

**WSR 23-08-029**

**WITHDRAWAL OF PROPOSED RULES**

**DEPARTMENT OF LICENSING**

(By the Code Reviser's Office)

[Filed March 28, 2023, 9:08 a.m.]

WAC 308-70-130, proposed by the department of licensing in WSR 22-18-104, appearing in issue 22-18 of the Washington State Register, which was distributed on September 21, 2022, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register

## WSR 23-08-031

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed March 28, 2023, 2:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-143.

Title of Rule and Other Identifying Information: The board of physical therapy (board) is proposing amendments to licensure requirements for foreign educated applicants under WAC 246-915-120. The board is proposing updates to the test of English as foreign language (TOEFL) scoring requirements to bring them into alignment with the Federation of State Boards of Physical Therapy (FSBPT) guidelines. Additionally, the board is proposing to remove the requirement that an applicant's first professional degree can only be from a Commission on Accreditation in Physical Therapy Education (CAPTE) approved program. Finally, additional proposed edits to clarify the language of the rule without changing its effect are being proposed.

Hearing Location(s): On June 12, 2023, at 10:15 a.m., at Lacey Community Center, 6729 Pacific Avenue S.E., Lacey, WA 98502; or virtual. Please follow this link to register for the virtual hearing which will give you instructions to either join the meeting on a device, or to call in to the meeting on the phone: [https://us02web.zoom.us/webinar/register/WN\\_u7soEf4eQkqdmT7oSszZgg](https://us02web.zoom.us/webinar/register/WN_u7soEf4eQkqdmT7oSszZgg).

Date of Intended Adoption: June 12, 2023.

Submit Written Comments to: Davis Hylkema, Interim Program Manager, P.O. Box 47877, Olympia, WA 98504-7877, email [physical.therapy@doh.wa.gov](mailto:physical.therapy@doh.wa.gov) or <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2901, by June 2, 2023.

Assistance for Persons with Disabilities: Contact Davis Hylkema, interim program manager, phone 360-236-4633, fax 360-236-2901, TTY 711, email [physical.therapy@doh.wa.gov](mailto:physical.therapy@doh.wa.gov), by May 30, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing amendments to TOEFL's minimum passing scores which are necessary to protect the public without creating unnecessary barriers for licensure. Washington state's current passing score requirements were originally established based on FSBPT's passing score recommendation. FSBPT's minimum passing score recommendations have since been updated. To align with FSBPT's recommendation, the board is proposing to lower the minimum passing score for the writing and speaking tests and raise the minimum passing score requirements for the reading and listening tests. Consistent licensing standards between states will help support a framework of equality and increased mobility for physical therapists and physical therapy assistants. Additionally, FSBPT research has shown that candidates who meet their recommended criteria are more likely to pass the National Physical Therapy Exam. Additionally, the board is proposing to remove the requirement that an applicant's first professional degree only must be from a CAPTE accredited program, in order to allow applicants who went on to pursue additional professional degrees in physical therapy through a CAPTE accredited program to pursue licensure outside of the foreign-educated pathway.

Reasons Supporting Proposal: The intent of chapter 18.74 RCW is to protect the public health, safety, and welfare, and to provide for state administrative control, supervision, licensure and regulation of the practice of physical therapy. The intent of RCW 18.74.023 is to

give authority to the board to pass upon the qualifications of applicants for a license and to certify to the secretary duly qualified applicants. The proposed rule brings Washington state's TOEFL score requirements into alignment with FSBPT's recommended scores which creates consistent licensing standards which supports a framework of equality and increased mobility for physical therapist and physical therapy assistants. The proposed rules also remove a barrier hindering applicants who, after earning a professional degree from a non-CAPTE approved program, have gone on to earn subsequent professional degree(s) from a CAPTE approved program.

Statutory Authority for Adoption: RCW 18.74.023.

Statute Being Implemented: Chapter 18.74 RCW.

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

Name of Proponent: Board of physical therapy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Allyson McIver, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2878.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Davis Hy-lkema, P.O. Box 47877, Olympia, WA 98504-7877, phone 360-236-4633, fax 360-236-2901, TTY 711, email physical.therapy@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

March 27, 2023  
Kathryn Dale, PT, DSc  
Board Chair

## OTS-4267.1

AMENDATORY SECTION (Amending WSR 22-10-016, filed 4/25/22, effective 5/26/22)

**WAC 246-915-120 Foreign educated applicants.** (1) An applicant whose (~~first~~) professional degree in physical therapy was awarded from a foreign physical therapy program that is not or was not accredited by the CAPTE shall submit:

(a) An application for review by the board;

(b) A credentials evaluation report of professional education and training prepared by a board-approved credentials evaluation agency. The report must be sent directly from the credentialing agency to the board. It is the responsibility of the applicant to pay the expenses associated with the credentials evaluation:

(i) The report must provide evidence and documentation that the applicant completed education outside a state or territory of the United States that is substantially equivalent to the education of a

physical therapist who graduated from a physical therapy education program accredited by CAPTE.

(ii) To be approved as a credentialing agency, the agency must use the appropriate course work tool (CWT) adopted by the Federation of State Boards of Physical Therapy to determine substantial equivalency. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist earned their first professional degree in physical therapy.

(c) Evidence of English language proficiency:

(i) Verification that English is the native language of the country of origin, and the physical therapy program employs English as the language of training; or

(ii) Verification that the applicant has achieved a score of not less than 560 on the paper Test of English as a Foreign Language (TOEFL) or a score of not less than 220 on the computer Test of English as a Foreign Language (TOEFL), a score of not less than 50 on the Test of Spoken English (TSE) and a score of not less than four and one-half on the Test of Written English (TWE); or

(iii) Verification that the applicant has achieved an overall score of not less than 89, and the following minimum scores for each category of the internet-based TOEFL (ibTOEFL) examination: Writing, ((24)) 22; speaking, ((26)) 24; reading, ((21)) 22; listening, ((18)) 21.

(d) Verification of a valid, unencumbered license or authorization to practice physical therapy in the country in which the physical therapy education was obtained;

(e) Official transcripts from the physical therapy program showing degree date;

(f) Passing scores for the Washington jurisprudence examination;

(g) Passing scores for the National Physical Therapy Examination (NPTE) as described in WAC 246-915-030; and

(h) Any additional supporting documentation as requested by the board.

(2) The applicant shall have received a grade of "C" or higher (or equivalent) in all professional education course work;

(3) The applicant may apply for the college-level education program (CLEP) and their scores may be applied toward college credit. The board will consider the conversion of CLEP scores to college credits provided by a board-approved credentialing agency;

(4) The board may allow applicants to correct general education and professional education course work deficiencies by:

(a) Completing ((board-approved)) course work pre-approved by the board. To obtain ((professional)) course work preapproval, the applicant shall submit a written request along with the course description/syllabus for the proposed course; or

(b) Obtaining a new passing education evaluation from a board-approved credentials evaluation agency after correcting deficiencies as recommended by the credentialing agency. The report must be sent directly from the credentialing agency to the board; and

(5) An applicant whose ((first)) professional degree in physical therapy was awarded from a foreign physical therapy program that is or was accredited by the CAPTE shall follow the requirements under WAC 246-915-030 and 246-915-100.

[Statutory Authority: RCW 18.74.023. WSR 22-10-016, § 246-915-120, filed 4/25/22, effective 5/26/22. Statutory Authority: RCW 18.74.023 and chapter 18.74 RCW, RCW 18.340.020. WSR 18-15-067, § 246-915-120,

filed 7/17/18, effective 8/17/18. Statutory Authority: RCW 18.74.023. WSR 08-17-026, § 246-915-120, filed 8/13/08, effective 8/13/08; WSR 07-07-066, § 246-915-120, filed 3/15/07, effective 4/15/07; WSR 94-05-014 (Order 403B), § 246-915-120, filed 2/4/94, effective 3/7/94; WSR 93-04-081 (Order 328B), § 246-915-120, filed 2/1/93, effective 3/4/93; WSR 92-08-039 (Order 259B), § 246-915-120, filed 3/24/92, effective 4/24/92; WSR 91-02-011 (Order 103B), recodified as § 246-915-120, filed 12/21/90, effective 1/31/91; WSR 84-13-057 (Order PL 471), § 308-42-125, filed 6/19/84.]

**WSR 23-08-041**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed March 29, 2023, 11:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-12-084.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is planning to amend WAC 388-106-0010 What definitions apply to this chapter? and 388-106-0130 How does the department determine the number of hours I may receive for in-home care?

Hearing Location(s): On May 23, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are held virtually, see the DSHS website <https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules> for the most current information.

Date of Intended Adoption: Not earlier than May 24, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by May 23, 2023, by 5:00 p.m.

Assistance for Persons with Disabilities: DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov), by May 9, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to amend rules that are a result of DSHS efforts to modernize the comprehensive assessment and reporting evaluation (CARE) assessment tool. Most of the changes in this proposal were intended to be a part of WSR 20-23-124 and went through most of the rule-making review process but had to be pulled in order to prioritize other rule-making priorities. There have been no changes that affect how DSHS determines eligibility or benefit level using the CARE tool. In addition, in WAC 388-106-0010, "Turning and repositioning program," "Passive range of motion," "Active range of motion," and "Bowel program" definitions are being added. A couple of definitions that are no longer relevant are being removed. Subsection (6)(c) is being removed because it is being added to WAC 388-106-0010(3) "Informal support" definition in this rule-making effort. Also, updates to terminology were made due to CARE modernization.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090 and 74.09.520.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Rachel Ames, P.O. Box 45600, Olympia, WA 98504-5600, 360-789-1708.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt under RCW 34.05.328 (5) (b) (vii), rules of DSHS relating only to client medical or financial eligibility.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

March 28, 2023  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 23-09 issue of the Register.

## WSR 23-08-046

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed March 30, 2023, 12:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-060.

Title of Rule and Other Identifying Information: WAC 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources.

Hearing Location(s): On May 9, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_hBvWLAWGQNaCbfhRKR7ciw](https://us02web.zoom.us/webinar/register/WN_hBvWLAWGQNaCbfhRKR7ciw). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than May 10, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by May 9, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov), by April 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-512-0500 to exclude fully and partially paid burial space purchase agreements from the calculation of available resources. The agency is making additional, nonsubstantive changes so that the rule is easier to understand and apply.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Paige Lewis, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-0757.

