons perform compilation, or other professional services for which a report expressing assurance is prescribed by professional standards for that client. This prohibition applies:~~

~~(a) During the period in which such persons are engaged to perform professional services for which a report expressing assurance is prescribed by professional standards; and~~

~~(b) During the period covered by any information for which a report expressing assurance is prescribed by professional standards and a report was issued by such persons.~~

~~(2) Licensees and/or their employees must also not:~~

~~(a) Perform for a contingent fee any professional services for, or receive such a fee from a client for whom such persons perform compilation, or other professional services for which a report expressing assurance is prescribed by professional standards; or~~

~~(b) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.~~

~~(3) The prohibition against contingent fees applies:~~

~~(a) During the period in which such persons are engaged to perform professional services for which a report expressing assurance is prescribed by professional standards; and~~

~~(b) During the period covered by any information for which a report expressing assurance is prescribed by professional standards and a report was issued by such persons.~~

~~(4) Fees are not considered contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.)~~ (1) A licensee in public practice shall not:

(a) Perform for a contingent fee any professional services for, or receive such a fee from a client for whom the licensee or the licensee's firm performs:

(i) An audit or review of a financial statement; or

(ii) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

(iii) An examination of prospective financial information; or

(b) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

(2) The prohibition above applies during the period in which the licensee or licensee's firm is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in any such listed services.

(3) Except as stated in the next sentence, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this rule, fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.

(4) A licensee's fees may vary depending, for example, on the complexity of services rendered.

(5) Any ~~((person subject to board rules who is not prohibited by this section from performing services for, or receiving a commission, referral or contingent fee and who are paid or expect to be paid accordingly must disclose that fact to any person or entity to whom such persons recommend or refer a product or service to which the commission, referral or contingent fee relates in the manner prescribed below))~~ licensee who is not prohibited by this rule from performing services for a contingent fee must:

(a) Disclose the arrangement in writing and in advance of client acceptance;

(b) Disclose the method of calculating the fee or amount of fee;

(c) Specify the licensee's ~~((, CPA-Inactive certificate holder's, or nonlicensee firm owner's))~~ role as the client's advisor; and

(d) Obtain the client's consent to the fee arrangement in writing.

(6) ~~((Nothing in this rule shall be interpreted to preclude licensees, as defined in WAC 4-30-010, CPA-Inactive certificate holders, or nonlicensee firm owners from purchasing, selling, or merging all or a portion of a licensed firm or affiliated entity or to require disclosure to clients of terms or payments made or received pursuant to the purchase, sale, or merger.))~~ For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(2), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055(2). WSR 10-24-009, amended and recodified as § 4-30-044, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-626, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-626, filed 12/16/04, effective 1/31/05; WSR

02-04-064, § 4-25-626, filed 1/31/02, effective 3/15/02; WSR 01-03-012, § 4-25-626, filed 1/5/01, effective 2/5/01; WSR 98-12-055, § 4-25-626, filed 5/29/98, effective 6/29/98.]

OTS-4194.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-046 (~~(What are the requirements concerning competence?)~~) **General standards.** (~~(Licensees, CPA Inactive certificate holders, nonlicensee firm owners, and employees of such persons must not undertake to perform any professional service unless such persons can reasonably expect to complete the service with professional competence.)~~) (1) Licensees shall comply with the following general standards:

(a) Professional competence. Undertake only those professional services that the licensee or the licensee's firm can reasonably expect to be completed with professional competence.

(b) Due professional care. Exercise due professional care in the performance of professional services.

(c) Planning and supervision. Adequately plan and supervise the performance of professional services.

(d) Sufficient relevant data. Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

(2) For the purposes of this rule, "licensees" includes licensees, licensees with an inactive status, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(2), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055(2). WSR 10-24-009, recodified as § 4-30-046, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-630, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-630, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-630, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.40.055 [18.04.055]. WSR 93-22-046, § 4-25-630, filed 10/28/93, effective 11/28/93.]