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

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule pertains to client program eligibility and does not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

March 30, 2023

Wendy Barcus



## OTS-4060.5

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

- WAC 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources.** (1) For the purposes of this section, burial funds are funds set aside and clearly designated solely for burial and related expenses, and kept separate from all other resources not intended for burial. These include:
- (a) Revocable burial contracts;
  - (b) Revocable burial trusts; or
  - (c) ~~((Installment contracts for purchase of a burial space on which payments are still owing;~~
  - ~~(d))~~ Other revocable burial arrangements. The designation is effective the first day of the month in which the person intended the funds to be set aside for burial.
- (2) ~~((The following))~~ Burial funds in a revocable burial contract, burial trust, cash accounts, or other financial instruments with a definite cash value are excluded as resources for the person and ((his or her)) their spouse, up to ((fifteen hundred dollars)) \$1,500 each, when set aside solely for ((the expenses of)) burial or cremation and ((expenses)) related ((to the burial or cremation, and the funds are either:
- ~~(a) An installment contract for purchase of a burial space that is not yet paid in full; or~~
  - ~~(b) In a revocable burial contract, burial trust, cash accounts, or other financial instrument with a definite cash value)) expenses.~~
- (3) Interest earned in burial funds and appreciation in the value of excluded burial arrangements in subsection (2) ~~((a) and (b))~~ of this section are excluded from resources and are not counted as income if left to accumulate and become part of the separate burial fund.
- (4) An irrevocable burial account, burial trust, or other irrevocable burial arrangement, set aside solely for burial and related expenses, is not considered a resource. To be excluded, the amount set aside must be reasonably related to the anticipated death-related expenses.
- (5) The ~~((fifteen hundred dollar))~~ \$1,500 exclusion for burial funds described in subsection (2) of this section is reduced by:
- (a) The face value of life insurance with CSV excluded in WAC 182-512-0450; and
  - (b) Amounts ~~((in an irrevocable burial trust, or other irrevocable arrangement available to meet burial expenses, or burial space purchase agreement installment contracts on which money is still owing. If these reductions bring the balance of the available exclusion to zero, no additional funds can be excluded as burial funds.~~
- ~~(5) An irrevocable burial account, burial trust, or other irrevocable burial arrangement, set aside solely for burial and related expenses is not considered a resource. The amount set aside must be reasonably related to the anticipated death-related expenses in order to~~

~~be excluded~~) that meet the requirements of subsection (4) of this section.

(6) A person's burial funds are no longer excluded when they are mixed with other resources that are not related to burial.

(7) When excluded burial funds are spent for other purposes, the spent amount is added to other countable resources and any amount exceeding the resource limit is considered available income on the first of the month it is used. The amount remaining in the burial fund remains excluded.

(8) Burial space and accessories for the person and any member of the person's immediate family described in subsection (9) of this section are excluded. Burial space and accessories include:

(a) Conventional gravesites;

(b) Crypts, niches, and mausoleums;

(c) Urns, caskets and other repositories customarily used for the remains of deceased persons;

(d) Necessary and reasonable improvements to the burial space including, but not limited to:

(i) Vaults and burial containers;

(ii) Headstones, markers and plaques;

(iii) Arrangements for the opening and closing of the gravesite;

and

(iv) Contracts for care and maintenance of the gravesite.

(e) A burial space purchase agreement that is ~~((currently paid for and owned by the person is also defined as a burial space. The entire value of the purchase agreement is excluded; as well as any interest accrued, which is left to accumulate as part of the value of the agreement. The value of this agreement does not reduce the amount of burial fund exclusion available to the person))~~ fully or partially paid, and any accrued interest.

(9) Immediate family, for the purposes of subsection (8) of this section includes the person's:

(a) Spouse;

(b) Parents and adoptive parents;

(c) Minor and adult children, including adoptive and stepchildren;

(d) Siblings (brothers and sisters), including adoptive and step-siblings;

(e) Spouses of any of the above.

None of the family members listed above, need to be dependent on or living with the person, to be considered immediate family members.

[Statutory Authority: RCW 41.05.021 and Patient Protection and Affordable Care Act (Public Law 111-148), 42 C.F.R. §§ 431, 435, 457 and 45 C.F.R. § 155. WSR 14-07-059, § 182-512-0500, filed 3/14/14, effective 4/14/14. WSR 11-24-018, recodified as § 182-512-0500, filed 11/29/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 04-09-003, § 388-475-0500, filed 4/7/04, effective 6/1/04.]

## WSR 23-08-047

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed March 30, 2023, 12:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-032.

Title of Rule and Other Identifying Information: WAC 182-513-1100 Definitions related to long-term services and supports (LTSS), 182-513-1215 Community first choice (CFC)—Eligibility, 182-513-1220 Community first choice (CFC)—Spousal impoverishment protections for noninstitutional Washington apple health clients, and 182-513-1660 Medicaid alternative care (MAC) and tailored supports for older adults (TSOA)—Spousal impoverishment.

Hearing Location(s): On May 9, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_hBvwLAWGQNaCbfhRKR7ciw](https://us02web.zoom.us/webinar/register/WN_hBvwLAWGQNaCbfhRKR7ciw). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than May 10, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by May 9, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov), by April 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Section 5115 of the federal Consolidated Appropriations Act, 2023, amends Section 2404 of the Patient Protection and Affordable Care Act (42 U.S.C. 1396r-5 note) to extend spousal impoverishment protections to September 30, 2027. The agency is amending the rules identified above to replace "September 30, 2023" with "September 30, 2027" to comply with this change in federal law. The agency is also making technical changes to remove or amend references to outdated programs.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160; 42 U.S.C. 1396r-5 note.

Rule is necessary because of federal law, Section 2404 of the Patient Protection and Affordable Care Act (42 U.S.C. 1396r-5 note).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Paige Lewis, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-0757.

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

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

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Section 2404 of the Patient Protection and Affordable Care Act (42 U.S.C. 1396r-5 note). Failure to conform agency medicaid client eligibility rules to federal law jeopardizes the agency's receipt of federal funds.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule pertains to client program eligibility and does not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

March 30, 2023  
Wendy Barcus  
Rules Coordinator

## OTS-4379.2

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

**WAC 182-513-1100 Definitions related to long-term services and supports (LTSS).** This section defines the meaning of certain terms used in chapters 182-513 and 182-515 WAC. Within these chapters, institutional, home and community based (HCB) waiver, program of all-inclusive care for the elderly (PACE), and hospice in a medical institution are referred to collectively as long-term care (LTC). Long-term services and supports (LTSS) is a broader definition which includes institutional, HCB waiver, and other services such as medicaid personal care (MPC), community first choice (CFC), PACE, and hospice in the community. See chapter 182-500 WAC for additional definitions.

**"Adequate consideration"** means that the fair market value (FMV) of the property or services received, in exchange for transferred property, approximates the FMV of the property transferred.

**"Administrative costs"** or **"costs"** means necessary costs paid by the guardian including attorney fees.

**"Aging and long-term support administration (AL TSA)"** means the administration within the Washington state department of social and health services (DSHS).

**"Alternate living facility (ALF)"** is not an institution under WAC 182-500-0050; it is one of the following community residential facilities:

- (a) An adult family home (AFH) licensed under chapter 70.128 RCW.
- (b) An adult residential care facility (ARC) licensed under chapter 18.20 RCW.
- (c) A behavioral health adult residential treatment facility licensed under chapter 246-337 WAC.

(d) An assisted living facility (AL) licensed under chapter 18.20 RCW.

(e) A developmental disabilities administration (DDA) group home (GH) licensed as an adult family home under chapter 70.128 RCW or an assisted living facility under chapter 18.20 RCW.

(f) An enhanced adult residential care facility (EARC) licensed as an assisted living facility under chapter 18.20 RCW.

(g) An enhanced service facility (ESF) licensed under chapter 70.97 RCW.

(h) A staffed residential facility licensed under chapter 74.15 RCW.

(i) A group care facility for medically complex children licensed under chapter 74.15 RCW.

(j) A facility for children and youth (~~(twenty)~~) 20 years of age and younger where a state-operated living alternative program, as defined under chapter 71A.10 RCW, is operated.

**"Assets"** means all income and resources of a person and of the person's spouse, including any income or resources which that person or that person's spouse would otherwise currently be entitled to but does not receive because of action:

(a) By that person or that person's spouse;

(b) By another person, including a court or administrative body, with legal authority to act in place of or on behalf of the person or the person's spouse; or

(c) By any other person, including any court or administrative body, acting at the direction or upon the request of the person or the person's spouse.

**"Authorization date"** means the date payment begins for long-term services and supports (LTSS) under WAC 388-106-0045.

**"Clothing and personal incidentals (CPI)"** means the cash payment (under WAC 388-478-0090, 388-478-0006, and 388-478-0033) issued by the department for clothing and personal items for people living in an ALF or medical institution.

**"Community first choice (CFC)"** means a medicaid state plan home and community based service developed under the authority of section 1915(k) of the Social Security Act under chapter 388-106 WAC.

**"Community options program entry system (COPES)"** means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-106 WAC.

**"Community spouse (CS)"** means the spouse of an institutionalized spouse.

**"Community spouse resource allocation (CSRA)"** means the resource amount that may be transferred without penalty from:

(a) The institutionalized spouse (IS) to the community spouse (CS); or

(b) The spousal impoverishment protections institutionalized (SIPI) spouse to the spousal impoverishment protections community (SIPC) spouse.

**"Community spouse resource evaluation"** means the calculation of the total value of the resources owned by a married couple on the first day of the first month of the institutionalized spouse's most recent continuous period of institutionalization.

**"Comprehensive assessment reporting evaluation (CARE) assessment"** means the evaluation process defined under chapter 388-106 WAC used by a department designated social services worker or a case manager to determine a person's need for long-term services and supports (LTSS).

**"Continuing care contract"** means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved.

**"Continuing care retirement community"** means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

**"Dependent"** means a minor child, or one of the following who meets the definition of a tax dependent under WAC 182-500-0105: Adult child, parent, or sibling.

**"Developmental disabilities administration (DDA)"** means an administration within the Washington state department of social and health services (DSHS).

**"Developmental disabilities administration (DDA) home and community based (HCB) waiver"** means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-845 WAC authorized by DDA. There are five DDA HCB waivers:

- (a) Basic Plus;
- (b) Core;
- (c) Community protection;
- (d) Children's intensive in-home behavioral support (CIIBS); and
- (e) Individual and family services (IFS).

**"Equity"** means the fair market value of real or personal property less any encumbrances (mortgages, liens, or judgments) on the property.

**"Fair market value (FMV)"** means the price an asset may reasonably be expected to sell for on the open market in an agreement, made by two parties freely and independently of each other, in pursuit of their own self-interest, without pressure or duress, and without some special relationship (arm's length transaction), at the time of transfer or assignment.

**"Guardianship fees"** or **"fees"** means necessary fees charged by a guardian for services rendered on behalf of a client.

**"Home and community based (HCB) waiver programs authorized by home and community services (HCS)"** means medicaid HCB waiver programs developed under the authority of Section 1915(c) of the Social Security Act under chapter 388-106 WAC authorized by HCS. There are three HCS HCB waivers: Community options program entry system (COPES), new freedom consumer directed services (New Freedom), and residential support waiver (RSW).

**"Home and community based services (HCBS)"** means LTSS provided in the home or a residential setting to persons assessed by the department.

**"Institutional services"** means services paid for by Washington apple health, and provided:

- (a) In a medical institution;
- (b) Through an HCB waiver; or
- (c) Through programs based on HCB waiver rules for post-eligibility treatment of income under chapter 182-515 WAC.

**"Institutionalized individual"** means a person who has attained institutional status under WAC 182-513-1320.

**"Institutionalized spouse"** means a person who, regardless of legal or physical separation:

(a) Has attained institutional status under WAC 182-513-1320; and  
(b) Is legally married to a person who is not in a medical institution.

**"Life care community"** see continuing care community.

**"Likely to reside"** means the agency or its designee reasonably expects a person will remain in a medical institution for (~~thirty~~) 30 consecutive days. Once made, the determination stands, even if the person does not actually remain in the facility for that length of time.

**"Long-term care services"** see "Institutional services."

**"Long-term services and supports (LTSS)"** includes institutional and noninstitutional services authorized by the department.

**"Medicaid personal care (MPC)"** means a medicaid state plan home and community based service under chapter 388-106 WAC.

**"Most recent continuous period of institutionalization (MRCPI)"** means the current period an institutionalized spouse has maintained uninterrupted institutional status when the request for a community spouse resource evaluation is made. Institutional status is determined under WAC 182-513-1320.

**"Noninstitutional medicaid"** means any apple health program not based on HCB waiver rules under chapter 182-515 WAC, or rules based on a person residing in an institution for (~~thirty~~) 30 days or more under chapter 182-513 WAC.

**"Nursing facility level of care (NFLOC)"** is under WAC 388-106-0355.

**"Participation"** means the amount a person must pay each month toward the cost of long-term care services received each month; it is the amount remaining after the post-eligibility process under WAC 182-513-1380, 182-515-1509, or 182-515-1514. Participation is not room and board.

**"Penalty period"** or **"period of ineligibility"** means the period of time during which a person is not eligible to receive services that are subject to transfer of asset penalties.

**"Personal needs allowance (PNA)"** means an amount set aside from a person's income that is intended for personal needs. The amount a person is allowed to keep as a PNA depends on whether the person lives in a medical institution, ALF, or at home.

**"Room and board"** means the amount a person must pay each month for food, shelter, and household maintenance requirements when that person resides in an ALF. Room and board is not participation.

**"Short stay"** means residing in a medical institution for a period of (~~twenty-nine~~) 29 days or fewer.

**"Special income level (SIL)"** means the monthly income standard that is (~~three hundred~~) 300 percent of the supplemental security income (SSI) federal benefit rate.

**"Spousal impoverishment protections"** means the financial provisions within Section 1924 of the Social Security Act that protect income and assets of the community spouse through income and resource allocation. The allocation process is used to discourage the impoverishment of a spouse due to the other spouse's need for LTSS. This includes services provided in a medical institution, HCB waivers authorized under 1915(c) of the Social Security Act, and through September 30, (~~2023~~) 2027, services authorized under 1115 and 1915(k) of the Social Security Act.

**"Spousal impoverishment protections community (SIPC) spouse"** means the spouse of a SIPI spouse.

**"Spousal impoverishment protections institutionalized (SIPI) spouse"** means a legally married person who qualifies for the noninstitutional categorically needy (CN) Washington apple health SSI-related program only because of the spousal impoverishment protections under WAC 182-513-1220.

**"State spousal resource standard"** means the minimum CSRA standard for a CS or SIPC spouse.

**"Third-party resource (TPR)"** means funds paid to or on behalf of a person by a third party, where the purpose of the funds is for payment of activities of daily living, medical services, or personal care. The agency does not pay for these services if there is a third-party resource available.

**"Transfer"** means, in the context of long-term care eligibility, the changing of ownership or title of an asset, such as income, real property, or personal property, by one of the following:

- (a) An intentional act that changes ownership or title; or
- (b) A failure to act that results in a change of ownership or title.

**"Uncompensated value"** means the fair market value (FMV) of an asset on the date of transfer, minus the FMV of the consideration the person receives in exchange for the asset.

**"Undue hardship"** means a person is not able to meet shelter, food, clothing, or health needs. A person may apply for an undue hardship waiver based on criteria under WAC 182-513-1367.

[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, § 182-513-1100, filed 4/29/21, effective 5/30/21. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-24-065, § 182-513-1100, filed 11/27/19, effective 12/28/19. 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, § 182-513-1100, filed 1/17/17, effective 2/17/17.]

AMENDATORY SECTION (Amending WSR 23-04-034, filed 1/25/23, effective 2/25/23)

**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)~~) 2027, 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~~) Family planning only under chapter 182-532 WAC;
- (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.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources](http://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 23-04-034, § 182-513-1215, filed 1/25/23, effective 2/25/23. 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 23-04-034, filed 1/25/23, effective 2/25/23)

**WAC 182-513-1220 Community first choice (CFC)—Spousal impoverishment protections for noninstitutional Washington apple health cli-**

**ents.** (1) This section is effective through September 30, ((2023))  
2027.

(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 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 ~~SIFI spouse and is financially eligible for noninstitutional CN coverage and CFC services.~~

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

~~((11))~~ (10) If the applicant's separate countable income is above the standards under subsections ~~(7) ((, (8), and (9))~~ and (8) of this section, the applicant is not eligible for CFC services under this section.

~~((12))~~ (11) The spousal impoverishment protections under this section expire on September 30, ~~((2023))~~ 2027.

~~((13))~~ (12) Standards are found at [www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources](http://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 23-04-034, § 182-513-1220, filed 1/25/23, effective 2/25/23. 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 23-04-034, filed 1/25/23, effective 2/25/23)

**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))~~ 2027.

(8) Standards described in this chapter are located at [www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources](http://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 23-04-034, § 182-513-1660, filed 1/25/23, effective 2/25/23. 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.]

## WSR 23-08-048

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed March 30, 2023, 2:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-074.

Title of Rule and Other Identifying Information: WAC 182-502-0002 Eligible provider types; new chapter 182-561 WAC, Community behavioral support services benefit.

Hearing Location(s): On May 9, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_hBvwLAWGQNaCbfhRKR7ciw](https://us02web.zoom.us/webinar/register/WN_hBvwLAWGQNaCbfhRKR7ciw). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: May 10, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by May 9, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov), by April 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 182-561 WAC is a new chapter to establish the community behavioral [health] support services (CBHS) benefit. The CBHS benefit assists eligible clients with obtaining the skills necessary to reside successfully in home and community-based settings. The chapter includes the eligibility criteria for clients; applicable health rules requiring medical necessity do not apply to this benefit. The chapter also includes CBHS provider requirements, eligible diagnoses, covered services, and the appeal process.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Rebecca Carrell, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-5707.

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

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

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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

costs were calculated. The rules do not impose any costs on businesses.

March 30, 2023  
Wendy Barcus  
Rules Coordinator

## OTS-4392.1

AMENDATORY SECTION (Amending WSR 23-04-071, filed 1/30/23, effective 3/2/23)

**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) Substance use disorder professionals:

(i) Mental health 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) Substance use disorder treatment facilities certified by the department of health (DOH);
  - (h) Withdrawal management treatment facilities certified by DOH;
  - (i) Community AIDS services alternative agencies;
  - (j) Community behavioral health support services provider facilities;
  - (k) Community mental health centers;
  - ~~((k))~~ (l) Diagnostic centers;
  - ~~((l))~~ (m) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;
  - ~~((m))~~ (n) Family planning clinics;
  - ~~((n))~~ (o) Federally qualified health centers (designated by the federal department of health and human services);
  - ~~((o))~~ (p) Genetic counseling agencies;
  - ~~((p))~~ (q) Health departments;
  - ~~((q))~~ (r) Health maintenance organization (HMO)/managed care organization (MCO);
  - ~~((r))~~ (s) HIV/AIDS case management;
  - ~~((s))~~ (t) Home health agencies;
  - ~~((t))~~ (u) Hospice agencies;
  - ~~((u))~~ (v) Hospitals;
  - ~~((v))~~ (w) Indian health service facilities/tribal 638 facilities;
  - ~~((w))~~ (x) Tribal or urban Indian clinics;
  - ~~((x))~~ (y) Inpatient psychiatric facilities;
  - ~~((y))~~ (z) Intermediate care facilities for individuals with intellectual disabilities (ICF-IID);
  - ~~((z))~~ (aa) Kidney centers;
  - ~~((aa))~~ (bb) Laboratories (CLIA certified);
  - ~~((bb))~~ (cc) Maternity support services agencies; maternity case managers; infant case management, first steps providers;
  - ~~((cc))~~ (dd) Neuromuscular and neurodevelopmental centers;
  - ~~((dd))~~ (ee) Nurse services/delegation;
  - ~~((ee))~~ (ff) Nursing facilities (approved by the DSHS aging and long-term support administration);

~~((ff))~~ (gg) Pathology laboratories;  
~~((gg))~~ (hh) Pharmacies;  
~~((hh))~~ (ii) Private duty nursing agencies;  
~~((ii))~~ (jj) Radiology - Stand-alone clinics;  
~~((jj))~~ (kk) Rural health clinics (medicare-certified);  
~~((kk))~~ (ll) School districts and educational service districts;  
~~((ll))~~ (mm) Sleep study centers; and  
~~((mm))~~ (nn) 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, 41.05.160, 71A.10.020(11), and chapter 18.205 RCW. WSR 23-04-071, § 182-502-0002, filed 1/30/23, effective 3/2/23. 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.]