OTS-4195.1

AMENDATORY SECTION (Amending WSR 11-07-070, filed 3/22/11, effective 4/22/11)

WAC 4-30-048 (~~(Compliance is required with which rules, regulations and professional standards?)~~) **Compliance with standards.** (~~(Licensees, including out-of-state individuals exercising practice privi-~~

~~leges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1) (b), CPA-Inactive certificate holders, CPA firms, nonlicensee firm owners, and employees of such persons must comply with rules, regulations, and professional standards promulgated by the appropriate bodies for each service undertaken. However, if the requirements found in the professional standards listed in this section differ from the requirements found in specific board rules, board rules prevail.~~

~~Authoritative bodies include, but are not limited to, the Securities and Exchange Commission (SEC); the Public Company Accounting Oversight Board (PCAOB); the Financial Accounting Standards Board (FASB); the Governmental Accounting Standards Board (GASB); the Cost Accounting Standards Board (CASB); the Federal Accounting Standards Advisory Board (FASAB); the U.S. Governmental Accountability Office (GAO); the Federal Office of Management and Budget (OMB); the Internal Revenue Service (IRS); the American Institute of Certified Public Accountants (AICPA), and federal, state, and local audit, regulatory and tax agencies.~~

~~Such standards include:~~

- ~~(1) Statements on Auditing Standards and related Auditing Interpretations issued by the AICPA;~~
- ~~(2) Statements on Standards for Accounting and Review Services and related Accounting and Review Services Interpretations issued by the AICPA;~~
- ~~(3) Statements on Governmental Accounting and Financial Reporting Standards issued by GASB;~~
- ~~(4) Statements on Standards for Attestation Engagements and related Attestation Engagements Interpretations issued by AICPA;~~
- ~~(5) Statements of Financial Accounting Standards and Interpretations, and Staff Positions issued by FASB, together with those Accounting Research Bulletins and Accounting Principles Board Opinions which are not superseded by action of the FASB;~~
- ~~(6) Statement on Standards for Consulting Services issued by the AICPA;~~
- ~~(7) Statements on Quality Control Standards issued by the AICPA;~~
- ~~(8) Statements on Standards for Tax Services and Interpretation of Statements on Standards for Tax Services issued by the AICPA;~~
- ~~(9) Statements on Responsibilities in Personal Financial Planning Practice issued by the AICPA;~~
- ~~(10) Statements on Standards for Litigation Services issued by the AICPA;~~
- ~~(11) Professional Code of Conduct issued by the AICPA including interpretations and ethics rulings;~~
- ~~(12) Governmental Auditing Standards issued by the U.S. Governmental Accountability Office;~~
- ~~(13) AICPA Industry Audit and Accounting Guides;~~
- ~~(14) SEC Rules, Concept Releases, Interpretative Releases, and Policy Statements;~~
- ~~(15) Standards issued by the PCAOB; and~~
- ~~(16) IRS Circular 230;~~
- ~~(17) Any additional national or international standards recognized by the AICPA, PCAOB, SEC and/or GAO.~~

~~If the professional services are governed by standards not included in subsections (1) through (17) of this section, individuals and firms including persons exercising practice privileges under RCW 18.04.350(2) who offer or render professional services in this state~~

or for clients located in this state and the firms rendering professional services in this state or for clients located in this state through such qualifying individuals must:

~~(a) Maintain documentation of the justification for the departure from the standards listed in subsections (1) through (17) of this section;~~

~~(b) Determine and document what standards are applicable; and~~

~~(c) Demonstrate compliance with the applicable standards.))~~ (1) A licensee who performs professional services shall comply with standards promulgated by the appropriate body for each service undertaken.

(2) Authoritative bodies include, but are not limited to, the American Institute of Certified Public Accountants (AICPA), its Code of Professional Conduct, its definitions, and interpretations, and other AICPA standards; the Internal Revenue Code (IRC); the Internal Revenue Service (IRS); and federal, state, and local audit, regulatory and tax agencies; the Securities and Exchange Commission (SEC); the Public Company Accounting Oversight Board (PCAOB); the Financial Accounting Standards Board (FASB); the Governmental Accounting Standards Board (GASB); the Cost Accounting Standards Board (CASB); the Federal Accounting Standards Advisory Board (FASAB); the U.S. Governmental Accountability Office (GAO); and the Federal Office of Management and Budget (OMB).

(3) However, if the requirements found in the professional standards differ from the requirements found in specific board rules, board rules prevail.