#### OTS-4003.4

### Chapter 182-561 WAC COMMUNITY BEHAVIORAL HEALTH SUPPORT SERVICES BENEFIT

#### NEW SECTION

**WAC 182-561-0100 General.** (1) **Administration.** The medicaid agency, in conjunction with the department of social and health services, administers the community behavioral health support services (CBHS) benefit.

(2) **Services.** The CBHS benefit individualizes services designed to assist eligible clients in acquiring, retaining, restoring, and im-



proving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.

(3) **Applicability.** The rules in this chapter apply to benefits administered through fee-for-service delivery or a managed care organization.

(4) **CBHS benefits determined under this chapter.**

(a) The agency determines eligibility for CBHS benefits based on the rules in this chapter.

(b) Apple health rules requiring medical necessity do not apply to the CBHS benefit.

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#### NEW SECTION

**WAC 182-561-0200 Definitions.** The following definitions and those found in chapter 182-500 WAC apply to this chapter:

"Activities of daily living (ADL)" means the same as in WAC 388-106-0010.

"Home and community services (HCS)" means the division of the department of social and health services (DSHS) that manages the state's comprehensive long-term care system that provides in-home, residential, and nursing home services to clients with functional disabilities.

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#### NEW SECTION

**WAC 182-561-0300 Eligibility.** To be eligible for the community behavioral health support services (CBHS) benefit, a person must meet all requirements and criteria in this section.

(1) **General requirements.** A person must:

(a) Be eligible for apple health under categorically needy or alternate benefit plan scope of care;

(b) Receive at least one of the following home and community services at home or in a community residential setting:

(i) Medicaid personal care (MPC), as described in WAC 388-106-0015(1);

(ii) Community options program entry system (COPES), as described in WAC 388-106-0015(2);

(iii) Community first choice (CFC), as described in WAC 388-106-0015(3);

(iv) New freedom consumer directed services (NFCDS), as described in WAC 388-106-0015(16); or

(v) Residential support, as described in WAC 388-106-0015(17).

(c) Have countable income at or below 150 percent of the federal poverty level (FPL);

(d) Be age 18 or older; and

(e) Have an eligible diagnosis, as identified in WAC 182-561-0600.

(2) **Needs-based criteria.** A person must be assessed by home and community services (HCS) or an HCS designee and found to have a demonstrated need for:

(a) Assistance with three or more activities of daily living (ADL), or assistance with body care, or both, as defined in WAC 388-106-0010; or

(b) Hands-on assistance with one or more ADLs.

(3) **Risk-based criteria.** A person must have:

(a) A behavioral or clinical complexity that requires additional staffing or specialized services available only under the CBHS benefit. This determination is based on the person exhibiting one or more of the following behaviors within the last 12 months:

(i) Multiple assaults related to a behavioral health condition during inpatient or long-term care;

(ii) Self-endangering behaviors related to a behavioral health condition that would result in bodily harm;

(iii) Intrusiveness related to a behavioral health condition (e.g., rummaging, unawareness of personal boundaries) that places the person at risk of assault by others;

(iv) Chronic psychiatric symptoms that cause distress to and escalate the person or other residents to crisis;

(v) Sexual inappropriateness related to a behavioral health condition that may compromise the safety of the person and other vulnerable adults; or

(b) A history of any of the above behaviors, which are currently only prevented by additional skilled staff intervention.

(4) **Other criteria.** A person must meet the criteria of (a) or (b) of this subsection and have:

(a) A history of being unsuccessful in community living settings, as evidenced by at least one or more of the following:

(i) A history of multiple failed stays in residential settings within the past two years;

(ii) Be in imminent danger of losing a current community living setting due to behaviors related to a behavioral health condition or conditions;

(iii) Experience frequent caregiver turnover due to behaviors related to a behavioral health condition or conditions within the past two years; or

(iv) Be at imminent risk of losing a long-term care living setting without currently receiving the CBHS benefit.

(b) A past psychiatric history, where significant functional improvement has not been maintained due to the lack of the CBHS benefit, as evidenced by one or more of the following:

(i) Two or more inpatient psychiatric hospitalizations in the last 12 months;

(ii) An inpatient stay in a community hospital (acute or psychiatric) or a free-standing evaluation and treatment facility for 30 days or more in the last 12 months, with barriers to discharge related to a behavioral health condition or conditions;

(iii) Discharge from a state psychiatric hospital or a long-term 90/180-day inpatient psychiatric setting in the last 12 months; or

(iv) Being at imminent risk of requiring inpatient level of care without currently receiving the CBHS benefit.

(5) **Continuous eligibility.** Covered services may begin on the date the client meets all CBHS benefit criteria described in subsections (1) through (4) of this section. The agency approves one year of continuous eligibility for the CBHS benefit, unless the client:

- (a) Is admitted to an institution, as defined in WAC 182-500-0050, and is likely to reside there for 30 days or longer;
- (b) No longer receives any of the following home and community services at home or in a community residential setting:
- (i) Medicaid personal care (MPC), as described in WAC 388-106-0015(1);
  - (ii) Community options program entry system (COPES), as described in WAC 388-106-0015(2);
  - (iii) Community first choice (CFC), as described in WAC 388-106-0015(3);
  - (iv) New freedom consumer directed services (NFCDS), as described in WAC 388-106-0015(16); or
  - (v) Residential support, as described in WAC 388-106-0015(17).
- (c) Has countable income over 150 percent federal poverty level (FPL); or
- (d) Otherwise loses eligibility for medicaid.
- (6) **Service eligibility denial or termination.** The agency provides a written explanation for denials as described in chapter 182-518 WAC.
- (a) A change that results in termination takes effect the first of the month following the change as described in WAC 182-504-0120.
- (b) A change that results in a decreased scope of care takes effect the first of the month following the advance notice period, as described in WAC 182-504-0120.
- (7) **Redetermination.** The agency reviews client eligibility for CBHS services at least once every 12 months.

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#### NEW SECTION

**WAC 182-561-0400 Covered services.** The community behavioral health support services (CBHS) benefit covers supportive supervision and oversight services that:

- (1) Include direct monitoring, redirection, diversion, and cueing to prevent at-risk behavior that may result in harm to the client or to others;
- (2) Provide assistance with building skills and resiliency to support stabilized living and integration; and
- (3) Must be coordinated with other behavioral health services or incorporated into any existing crisis plans.

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#### NEW SECTION

**WAC 182-561-0500 Providers.** (1) **Supportive supervision and oversight services providers.** The services described in WAC 182-561-0400(1) must be provided by the following medicaid agency-contracted providers:

- (a) Adult family homes, which are licensed under chapter 388-76 WAC;

(b) Adult residential care facilities (ARC), which are assisted living facilities with a contract to provide ARC services and are licensed under chapters 18.20 RCW and 388-78A WAC;

(c) Enhanced adult residential care (EARC) facilities, which are assisted living facilities with a contract to provide EARC services and are licensed under chapters 18.20 RCW and 388-78A WAC;

(d) Assisted living facilities, which are licensed under chapters 70.97 RCW and 388-78A and 388-110 WAC; or

(e) Enhanced services facilities, which are licensed under chapters 70.97 RCW and 388-107 WAC.

(2) **Provider requirements.** For the purposes of community behavioral health support services, WAC 182-502-0020 is not applicable. Providers should follow the record requirements outlined in the billing guides.

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#### NEW SECTION

**WAC 182-561-0600 Eligible diagnoses.** For purposes of this chapter, eligible diagnoses include:

- Psychotic disorder with hallucinations due to known physiological condition
- Psychotic disorder with delusions due to known physiological condition
- Mood disorder due to known physiological condition, unspecified
- Mood disorder due to known physiological condition with depressive features
- Mood disorder due to known physiological condition with major depressive-like episode
- Mood disorder due to known physiological condition with manic features
- Mood disorder due to known physiological condition with mixed features
- Anxiety disorder due to known physiological condition
- Personality change due to known physiological condition
- Diffuse traumatic brain injury with loss of consciousness sequela
- Paranoid schizophrenia
- Disorganized schizophrenia
- Catatonic schizophrenia
- Undifferentiated schizophrenia
- Residual schizophrenia
- Schizophreniform disorder
- Other schizophrenia
- Schizophrenia, unspecified
- Schizotypal disorder
- Delusional disorders
- Brief psychotic disorder
- Shared psychotic disorder
- Schizoaffective disorder, bipolar type
- Schizoaffective disorder, depressive type
- Other schizoaffective disorders
- Schizoaffective disorder, unspecified

- Other psychotic disorder not due to a substance or known physiological condition
  - Unspecified psychosis not due to a substance or known physiological condition
    - Manic episode without psychotic symptoms, unspecified
    - Manic episode without psychotic symptoms, mild
    - Manic episode without psychotic symptoms, moderate
    - Manic episode, severe, without psychotic symptoms
    - Manic episode, severe with psychotic symptoms
    - Manic episode in partial remission
    - Manic episode in full remission
    - Other manic episodes
    - Manic episode, unspecified
  - Bipolar disorder, current episode hypomanic
  - Bipolar disorder, current episode manic without psychotic features, unspecified
    - Bipolar disorder, current episode manic without psychotic features, mild
    - Bipolar disorder, current episode manic without psychotic features, moderate
    - Bipolar disorder, current episode manic without psychotic features, severe
  - Bipolar disorder, current episode manic severe with psychotic features
    - Bipolar disorder, current episode depressed, mild or moderate severity, unspecified
      - Bipolar disorder, current episode depressed, mild
      - Bipolar disorder, current episode depressed, moderate
      - Bipolar disorder, current episode depressed, severe, without psychotic features
    - Bipolar disorder, current episode depressed, severe, with psychotic features
      - Bipolar disorder, current episode mixed, unspecified
      - Bipolar disorder, current episode mixed, mild
      - Bipolar disorder, current episode mixed, moderate
      - Bipolar disorder, current episode mixed, severe, without psychotic features
      - Bipolar disorder, current episode mixed, severe, with psychotic features
  - Bipolar disorder, currently in remission, most recent episode unspecified
    - Bipolar disorder, in partial remission, most recent episode hypomanic
    - Bipolar disorder, in full remission, most recent episode hypomanic
    - Bipolar disorder, in partial remission, most recent episode manic
    - Bipolar disorder, in full remission, most recent episode manic
    - Bipolar disorder, in partial remission, most recent episode depressed
      - Bipolar disorder, in full remission, most recent episode depressed
      - Bipolar disorder, in partial remission, most recent episode mixed
        - Bipolar disorder, in full remission, most recent episode mixed
        - Bipolar II disorder
        - Other bipolar disorder