(4) For the purposes of this rule, "licensees" includes licensees, licensees with an inactive status, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(2), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055(2). WSR 11-07-070, § 4-30-048, filed 3/22/11, effective 4/22/11; WSR 10-24-009, amended and recodified as § 4-30-048, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-631, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-631, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-631, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055 (2) and (6). WSR 00-11-071, § 4-25-631, filed 5/15/00, effective 6/30/00. Statutory Authority: RCW 18.04.055(6). WSR 98-12-050, § 4-25-631, filed 5/29/98, effective 6/29/98. Statutory Authority: RCW 18.40.055 [18.04.055]. WSR 93-22-046, § 4-25-631, filed 10/28/93, effective 11/28/93.]

OTS-4197.1

AMENDATORY SECTION (Amending WSR 18-04-071, filed 2/2/18, effective 3/5/18)

WAC 4-30-050 ((Records and clients)) Confidential client information. ~~((1) Client: The term "client" as used throughout WAC 4-30-050 and 4-30-051 includes former and current clients. For purposes of this section, a client relationship has been formed when confi-~~

dential information has been disclosed by a prospective client or another authorized person in an initial interview to obtain or provide professional services.

~~(2) **Sale or transfer of client records:** No statement, record, schedule, working paper, or memorandum, including electronic records, may be sold, transferred, or bequeathed without the consent of the client or another authorized person.~~

~~(3) **Disclosure of client confidential records and client relationships:**~~

~~(a) Confidential client communication or information: Licensees, CPA-Inactive certificate holders, nonlicensee firm owners, and employees of such persons must not without the specific consent of the client or another authorized person disclose any confidential communication or information pertaining to the client obtained in the course of performing professional services.~~

~~(b) Licensees, CPA-Inactive certificate holders, nonlicensee firm owners, and employees of such persons who have provided records to a client or another authorized person are not obligated to provide such records to other individuals associated with the client.~~

~~(c) When a licensee, CPA-Inactive certificate holder, nonlicensee firm owner, or employee is engaged to prepare a married couple's joint tax return, both spouses are considered to be clients, even if the licensee, CPA-Inactive certificate holder, nonlicensee firm owner, or employee was engaged by one spouse and deals exclusively with that spouse.~~

Accordingly, if the married couple is undergoing a divorce and one spouse directs the licensee, CPA-Inactive certificate holder, nonlicensee firm owner, or employee to withhold joint tax information from the other spouse, the licensee, CPA-Inactive certificate holder, nonlicensee firm owner, or employee shall provide the information to both spouses, in compliance with this rule. The licensee, CPA-Inactive certificate holder, nonlicensee firm owner, or employee should consider reviewing the legal implications of such disclosure with an attorney and any responsibilities under any applicable tax performance standards promulgated by the United States Department of Treasury, Internal Revenue Service.

This rule also applies to confidential communications and information obtained in the course of professional tax compliance services unless state or federal tax laws or regulations require or permit use or disclosure of such information.

Consents may include those requirements of Treasury Circular 230 and IRC Sec. 7216 for purposes of this rule, provided the intended recipients are specifically and fully identified by full name, address, and other unique identifiers.

~~(4) **Disclosing information to third-party service providers:** Licensees, CPA-Inactive certificate holders, or nonlicensee firm owners must do one of the following before disclosing confidential client information to third-party service providers:~~

~~(a) Enter into a contractual agreement with the third-party service provider to assist in providing the professional services to maintain the confidentiality of the information and provide a reasonable assurance that the third-party service provider has appropriate procedures in place to prevent the unauthorized release of confidential information to others. The nature and extent of procedures necessary to obtain reasonable assurance depends on the facts and circumstances, including the extent of publicly available information on the third-~~

~~party service provider's controls and procedures to safeguard confidential client information; or~~

~~(b) Obtain specific consent from the client before disclosing confidential client information to the third-party service provider.~~

~~(5) Disclosure of client records in the course of a firm sale, or transfer upon death of a licensee, CPA-Inactive certificate holder, or nonlicensee firm owner.~~

~~A licensee, CPA-Inactive certificate holder, or nonlicensee firm owner, or the successor in interest of a deceased licensee, CPA-Inactive certificate holder, or nonlicensee firm owner, that sells or transfers all or part of a practice to another person, firm, or entity (successor firm) and will no longer retain ownership in the practice must do all of the following:~~