- Bipolar disorder, unspecified
- Major depressive disorder, single episode, mild
- Major depressive disorder, single episode, moderate
- Major depressive disorder, single episode, severe without psychotic features
- Major depressive disorder, single episode, severe with psychotic features
- Major depressive disorder, single episode, in partial remission
- Major depressive disorder, single episode, in full remission
- Other depressive episodes
- Premenstrual dysphoric disorder
- Other specified depressive episodes
- Major depressive disorder, single episode, unspecified
- Depression, unspecified
- Major depressive disorder, recurrent, mild
- Major depressive disorder, recurrent, moderate
- Major depressive disorder, recurrent severe without psychotic features
- Major depressive disorder, recurrent, severe with psychotic symptoms
- Major depressive disorder, recurrent, in remission, unspecified
- Major depressive disorder, recurrent, in partial remission
- Major depressive disorder, recurrent, in full remission
- Other recurrent depressive disorders
- Major depressive disorder, recurrent, unspecified
- Cyclothymic disorder
- Dysthymic disorder
- Other persistent mood (affective) disorders
- Disruptive mood dysregulation disorder
- Other specified persistent mood disorders
- Persistent mood (affective) disorder, unspecified
- Unspecified mood (affective) disorder
- Agoraphobia, unspecified
- Agoraphobia with panic disorder
- Agoraphobia without panic disorder
- Social phobia, unspecified
- Social phobia, generalized
- Claustrophobia
- Other phobic anxiety disorders
- Panic disorder (episodic paroxysmal anxiety)
- Generalized anxiety disorder
- Obsessive-compulsive disorder
- Mixed obsessional thoughts and acts
- Hoarding disorder
- Excoriation (skin-picking) disorder
- Other obsessive-compulsive disorder
- Obsessive-compulsive disorder, unspecified
- Post-traumatic stress disorder, unspecified
- Post-traumatic stress disorder, acute
- Post-traumatic stress disorder, chronic
- Dissociative amnesia
- Dissociative fugue
- Dissociative stupor
- Conversion disorder with motor symptom or deficit
- Conversion disorder with seizures or convulsions
- Conversion disorder with sensory symptom or deficit
- Conversion disorder with mixed symptom presentation

- Dissociative identity disorder
- Other dissociative and conversion disorders
- Dissociative and conversion disorder, unspecified
- Somatization disorder
- Undifferentiated somatoform disorder
- Hypochondriacal disorder, unspecified
- Hypochondriasis
- Body dysmorphic disorder
- Other hypochondriacal disorders
- Pain disorder exclusively related to psychological factors
- Pain disorder with related psychological factors
- Other somatoform disorders
- Somatoform disorder, unspecified
- Depersonalization-derealization syndrome
- Nonpsychotic mental disorder, unspecified
- Borderline personality disorder
- Trichotillomania
- Intermittent explosive disorder
- Other impulse disorders
- Impulse disorder, unspecified
- Factitious disorder imposed on self, unspecified
- Factitious disorder imposed on self, with predominantly physical signs and symptoms
  - Factitious disorder imposed on self, with combined psychological and physical signs and symptoms
  - Other specified disorders of adult personality and behavior
  - Conduct disorder confined to family context
  - Conduct disorder, childhood-onset type
  - Conduct disorder, adolescent-onset type
  - Other conduct disorders
  - Conduct disorder, unspecified
  - Separation anxiety disorder of childhood
  - Other childhood emotional disorders
  - Childhood emotional disorder, unspecified
  - Selective mutism
  - Reactive attachment disorder of childhood
  - Disinhibited attachment disorder of childhood
  - Other childhood disorders of social functioning
  - Childhood disorder of social functioning, unspecified

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#### NEW SECTION

**WAC 182-561-0700 Appeal process.** (1) The medicaid agency gives the client written notice of an action under chapter 182-518 WAC.

(2) The client has the right to appeal the agency's action according to chapter 182-526 WAC.

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## WSR 23-08-049

## PROPOSED RULES

## DEPARTMENT OF COMMERCE

[Filed March 31, 2023, 8:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-110.

Title of Rule and Other Identifying Information: The proposed rules to amend WAC 194-50-150 to increase the period for exemption application for building owners. This rule would make permanent the emergency rule filed as WSR 23-05-101.

Hearing Location(s): On May 9, 2023, at 10:00 a.m., virtual. Remote testimony will be accepted.

Date of Intended Adoption: June 15, 2023.

Submit Written Comments to: Liz Reichart, Washington Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504, email [buildings@commerce.wa.gov](mailto:buildings@commerce.wa.gov), by May 12, 2023.

Assistance for Persons with Disabilities: Contact Nick Manning, email [nick.manning@commerce.wa.gov](mailto:nick.manning@commerce.wa.gov), by May 2, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 194-50 WAC contains a process for building owners to apply for an exemption to the clean building performance standard. Currently, WAC 194-50-150 allows for building owners to apply for an exemption no sooner than 365 [days] prior to the date of compliance. The proposed rule change would allow building owners to apply for an exemption no sooner than three years prior to the date of compliance.

Reasons Supporting Proposal: The clean buildings performance standard requires certain buildings in the state to meet energy performance metrics over time. The standard exempts several building categories from compliance with the standard, for example, buildings scheduled for demolition or facing financial hardship, through a commerce approval process. The rules promulgated in chapter 194-50 WAC contain a process for buildings owners to apply for exemptions. WAC 194-50-150 states that building owners may apply for an exemption no sooner than 365 days prior to the date of compliance. However, commerce has received feedback from stakeholders [stating] that if an exemption application is denied by the agency, building owners require more time to bring buildings into compliance given the amount of time and financial resources it may take. Thus, commerce has concluded that providing a greater window of time for building owners to apply for, and for commerce to grant, exemptions is in the public interest and is likely to result in more buildings being compliant with the standard by the statutory compliance date.

Statutory Authority for Adoption: RCW 19.27A.210.

Statute Being Implemented: Chapter 19.27A RCW.

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

Name of Proponent: Washington department of commerce, public.

Name of Agency Personnel Responsible for Drafting: Liz Reichart, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504, 360-515-8194; Implementation and Enforcement: Washington Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504, 360-407-6000.

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



A cost-benefit analysis is not required under RCW 34.05.328. The department of commerce is not a listed agency in RCW 34.05.328.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed change decreases financial burden on businesses applying for an exemption. Given the amount of time and financial resources it may take to bring buildings into compliance, if an exemption application is denied by the agency, building owners will receive more time under the proposed rule to do so.

March 31, 2023  
Amanda Hathaway  
Rules Coordinator

## OTS-4350.1

AMENDATORY SECTION (Amending WSR 20-22-059, filed 10/30/20, effective 11/30/20)

**WAC 194-50-150 Normative Annex Z—Washington state reporting requirements.**

### **Z1 Building owner notifications by the AHJ.**

**Z1.1 Notification to building owners of covered commercial buildings by the AHJ.** Based on records obtained from each county assessor and other available information sources, the AHJ must create a database of *covered commercial buildings* and *building owners* required to comply with the standard established in accordance with this section. The database may include buildings and *building complexes* presumed to meet the definition of *covered commercial building* and *multifamily buildings* greater than 50,000 square feet in floor area.

**Z1.1.1** The database will contain information about buildings that may be subject to compliance, their owners, and information about multifamily residential buildings eligible for incentives. The database will also contain information to assist tracking and reporting on building owner compliance, and incentive application and distribution. Commerce will create a method for tracking building owner notification responses. Each building or building complex will be assigned a unique building identifier.

**Z1.2** By July 1, 2021, the AHJ must provide the owners of covered commercial buildings with notification of compliance requirements. Notifications will be mailed to the mailing addresses county assessors have on file.

**Z1.3** Failure by the AHJ to provide the notification in Z1.2 does not release the *building owner* of the legal obligation to comply with this law.

**Z1.4** By July 1, 2021, the AHJ must provide notifications to the building owners of multifamily residential building where the floor area

exceeds (~~(fifty thousand)~~) 50,000 gross square feet, excluding the parking garage area.

## **Z2 Building owner response to notifications.**

**Z2.1 Correction of errors.** *Building owners* are responsible for reviewing the property and building information provided by the AHJ through notification including, but not limited to, *building or building complex ownership details, gross floor area, and other information as identified by the building owner.*

**Z2.1.1 Correction of errors documentation form.** Building owners who are notified in error may submit a correction form to the AHJ. The correction form will be used to document gross floor area (conditioned and unconditioned) and/or building type. Building owners that submit the correction form must also submit the documentation required to demonstrate an exception as required in Section Z4.1 prior to the compliance date if applicable.

## **Washington State Reporting Requirements for Building Owners.**

**Z3 General compliance.** The building owner of a *covered commercial building* must report compliance with the standard to the AHJ in accordance with the compliance schedule established under Section Z3.1 and every five years thereafter. For each reporting date, the building owner must submit documentation to demonstrate that:

1. The weather normalized energy use intensity of the *covered commercial building* measured in a period not to exceed two years prior to the compliance deadline specified in Normative Annex Z3.1 is less than or equal to the energy use intensity target (buildings that meet their energy targets); or
2. The *covered commercial building* has received conditional compliance from the department based on energy efficiency actions prescribed by the standard; or
3. The *covered commercial building* is exempt from the standard by demonstrating that the building meets one of the criteria for an exemption.

**Z3.1 Compliance schedule.** The building owner of a covered commercial building must report the building owner's compliance with the standard to the department in accordance with the appropriate initial compliance date as follows and every five years thereafter.