~~(a) Submit a written request to each client subject to the sale or transfer, requesting the client's consent to transfer its files to the successor firm or other entity and notify the client that its consent may be presumed if it does not respond to the licensee, CPA-Inactive certificate holder, or nonlicensee firm owner's request within a period of not less than ninety days, unless prohibited by law. The licensee, CPA-Inactive certificate holder, or nonlicensee firm owner, or successor in interest of a deceased firm owner, should not transfer any client files to the successor firm until either the client's consent is obtained or the ninety days has lapsed, whichever is shorter. The licensee, CPA-Inactive certificate holder, or nonlicensee firm owner must retain evidence of consent, whether obtained from the client or presumed after ninety days.~~

~~(b) It is permissible for the successor in interest of a deceased licensee, CPA-Inactive certificate holder, or nonlicensee firm owner to contract with a responsible custodian to securely store client records until such time as consent or transfer has been obtained.~~

~~(6) This rule does not:~~

~~(a) Affect in any way the obligation of those persons to comply with a lawfully issued subpoena or summons;~~

~~(b) Prohibit disclosures in the course of a quality review of a licensee's attest, compilation, or other reporting services governed by professional standards;~~

~~(c) Preclude those persons from responding to any inquiry made by the board or any investigative or disciplinary body established by local, state, or federal law or recognized by the board as a professional association; or~~

~~(d) Preclude a review of client information in conjunction with a prospective purchase, sale, or merger of all or part of the professional practice of public accounting of any such persons.) (1) A licensee in public practice shall not disclose any confidential client information without the specific consent of the client.~~

~~(2) This rule does not:~~

~~(a) Affect in any way the obligation of those persons to comply with a disclosure required by law or a lawfully issued subpoena or summons;~~

~~(b) Prohibit disclosures in the course of a quality review of a licensee's attest, compilation, or other reporting services governed by professional standards;~~

~~(c) Preclude those persons from responding to any inquiry made by the board or any investigative or disciplinary body established by local, state, or federal law or recognized by the board as a professional association; or Board AICPA Rules;~~

(d) Preclude a review of client information in conjunction with a prospective purchase, sale, or merger of all or part of the professional practice of public accounting of any such persons.

(3) It is permissible for the successor in interest of a deceased or incapacitated licensee to contract with a responsible custodian to securely store client records until such time as consent to transfer records has been obtained.

(4) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(2), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055 and 2017 c 304. WSR 18-04-071, § 4-30-050, filed 2/2/18, effective 3/5/18. Statutory Authority: RCW 18.04.055(2), 18.04.405(1). WSR 13-04-011, § 4-30-050, filed 1/25/13, effective 2/25/13. Statutory Authority: RCW 18.04.055(2), 18.04.390(4)(b), and 18.04.405(1). WSR 11-06-062, amended and recodified as § 4-30-050, filed 3/2/11, effective 4/2/11; WSR 08-18-016, § 4-25-640, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-640, filed 12/16/04, effective 1/31/05; WSR 03-24-033, § 4-25-640, filed 11/25/03, effective 12/31/03. Statutory Authority: RCW 18.04.055(2). WSR 02-22-082, § 4-25-640, filed 11/5/02, effective 12/31/02. Statutory Authority: RCW 18.04.055 [18.04.055]. WSR 93-22-046, § 4-25-640, filed 10/28/93, effective 11/28/93.]

OTS-4198.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 4-30-051 Client records.

OTS-4199.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-052 ((What acts are considered discreditable?)) Acts discreditable. ((Licensees, CPA-Inactive certificate holders, nonlicensee firm owners, and employees of such persons must not:

(1) Commit, or allow others to commit in their name, any act that reflects adversely on their fitness to represent themselves as a CPA, CPA-Inactive certificate holder, CPA firm, or a firm owner;

(2) Seek to obtain clients by the use of coercion, intimidation or harassing conduct; or

~~(3) Permit others to carry out on their behalf, either with or without compensation, acts which violate the rules of conduct.)) (1) A licensee shall not commit an act discreditable to the profession.~~

(2) For the purposes of this rule, "licensees" includes licensees, licensees with an inactive status, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(2), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055(2). WSR 10-24-009, recodified as § 4-30-052, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-650, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-650, filed 12/16/04, effective 1/31/05; WSR 01-22-036, § 4-25-650, filed 10/30/01, effective 12/1/01. Statutory Authority: RCW 18.04.055. WSR 93-22-090, § 4-25-650, filed 11/2/93, effective 12/3/93.]

OTS-4200.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-054 ((What are the limitations on)) Advertising and other forms of solicitation((?)). ~~((Licensees, CPA-Inactive certificate holders, nonlicensee firm owners, and employees of such persons must not make false, fraudulent, misleading, deceptive or unfair statements or claims regarding their services. Examples of such statements or claims include, but are not limited to, statements or claims which:~~

~~(1) Contain a misrepresentation of fact;~~
~~(2) Fail to make full disclosure of relevant facts;~~
~~(3) Imply your professional services are of an exceptional quality, which is not supported by verifiable facts;~~
~~(4) Create false expectations of favorable results;~~
~~(5) Imply educational or professional attainments, specialty designations, or licensing recognition not supported in fact; or~~
~~(6) Represent that professional services will be performed for a stated fee when this is not the case, or do not disclose variables that may reasonably be expected to affect the fees that will be charged.)) (1) A licensee in public practice shall not seek to obtain clients by advertising or other forms of solicitation in a manner that is false, misleading, or deceptive. Solicitation by the use of coercion, over-reaching, or harassing conduct is prohibited.~~

(2) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(2), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055(2). WSR 10-24-009, recodified as § 4-30-054, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-660, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-660,

filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-660, filed 1/31/02, effective 3/15/02; WSR 00-11-072, § 4-25-660, filed 5/15/00, effective 6/30/00. Statutory Authority: RCW 18.04.055. WSR 93-22-090, § 4-25-660, filed 11/2/93, effective 12/3/93.]

OTS-4201.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-056 (~~What are the limitations regarding individual and firm names?~~) **Form of organization and name.** ((A firm name that does not consist of the name(s) of one or more present or former owners must be approved in advance by the board as not being deceptive or misleading.

~~Misleading or deceptive firm names are prohibited. The following are examples of misleading firm names. The board does not intend this listing to be all inclusive. The firm name:~~

~~(1) Implies it is a legal entity when it is not such an entity (as by the use of the designations "P.C.," "P.S.," "Inc. P.S.," or "L.L.C.");~~

~~(2) Implies the existence of a partnership when one does not exist;~~

~~(3) Includes the name of a person who is neither a present nor a past owner of the firm; or~~

~~(4) Implies educational or professional attainments, specialty designations, or licensing recognition not supported in fact.~~

~~A licensee may not operate under an alias, a firm name, title, or "DBA" that differs from the firm name that is registered with the board. A CPA or a CPA-Inactive certificate holder may not use the title in association with a name that is not registered with the board.)~~ (1) A licensee may practice public accounting only in a form of organization permitted by law or regulation.

(2) A firm name that does not consist of the name(s) of one or more present or former owners must be approved in advance by the board as not being deceptive or misleading.

(3) Misleading or deceptive firm names are prohibited. The following are examples of misleading firm names. The board does not intend this listing to be all inclusive. The firm name:

(a) Implies it is a legal entity when it is not such an entity (as by the use of the designations "P.C.," "P.S.," "Inc. P.S.," or "L.L.C.");

(b) Implies the existence of a partnership when one does not exist;

(c) Includes the name of a person who is neither a present nor a past owner of the firm;

(d) Implies educational or professional attainments, specialty designations, or licensing recognition not supported in fact; or

(e) Includes the terms "& Company", "& Associate", or "Group," but the firm does not include, in addition to the named partner, shareholder, owner, or member, at least one other unnamed partner, shareholder, owner, member, or staff employee.

(4) Licensed firms and unlicensed firms.

(a) No licensed firm may operate under an alias, a firm name, title, or "DBA" that differs from the firm name that is registered with the board.

(b) A firm not required to be licensed may not operate under an alias, a firm name, title, or "DBA" that differs from the firm name that is registered with the secretary of state and/or the department of revenue.