1. For a building with more than (~~(two hundred twenty thousand)~~) 220,000 gross square feet, June 1, 2026;
2. For a building with more than (~~(ninety thousand)~~) 90,000 gross square feet but less than (~~(two hundred twenty thousand)~~) 220,000 and one gross square feet, June 1, 2027; and
3. For a building with more than (~~(fifty thousand)~~) 50,000 gross square feet but less than (~~(ninety thousand)~~) 90,000 and one square feet, June 1, 2028.

**Z3.1.1 Early compliance option.** Building owners may submit for compliance to the AHJ beginning July 1, 2023. The weather normalized energy use intensity of the covered commercial building shall be measured in a period not to exceed two years prior to the submission of compliance documentation. This section expires June 1, 2028.

**Z3.1.2 Application for conditional compliance.** Applications for conditional compliance must be submitted to the AHJ (~~(one hundred eighty)~~) 180 days prior to the compliance date to receive conditional compliance approval prior to the compliance date.

**Z3.1.3 Application for exemption.** Building owners submitting an application for exemption as specified in Section Z4.1 must be submitted to the AHJ (~~(one hundred eighty)~~) 180 days prior to the compliance date to receive exemption approval prior to the compliance date.

**Z4 Documentation of compliance with the standard.** Documentation of compliance shall be submitted to the AHJ demonstrating the building owner has complied with the standard through submission of documentation in accordance with Section Z4.1, Z4.2, Z4.3, Z4.4 or Z4.5. Additional requirements for continued reporting may be required as specified in Z4.6.

**Z4.1 Documentation of compliance through exemption.** *Building owners* seeking approval of exemption shall submit to the AHJ the Z6.7 Form H, Application for exemption certificate documenting the following:

1. The building qualifies for one of the following exemptions:
  - a. Compliance with the exemption must be verified by the owner based on the building as it is to be occupied and operating on the compliance date;
  - b. Applications for exemptions may be submitted no sooner than (~~(1 year)~~) three years prior to the compliance date and submitted to the AHJ no later than (~~(one hundred eighty)~~) 180 days prior to the compliance date;
  - c. Exemptions certificates are only valid for the current compliance review cycle.
  - d. Within six months before the compliance date, building owners who have received exemption approval must certify that the building still meets the eligibility qualifications for the exemption and that there have been no material changes to qualifying conditions. A template for acceptable declarations will be made available by the AHJ on the agency website.

2. Covered commercial buildings are not eligible for exemption from the standards unless they meet one of the following criteria:
  - a. The building did not have a certificate of occupancy or temporary certificate of occupancy for a consecutive (~~(twelve)~~) 12 months period within two years prior to the compliance date;
  - b. The building did not have physical occupancy by owner or tenant for at least (~~(fifty)~~) 50 percent of the *conditioned floor area* throughout the consecutive (~~(twelve month)~~) 12-month period prior to the building compliance date;
  - c. The sum of the *building's gross floor area* minus *unconditioned and semi-conditioned spaces*, as defined in the Washington State Energy Code, is less than (~~(fifty thousand)~~) 50,000 square feet;
  - d. More than 50% of the gross floor area of the building is primarily used for manufacturing or other industrial purposes, as defined under the following use designations of the Washington state edition of the *International Building Code*:
    - i. Factory group F; or
    - ii. High hazard group H.
  - e. The building is an agricultural structure;
  - f. The building is pending demolition; or
  - g. The building meets at least one of the following conditions of financial hardship:
    - i. The building had arrears of property taxes or water or wastewater charges that resulted in the building's inclusion, within the prior two years, on a city's or county's annual tax lien sale list;

- ii. The building has a court appointed receiver in control of the asset due to financial distress;
- iii. The building is owned by a financial institution through default by a borrower;
- iv. The building has been acquired by a deed in lieu of foreclosure within the previous (~~twenty-four~~) 24 months;
- v. The building has a senior mortgage subject to a notice of default;
- vi. The building owner has an immediate and heavy financial need which cannot be satisfied from other reasonable available resources and which are caused by events that are beyond their control.

3. After documents have been submitted and reviewed, the AHJ will send notification of approval or denial.

a. If the exemption is approved the AHJ shall notify the applicant stating the application has been approved and update the AHJ records for the building.

b. If the exemption is denied the AHJ shall notify the applicant stating the application has been denied and update the AHJ records for the building.

4. When an application for exemption is denied the building owner must proceed with the process to demonstrate compliance with one of the compliance options in Washington state reporting requirements for building owners, Z4.2-Z4.5.

**Z4.2 Buildings that meet the  $EUI_t$ .** *Building owners* must provide the following documentation to verify that the building *weather normalized*  $EUI$  is less than the building  $EUI_t$  and that the energy management plan is complete and being implemented.

- Form A;
- Form B;
- Form C.

**Z4.3 Buildings that will meet the building investment criteria prior to the compliance date.** Building owners must provide the following documentation to verify that the building has implemented all EEMs that meet the cost effectiveness criteria resulting from the energy audit and economic evaluation criteria from Normative Annex X. The energy management plan must be completed and implemented and all EEMs must be installed and commissioned prior to the compliance date.

- Form A;
- Form B;
- Form C, except buildings unable to meet Section 5.2, Building energy monitoring;
- Energy audit report:
  - Level 2 energy audit;
  - Normative Annex X - Investment Criteria Form.

**Z4.4 Buildings that will meet the  $EUI_t$  through conditional compliance.** *Building owners* must provide the following documentation to verify that the building *weather normalized*  $EUI$  is projected to be less than the building  $EUI_t$  at the end of the measurement and verification period and that the energy management plan is complete and being implemented. EEMs required to meet the  $EUI_t$  must be installed and commissioned prior to the compliance date. Verification and completion shall be documented as required in Section Z4.6.

- Form A;
- Form B;

- Form C;
- Energy audit report:
  - Level 2 Energy Audit.
- Continued reporting until completion as specified in Section

Z4.6.

**Z4.5 Buildings that will meet the building investment criteria through conditional compliance.** Building owners must provide the following documentation to verify that the building has implemented all EEMs that meet the cost effectiveness criteria resulting from the energy audit and economic evaluation criteria from Normative Annex X. The energy management plan must be completed and implemented and all EEMs must be installed and commissioned prior to the compliance date. Verification and completion shall be documented as required in Section Z4.6.

- Form A;
- Form B;
- Form C, except buildings unable to meet Section 5.2 Building Energy Monitoring;
- Energy audit report:
  - Level 2 energy audit;
  - Normative Annex X - Investment Criteria Form.
- Continued reporting until completion as specified in Section

Z4.6.

**Z4.5.1 Phased implementation.** The building owner may include phased implementation of EEMs such that the *building owner* is not required to replace a system or equipment before the end of the system or equipment's useful life. System or equipment fitting this description shall be included in the energy audit and Normative Annex X - Investment Criteria submission with a schedule for replacement. Phased implementation shall be documented in the *energy management plan* and *capital management plan* required in Section 5.

**Z4.6 Continued reporting until completion.** Continued reporting is required as specified in Sections Z4.6.1 and Z4.6.2 until completion when: a) measurement and verification extends one year or more beyond the compliance date, or b) implementation is extended phased implementation.

**Z4.6.1 Annual reporting.** The following up to date reports shall be submitted to the AHJ annually, (date specific).

- Form A;
- Form B;
- Form C, except buildings unable to meet Section 5.2, Building energy.

**Z4.6.2 Completion Reporting.** The following up to date reports shall be submitted to the AHJ when all conditions of compliance have been verified and documented:

- Form A;
- Form B;
- Form C, except buildings unable to meet Section 5.2, Building energy monitoring. Buildings unable to meet Section 5.2 shall include the verification specified in Section 9.2.2 in the *building energy management plan*.

**Z5 Violations, assessment of administrative penalties, mitigation and review of penalty decisions.**

**25.1 Authorization.** The AHJ is authorized to impose administrative penalties upon building owners for failing to submit documentation demonstrating compliance with the requirements of this standard.

Failure to submit documentation demonstrating compliance by the scheduled reporting date will result in progressive penalties by legal notice.

**25.2 Notice of violation and opportunity to correct (NOVC) (first notice).**

**25.2.1** The department may issue a NOVC when a building owner has failed to submit documentation that demonstrates compliance with this standard by the scheduled reporting date.

**25.2.2** A NOVC may be issued for any of the following reasons:

1. Failure to submit a compliance report in the form and manner prescribed by the AHJ;
2. Failure to meet an energy use intensity target or failure to receive conditional compliance approval;
3. Failure to provide accurate reporting consistent with the requirements of the standard; and
4. Failure to provide a valid exemption certificate.

The AHJ will identify in the NOVC which section(s) of law, code, or the standard for which the *building owner* has failed to demonstrate compliance.

**25.2.3** The NOVC will specify the time by which the building owner must cure the violation by submitting documentation that demonstrates compliance with the identified section(s) of law, code, or the standard. The AHJ will give the building owner at least seven calendar days to submit such documentation.

**25.2.4** If sufficient documentation is not submitted by the date specified in the NOVC, the AHJ will issue a notice of violation and intent to assess administrative penalties (NOVI) and the *building owner* will be subject to administrative penalties.

**25.3 Notice of violation and intent to assess administrative penalties (NOVI) (second notice).**

**25.3.1** If a *building owner* fails to respond to a NOVC by submitting documentation demonstrating compliance by the date specified in the NOVC, the AHJ will issue a NOVI.

**25.3.2** The AHJ will identify in the NOVI which section(s) of law, code, or the standard for which the building owner has failed to demonstrate compliance. The NOVI will also include a description of how the penalties the AHJ intends to assess will be calculated.

Building owners must respond to a NOVI within (~~thirty~~) 30 days by either:

1. Submitting an application for exemption in accordance with Section Z4.1 if applicable;
2. Submitting a noncompliance mitigation plan in accordance with 25.7;
3. Submitting its intent to pay the penalties by using the form provided by the AHJ; or
4. Submitting a request for an administrative proceeding to challenge or mitigate the penalty.

**25.3.3** If the *building owner* does not timely request a hearing or submit an application for exemption, the *building owner* waives its right

to a hearing and the director or their designee may issue a final order assessing the penalties described in the NOVI. If the *building owner* has submitted a mitigation plan, the final order will only assess penalties from the scheduled compliance date until the date of an approval of compliance or conditional compliance.