(5) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(2), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[WSR 10-24-009, recodified as § 4-30-056, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 18.04.055 (4), (8) and 18.04.345(5). WSR 05-01-137, § 4-25-661, filed 12/16/04, effective 1/31/05. Statutory Authority: RCW 18.04.055(8). WSR 01-22-036, § 4-25-661, filed 10/30/01, effective 12/1/01; WSR 00-11-073, § 4-25-661, filed 5/15/00, effective 6/30/00. Statutory Authority: RCW 18.40.055 [18.04.055]. WSR 93-22-046, § 4-25-661, filed 10/28/93, effective 11/28/93.]

OTS-4202.1

AMENDATORY SECTION (Amending WSR 16-17-036, filed 8/9/16, effective 9/9/16)

~~WAC 4-30-058 ((Does the board authorize the use of any other titles or designations?)) Other authorized titles. ((Yes. RCW 18.04.350(14), Practices not prohibited, authorizes the board to allow the use of other titles (designations) if the individual using the title or designation is authorized at the time of use by a nationally recognized entity sanctioning the use of board authorized titles or designations. Accordingly, the board authorizes the use of the following titles and designations:~~

~~(1) Designations or titles authorized by the American Institute of Certified Public Accountants (AICPA);~~

~~(2) Designations or titles authorized by the Accreditation Council for Accountancy and Taxation located in Alexandria, Virginia, or its successor:~~

- ~~• "Accredited Business Accountant" or "ABA";~~
- ~~• "Accredited Tax Preparer" or "ATP"; and~~
- ~~• "Accredited Tax Advisor" or "ATA."~~

~~(3) Designations or titles authorized by the Certified Financial Planner Board of Standards in Denver, Colorado, or its successor:~~

- ~~• "Certified Financial Planner" or "CFP."~~

~~These authorized designations relate to title use only, are not limited to individuals who have held or are holding a license or certificate under the act, and do not authorize these other designated individuals to use the title "certified public accountant" or "CPA," or "CPA-inactive.") (1) The board allows the use of other titles by any person regardless of whether the person has been granted a certifi-~~

icate or holds a license if the person using the titles or designations is authorized at the time of use by a nationally recognized entity sanctioning the use of board authorized titles.

(2) Nothing in this chapter prohibits the use of the title "accountant" by any person regardless of whether the person holds a license under this chapter.

(3) Nothing in this chapter prohibits the use of the title "enrolled agent" or the designation "EA" by any person regardless of whether the person holds a license under this chapter if the person is properly authorized at the time of use to use the title or designation by the Internal Revenue Service (IRS).

(4) The board also authorizes titles and designations authorized by:

(a) The American Institute of Certified Public Accountants (AICPA);

(b) The Association of International Certified Professional Accountants (AICPA);

(c) The Institute of Management Accounts (IMA);

(d) The Accreditation Council for Accountancy and Taxation; and

(e) Certified Financial Planner Board of Standards (CFP Board).

(5) These authorized designations relate to title use only, are not limited to, individuals who have held or are holding a license under the act, and do not authorize these other designated individuals to use the title "certified public accountant" or "CPA," or "CPA-inactive."

(6) The board further authorizes the use of the designation "CPA retired" in this state by those individuals who, upon notice to the board to retire a license, meet the following criteria:

((*) (a) Has reached (~~sixty~~) 60 years of age and holds an active license in good standing; or

((*) (b) At any age, has held an active license in good standing, not suspended or revoked, to practice public accounting in any state for a combined period of not less than (~~twenty~~) 20 years.

[Statutory Authority: RCW 18.04.055. WSR 16-17-036, § 4-30-058, filed 8/9/16, effective 9/9/16. Statutory Authority: RCW 18.04.350(13). WSR 12-10-085, § 4-30-058, filed 5/2/12, effective 6/2/12; WSR 10-24-009, recodified as § 4-30-058, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 18.04.350(9). WSR 02-17-051, § 4-25-930, filed 8/15/02, effective 9/15/02.]

WSR 23-04-099

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed January 31, 2023, 3:20 p.m., effective April 1, 2023]

Effective Date of Rule: April 1, 2023.

Purpose: WAC 246-338-990 Fees. The department of health is adopting amendments to WAC 246-338-990 that will increase initial and renewal fees for medical test sites.

Citation of Rules Affected by this Order: Amending WAC 246-338-990.

Statutory Authority for Adoption: RCW 43.70.250, 70.42.090.

Adopted under notice filed as WSR 22-21-125 on October 18, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 31, 2023.

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

OTS-4093.1

AMENDATORY SECTION (Amending WSR 20-20-030, filed 9/29/20, effective 11/1/20)

WAC 246-338-990 Fees. (1) The department will assess and collect biennial fees for medical test sites as follows:

(a) Charge fees, based on the requirements authorized under RCW 70.42.090 and this section;

(b) Assess additional fees when changes listed in WAC 246-338-026 occur that require a different type of license than what the medical test site currently holds;

(c) Charge prorated fees for the remainder of the two-year cycle when the owner or applicant applies for an initial license during a biennium as defined under WAC 246-338-022 (2)(c);

(d) Charge prorated fees for licenses issued for less than a two-year period under WAC 246-338-024(3); and

(e) Determine fees according to criteria described in Table 990-1.

Table 990-1 License Categories and Fees

Category of License	Number of Tests/ Year	Biennial Fee
Certificate of Waiver	N/A	(((\$190)) <u>\$260</u>)
PPMP	N/A	(((\$250)) <u>\$300</u>)
Low Volume	1-2,000 tests	(((\$560)) <u>\$620</u>)
Category A	2,001-10,000 tests, 1-3 specialties	(((\$1,710)) <u>\$1,900</u>)
Category B	2,001-10,000 tests, 4 or more specialties	(((\$2,210)) <u>\$2,450</u>)
Category C	10,001-25,000 tests, 1-3 specialties	(((\$3,070)) <u>\$3,410</u>)
Category D	10,001-25,000 tests, 4 or more specialties	(((\$3,520)) <u>\$3,910</u>)
Category E	25,001-50,000 tests	(((\$4,230)) <u>\$4,700</u>)
Category F	50,001-75,000 tests	(((\$5,230)) <u>\$5,810</u>)
Category G	75,001-100,000 tests	(((\$6,240)) <u>\$6,930</u>)
Category H	100,001-500,000 tests	(((\$7,290)) <u>\$8,090</u>)
Category I	500,001-1,000,000 tests	(((\$12,960)) <u>\$14,390</u>)
Category J	> 1,000,000 tests	(((\$15,550)) <u>\$17,260</u>)
Accredited:		
Low Volume	1-2,000 tests	(((\$210)) <u>\$230</u>)
Category A	2,001-10,000 tests, 1-3 specialties	(((\$260)) <u>\$290</u>)
Category B	2,001-10,000 tests, 4 or more specialties	(((\$290)) <u>\$320</u>)
Category C	10,001-25,000 tests, 1-3 specialties	(((\$660)) <u>\$730</u>)
Category D	10,001-25,000 tests, 4 or more specialties	(((\$700)) <u>\$780</u>)
Category E	25,001-50,000 tests	(((\$980)) <u>\$1,090</u>)
Category F	50,001-75,000 tests	(((\$1,570)) <u>\$1,740</u>)
Category G	75,001-100,000 tests	(((\$2,150)) <u>\$2,390</u>)
Category H	100,001-500,000 tests	(((\$2,780)) <u>\$3,090</u>)
Category I	500,001-1,000,000 tests	(((\$8,040)) <u>\$8,920</u>)
Category J	> 1,000,000 tests	(((\$10,210)) <u>\$11,330</u>)
Follow-up survey for deficiencies		Direct staff time

Table 990-1 License Categories and Fees

Category of License	Number of Tests/Year	Biennial Fee
Complaint investigation		Direct staff time

(2) The following programs are excluded from fee charges when performing only waived hematocrit or hemoglobin testing for nutritional evaluation and food distribution purposes:

- (a) Women, infant and children programs (WIC); and
- (b) Washington state migrant council.