**25.3.4** Building owners who submit an application for exemption that is denied may request a hearing by submitting a request for a hearing within (~~(thirty)~~) 30 days of issuance of the decision denying its application for exemption. If the building owner does not request a hearing within (~~(thirty)~~) 30 days, the building owner waives its right to a hearing and the director or their designee may issue a final order assessing the penalties described in the NOVI.

**25.4 Assessment of administrative penalties.**

**25.4.1** Failure to submit documentation demonstrating compliance with the standard by the date specified in a NOVC will result in the issuance of a NOVI and the assessment of administrative penalties at an amount not to exceed (~~(five thousand dollars)~~) \$5,000 plus an amount based on the duration of any continuing violation. The additional amount for a continuing violation may not exceed a daily amount equal to one dollar per square foot of gross floor area per year.

**25.4.1.1 Penalties for building owners that submit a noncompliance mitigation plan.** For building owners subject to a NOVI who respond within (~~(thirty)~~) 30 days by submitting a noncompliance mitigation plan (25.7), fines shall be assessed on an annual basis or when the building owner achieves compliance or conditional compliance.

a. For applicants that submit a noncompliance mitigation plan and who submit documentation demonstrating completion, daily penalties will be assessed from the scheduled compliance date to the date of approval of compliance or conditional compliance. The penalty will be assessed at an amount not to exceed (~~(30% of five thousand dollars)~~) 30 percent of \$5,000 plus a daily amount equal to (~~(\$0.20)~~) 20 cents per square foot of gross floor area per year.

b. For applicants that submit a noncompliance mitigation plan but have not submitted documentation demonstrating completion, if the building does not comply with the standard by the next compliance date, the building owner will be assessed the maximum penalty of (~~(five thousand dollars)~~) \$5,000 plus a daily amount equal to (~~(\$1.00)~~) one dollar per square foot of gross floor area per year not to exceed a value greater than (~~(eighteen)~~) 18 months of accrued penalty.

The AHJ may by rule increase the penalty rates to adjust for the effects of inflation.

**25.4.1.2 Penalties for building owners that choose to pay the fine rather than pursuing compliance.** Building owners may choose to respond to the NOVI by paying the maximum penalty. The building owner will be assessed the maximum penalty of (~~(five thousand dollars)~~) \$5,000 plus a daily amount equal to (~~(\$1.00)~~) one dollar per square foot of gross floor area per year not to exceed a value greater than (~~(eighteen)~~) 18 months of accrued penalty. Penalties are assessed for each compliance period.

The AHJ may by rule increase the penalty rates to adjust for the effects of inflation.

**25.4.2** When assessed penalties are not paid within (~~(one hundred eighty)~~) 180 days of the date of a final order assessing penalties,

the AHJ may assess further penalties. Total penalties assessed will not exceed (~~five thousand dollars~~) \$5,000 plus a daily amount equal to (~~(\$1.00)~~) one dollar per square foot of gross floor area per year.

**25.4.3** Interest will accrue on civil penalties pursuant to RCW 43.17.240 if and when the debt becomes past due.

**25.5 Due date and collection of penalties.**

**25.5.1** Penalties shall become due and payable on the later of:

1. Thirty days after receipt of the final order imposing the penalty; or

2. The date specified in the final order imposing the penalty.

**25.5.2** If a penalty has not been paid by the due date, the AHJ may assign the debt to a collection agency as authorized by RCW 19.16.500 or take other action to pursue collection as authorized by law. If referred to a collection agency, the AHJ may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee.

**25.5.3** For building owners that are implementing a noncompliance mitigation plan but have not yet complied, the AHJ may assess the accumulated daily fine on June 1st of each year or shortly thereafter.

**25.6 Payment of administrative penalties.**

A check or money order payable in U.S. funds to the Washington state department of commerce can be mailed to:

Washington State Department of Commerce  
Re: Clean Buildings Initiative, Energy Division  
P.O. Box 42525  
Olympia, WA 98504-2525

**25.7 Noncompliance mitigation plan.** Owners of covered commercial buildings that are out of compliance by the scheduled compliance date and have not corrected the violation by the date noted in a NOVC may reduce possible penalties by demonstrating that they are taking action to achieve compliance with the standard. To begin the process of mitigating noncompliance, a building owner must submit to the AHJ the non-compliance mitigation plan form selecting one of the following actions within (~~(thirty)~~) 30 days of the date of a NOVI to avoid immediate issuance of penalty in accordance with Z5.4.1.

1. Compliance with the standard in accordance with Z4.2.

2. Conditional compliance with the standard in accordance with Z4.4.

3. Conditional compliance with the standard in accordance with Z4.5.

**25.7.1 Mitigation completion.** To demonstrate completion, the building owner shall complete all of the requirements of this standard and submit documentation as required by Section Z4.2, Z4.4 or Z4.5. After the building owner has demonstrated completion, the AHJ shall issue a final order assessing the reduced penalty as specified by Z5.4.1.1(a).

**25.8 Administrative hearings.**

**25.8.1 Requesting a hearing.** A *building owner* may request an administrative hearing after receiving an NOVI or after the denial of its application for an exemption by submitting a request within (~~(thirty)~~) 30 days of the date of a NOVI or the denial of a timely application for exemption. All requests must be made in writing and filed at the address specified on the NOVI. For convenience, the AHJ will attach a



form titled request for hearing to the NOVI that may be used to request an administrative hearing.

Requests for hearing must be accompanied by the following:

1. Washington State Building ID;
2. Submit Annex Z Forms A, B, and C.

**25.8.2 Hearing process.** The AHJ may refer matters to the office of administrative hearings (OAH). Administrative hearings will be conducted in accordance with chapter 34.05 WAC, Administrative Procedure Act, chapter 10-08 WAC, Model rules of procedure, and the procedural rules adopted in this chapter. In the case of a conflict between the model rules of procedure and the procedural rules adopted in this section, the procedural rules adopted in this section take precedence.

**25.8.3 Initial orders to become final orders.** Initial orders issued by the presiding officer will become final without further agency action unless, within (~~twenty~~) 20 days:

1. The director determines that the initial order should be reviewed; or
2. A party to the proceeding files a petition for administrative review of the initial order. Upon occurrence of either event, notice shall be given to all parties to the proceeding.

**25.8.4. Judicial review.** A final order entered pursuant to this section is subject to judicial review pursuant to RCW 34.05.510 through 34.05.598.

**25.8.5 Collected penalties.** The AHJ will deposit all penalties collected and received by the department under this section into the low-income weatherization and structural rehabilitation assistance account created in RCW 70.164.030.

**Z6 Compliance forms.** The following section replace Normative Annex C Forms in Standard 100 and provide additional forms specified by rule. Building owners are required to submit the applicable forms and the required supporting information to demonstrate compliance with the standard. These forms replace all referenced forms in this standard. The AHJ will make these forms available in an electronic format for submission to the AHJ.

**Z6.1 Compliance with Standard 100 (Form A)**

1. Building identification:
  - a. WA state building ID;
  - b. County;
  - c. County parcel number(s);
  - d. Portfolio manager property ID number;
  - e. Property name;
  - f. Parent property name;
  - g. Address 1 (street);
  - h. Address 2;
  - i. City;
  - j. State; and
  - k. Postal code.
2. Contact information:
  - a. *Building owner* name(s);
  - b. Contact name;
  - c. Address 1 (street);
  - d. Address 2;
  - e. City;
  - f. State/Province;

- g. Country;
- h. Postal code;
- i. Telephone number;
- j. Email address.
- 3. Qualified person:
  - a. Qualified person name;
  - b. Address 1 (street);
  - c. Address 2;
  - d. City;
  - e. State;
  - f. Postal code;
  - g. Telephone number;
  - h. Email address:
  - i. Licensed, certified (select all that apply);
  - ii. Licensure or certifying authority.
- 4. *Energy manager* (if different than the qualified person):
  - a. Energy manager name;
  - b. Address 1 (street);
  - c. Address 2;
  - d. City;
  - e. State/Province;
  - f. Postal code;
  - g. Country;
  - h. Telephone number;
  - i. Email address.
- 5. This compliance report is for:
  - a. Building that meets the  $EUI_t$ ;
  - b. Building that meets the building investment criteria prior to the compliance date;
  - c. Building that will meet the  $EUI_t$  through conditional compliance;
  - d. Building that will meet the building investment criteria through conditional compliance;
  - e. Annual reporting;
  - f. Completion reporting.
- 6. Summary data:
  - a. Energy utilization index target ( $EUI_t$ ) (kBtu/ft<sup>2</sup> yr) based on completed Z6.2 Form B;
  - b. Measured site  $EUI$  (kBtu/ft<sup>2</sup>) for the compliance year for this building based on Z6.3 Form C;
  - c. Measured weather normalized site  $EUI$  (kBtu/ft<sup>2</sup>) for the compliance year based on Z6.3 Form C;
  - d. List the months/year of the collected data (mm/yyyy - mm/yyyy) for the compliance year for this building from Z6.3 Form C;
  - e. Buildings unable to comply with Section 5.2, Building energy monitoring and complete Z6.3 Form C shall provide a reason statement.
- 7. Have the energy management requirements of Section 5 been met?
  - Yes  No
    - Upload energy management plan as specified by the AHJ.
- 8. Have the operation and maintenance requirements of Section 6 been met?  Yes  No
  - Upload operation and maintenance implementation documentation as specified by the AHJ.
- 9. Date the audit and economic evaluation was completed (N/A if none required).
  - Upload audit reports as specified by Z6.4 Form D.