[Statutory Authority: RCW 43.70.250 and 70.42.090. WSR 20-20-030, § 246-338-990, filed 9/29/20, effective 11/1/20. Statutory Authority: RCW 70.42.090. WSR 06-15-132, § 246-338-990, filed 7/19/06, effective 8/19/06. Statutory Authority: RCW 70.42.090 and 2002 c 371. WSR 02-12-105, § 246-338-990, filed 6/5/02, effective 7/6/02. Statutory Authority: RCW 70.42.005, 70.42.060. WSR 01-02-069, § 246-338-990, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 70.42.090. WSR 99-24-061, § 246-338-990, filed 11/29/99, effective 12/30/99; WSR 96-12-011, § 246-338-990, filed 5/24/96, effective 6/24/96. Statutory Authority: Chapter 70.42 RCW. WSR 94-17-099, § 246-338-990, filed 8/17/94, effective 9/17/94; WSR 93-18-091 (Order 390), § 246-338-990, filed 9/1/93, effective 10/2/93; WSR 91-21-062 (Order 205), § 246-338-990, filed 10/16/91, effective 10/16/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-338-990, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.42 RCW. WSR 90-20-017 (Order 090), § 248-38-120, filed 9/21/90, effective 10/22/90.]

WSR 23-04-101
PERMANENT RULES
OLYMPIC REGION
CLEAN AIR AGENCY

[Filed January 31, 2023, 4:31 p.m., effective March 6, 2023]

Effective Date of Rule: March 6, 2023.

Purpose: This action is to revoke the ban on recreational fires in the cities of Lacey, Olympia, and Tumwater.

Citation of Rules Affected by this Order: Amending ORCAA Regulations Rules 6.2.7 and 6.2.8.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 22-24-015 on November 29, 2022.

Date Adopted: January 11, 2023.

Jeff C. Johnston
Executive Director

AMENDED SECTION

Rule 6.2.7 Recreational Burning

The following burn practices must be used for recreational burning where allowed.

(a) Maximum pile size is three (3) feet in diameter and two (2) feet high.

(b) Only dry, seasoned firewood or charcoal and enough clean paper necessary to start a fire may be burned.

~~((c) No recreational fires are allowed within the city limits of Lacey, Olympia, and Tumwater, and unincorporated areas of Thurston County lying within or between the municipal boundaries of these cities. Charcoal, propane, or natural gas may be used without a permit.))~~

AMENDED SECTION

Rule 6.2.8 Permit Program

ORCAA may consult with fire protection authorities, conservation districts, or counties to determine if any of these agencies are capable and willing to serve as the permitting agency and/or enforcing agency for specific types of burning. Permitting agencies may use, as appropriate, a verbal, electronic, written, or general permit established by rule, for any type of burning that requires a permit.

(a) Permitting agencies may deny an application or revoke a previously issued permit if it is determined that the application contained inaccurate information, failed to contain pertinent information or the permitted activity has caused a nuisance.

(b) Failure to comply with any term or condition of a permit constitutes a violation of this rule and is subject to penalties pursuant to RCW 70A.15.3150 and RCW 70A.15.3160.

(c) Types of burning that require a written permit.

(1) Agricultural burning must abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

(2) Fire training fires, except as provided in RCW 52.12.150, may be conducted provided all the following requirements are met:

(i) Fire training must not occur during a burn ban.

(ii) The fire must be for training.

(iii) The agency conducting the training fire must obtain any permits, licenses, or other approvals required by any entity for such

training fires. All permits, licenses, and approvals must be kept on-site and available for inspection.

~~((3) Native American ceremonial fires within the city limits of Olympia, Lacey, and Tumwater and unincorporated areas of Thurston County lying within or between the municipal boundaries.))~~

((4))3) Land Clearing Burning requires an approved written permit. Conditions of the written permit issued by ORCAA, or another permitting agency are enforceable.

((5))4) Storm and flood debris resulting from a declared emergency by a governmental authority may be burned within two years of the event (storm). Burning must abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

((6))5) Weed abatement fires.

((7))6) Residential fires in Thurston County.

The permit application for the above permits must be accompanied by the applicable fee, pursuant to Rule 3.4.

(d) Where residential burning is allowed and no written burn permits are issued, burning must abide by Rule 6.2 and the following:

(1) Maximum pile size is four (4) feet in diameter and three (3) feet high.

(2) Only one pile may be burned at a time, and each pile must be extinguished before lighting another.

(3) Only natural vegetation may be burned.

(4) No fires are to be within fifty (50) feet of structures or within five hundred (500) feet of forest slash.

(5) No tree stumps may be burned.