10. Have all EEMs required by Section 8 been implemented? [ ] Yes  
[ ] No
11. Have the requirements of Section 9 been completed? [ ] Yes  
[ ] No
12. We state that this building complies with ANSI/ASHRAE/IES Standard 100 as amended by the AHJ to conform with RCW 19.27A.210:
- Signature of building owner:
    - Date:
  - Signature of qualified person:
    - Date:
  - Signature of energy manager:
    - Date:
  - Signature of authority having jurisdiction:
    - Conditional or final compliance:
    - Date:

**Z6.2 Building activity and energy use intensity target ( $EUI_t$ ) (Form B). - Complete form provided by the AHJ with the following information:**

- Building identification:
  - Washington state building ID;
  - County;
  - County parcel number(s);
  - Portfolio manager property ID number;
  - Property name;
  - Parent property name;
  - Address 1 (street);
  - Address 2;
  - City;
  - State; and
  - Postal code.
- List the building location climate zone, 4C or 5B. Determine the climate zone using ASHRAE climate zone as found on the map in Informative Annex G. Buildings located in Climate Zone 6 shall use Climate Zone 5B.
- The gross floor area in square feet shall be reported as defined in Section 3.
- If entire building is single activity/type not listed in Table 7-1, it should be listed as "building without target" on Z6.1 form. List "energy target" as "N/A" on Z6.2 Form B and Z6.2 Form B is considered complete.
- Fill in fraction of gross floor area (A)<sub>i</sub> for each activity. For single-activity buildings this is 1.0.
- Fill in the operating shifts normalization factor (S)<sub>i</sub> from Table 7-3 for each activity that has an area entered from Step 6.
- Fill in the activity energy target ( $EUI_{t1}$ )<sub>i</sub> from Table 7-2 (or table from AHJ) for each activity that has an area entered from Step 6.
- Calculate weighted space EUI target ( $A \times S \times EUI_{t1}$ )<sub>i</sub> for each activity that has an area entered from Step 6.
- Add up fraction of floor area and enter sum in "Total fraction of floor area with target," and add up all weighted space EUI targets and enter sum as the "energy target" on Z6.2 and Z6.1 Forms B and A.
- If more than 50% of gross floor area has no target, it should be listed as "building without target" on Z6.1 Form A. List "energy target" as "N/A" on Z6.2 Form B.  
For single-activity *buildings* this is 1.0.

**Z6.3 Energy-Use Intensity Calculations (Form C).**

Energy Use Intensity Calculations shall be reported via the U.S. EPA's ENERGY STAR Portfolio Manager ([www.energystar.gov/benchmark](http://www.energystar.gov/benchmark)). The *energy manager* is responsible for creating Energy Star portfolio manager record for each building.

**Exception to Z6.3:** Buildings unable to comply with Section 5.2, Building energy monitoring shall demonstrate compliance through Z4.3 or Z4.5.

The Energy Star portfolio manager building record shall be identical to the building activity/type, fraction floor area, operating shifts (hours of operation) and gross floor area of the building as reported on Form B. All inputs shall be up to date prior to reporting as required in Section Z4 and annually as required in Section 5.1.2.3, Annual updates of the *net energy use* and *EUI*.

Prior to submitting reports run the Energy Star portfolio manager data quality checker and make all corrections required to complete the report.

The energy manager shall use the EPA's Energy Star portfolio manager share properties feature and share the property data with the AHJ by enabling the read only access and exchange data feature.

For each report submitted under Section Z4, the energy manager shall create and submit a report documenting the required data fields listed (below) and other fields deemed necessary by the AHJ for the reporting period. This shall be submitted using the Washington state report specified in Energy Star portfolio manager.

Report fields shall include:

- Portfolio manager property ID;
- Portfolio manager parent property ID;
- Property name;
- Parent property name;
- Address 1;
- Address 2;
- City;
- County;
- State/Province;
- Postal Code;
- Primary property type - Self-selected;
- Primary property type - EPA calculated;
- List of all property use types at property;
- Property GFA - Self-reported (ft<sup>2</sup>);
- Property GFA - EPA calculated (buildings and parking) (ft<sup>2</sup>);
- Property GFA - EPA calculated (buildings) (ft<sup>2</sup>);
- Property GFA - EPA calculated (parking) (ft<sup>2</sup>);
- Largest property use type;
- Largest property use type - Gross floor area (ft<sup>2</sup>);
- 2nd Largest property use type;
- 2nd Largest property use - Gross floor area (ft<sup>2</sup>);
- 3rd Largest property use type;
- 3rd Largest property use type - Gross floor area (ft<sup>2</sup>);
- Year built;
- Occupancy;
- Property notes;
- Property data administrator;
- Property data administrator - Email;

- Last modified date - Property;
- Last modified date - Electric meters;
- Last modified date - Gas meters;
- Last modified date - Nonelectric nongas energy meters;
- Local standard ID(s) Washington state building standard;
- Data center - Energy estimates applied;
- Electricity use - Grid purchase and generated from on-site re-  
newable systems (kWh);
- Electricity use - Grid purchase (kWh);
- used on-site (kWh);
- Electricity use - Generated from on-site renewable systems and
- Natural gas use (therms);
- Fuel oil #1 use (kBtu);
- Fuel oil #2 use (kBtu);
- Fuel oil #4 use (kBtu);
- Fuel oil #5 and 6 use (kBtu);
- Diesel #2 use (kBtu);
- Kerosene use (kBtu);
- Propane use (kBtu);
- District steam use (kBtu);
- District hot water use (kBtu);
- District chilled water use (kBtu);
- Coal - Anthracite use (kBtu);
- Coal - Bituminous use (kBtu);
- Coke use (kBtu);
- Wood use (kBtu);
- Other use (kBtu);
- Default values;
- Temporary values;
- Estimated data flag - Electricity (grid purchase);
- Estimated data flag - Natural gas;
- Alert - Data center does not have an IT meter;
- Alert - Gross floor area is 0 ft<sup>2</sup>;
- Alert - Property has no uses;
- Data quality checker - Date run;
- Data quality checker run - ?
- Alert - Energy meter has less than 12 full calendar months of  
data;
- Alert - Energy meter has gaps;
- Alert - Energy meter has overlaps;
- Alert - Energy - No meters selected for metrics;
- Alert - Energy meter has single entry more than ((~~sixty-five~~))  
65 days;
- Estimated values - Energy;
- Energy Star score;
- National median site energy use (kBtu);
- Site energy use (kBtu);
- Site EUI (kBtu/ft<sup>2</sup>);
- Weather normalized site energy use (kBtu);
- Weather normalized site EUI (kBtu/ft<sup>2</sup>);
- Weather normalized site electricity (kWh);
- Weather normalized site electricity intensity (kWh/ft<sup>2</sup>);
- Weather normalized site natural gas use (therms);
- Weather normalized site natural gas intensity (therms/ft<sup>2</sup>) en-  
ergy current date;

- Electricity use - Generated from on-site renewable systems (kWh);
- Electricity use - Generated from on-site renewable systems and exported (kWh);
- Electricity Use - Grid purchase and generated from on-site renewable systems (kBtu);
- Electricity use - Grid purchase (kBtu);
- Electricity use - Generated from on-site renewable systems and used on site (kBtu);
- Natural gas use (kBtu);
- Percent of total electricity generated from on-site renewable systems;
- Cooling degree days (CDD) (°F);
- Heating degree days (HDD) (°F);
- Weather station name;
- Weather station ID.

**Z6.4 End-use analysis requirements.** Building owners shall demonstrate compliance with Form D by providing the documentation required by section Z6.4.1.

**Z6.4.1 Energy Audit Forms (Form D).** The energy audit form shall be provided electronically by completing the energy audit form included in the U.S. Department of Energy, Energy Asset Score Tool, or an equivalent tool provided by the AHJ. This form shall be completed in compliance with the level 2 energy audit, as published in ASHRAE Standard 211, Standard for commercial building energy audits.

**Form E** - Not adopted.

**Z6.5 Annex X, Investment Criteria Tool (Form F).**

**Z6.5.1** To demonstrate compliance with the investment criteria of Normative Annex X, building owners shall complete and submit Form F.

**Z6.5.2 Form F shall be developed by the AHJ.** Form F shall be a life cycle cost evaluation tool compliant with NIST Standard 135 and capable of supporting the evaluation criteria required by Normative Annex X.

**Z6.6 Documentation of a building of historic significance (Form G).**

**Energy efficiency measure exemptions for historic buildings.** No individual energy efficiency measure identified by energy efficiency audits need to be implemented if it would compromise the historical integrity of a building or part of a building. Building owners seeking this exception shall provide the following documentation. Certified historic buildings are not exempt from the other requirements of this standard.

**Plan for compliance.** The owner of a qualifying historic building shall have the plan for compliance evaluated by a qualified historic preservationist, as defined in 36 C.F.R., Part 61, identifying any energy efficiency requirement that may compromise the historic integrity of the building or part of the building. Any element of the plan identified to compromise the historic integrity of the building or part of the building shall be omitted from the compliance plan. Evidence of this evaluation must be submitted to the AHJ for approval.

**Documentation of a historic building.** Building owners must provide documentation to the AHJ that proves its historic identification or eligibility. Valid documentation from any existing programs listed below is acceptable.

1. Examples of existing programs that verify historic property include:
  - a. The National Register of Historic Places;
  - b. The Washington heritage register;
  - c. Properties that are identified by the department of archaeology and historic preservation (DAHP) to be eligible for listing in either one of these registers; and
  - d. Properties which are listed in a local register of historic places; or
2. Other documentation approved by the AHJ.

#### **Z6.7 Application for Exemption Certificate (Form H).**

Apply for an exemption certificate by submitting the following documentation to the building owner in the form specified by the AHJ. The application must include:

1. Building identification:
  - a. Washington state building ID;
  - b. County;
  - c. County parcel number(s);
  - d. Portfolio manager property ID number;
  - e. Property name;
  - f. Parent property name;
  - g. Address 1 (street);
  - h. Address 2;
  - i. City;
  - j. State; and
  - k. Postal code.
2. Contact information:
  - a. Building owner name(s);
  - b. Contact name;
  - c. Address 1 (street);
  - d. Address 2;
  - e. City;
  - f. State/Province;
  - g. Country;
  - h. Postal code;
  - i. Telephone number; and
  - j. Email address.
3. Building information:
  - a. Primary building activity from Table 7-1, or a description of the nonlisted building type;
  - b. Building gross floor area;
  - c. Building gross conditioned floor area.
4. Reason for exemption: Based on exemptions listed in Section 24.1(2).

A list all of documents enclosed and any facts in support of this application. Provide at least two of the acceptable documents listed below:

- a. Municipal or county records;
- b. Documents from a qualified person;
- c. Construction permit;
- d. Certificate of occupancy or application for certificate of occupancy;
- e. Demolition permit;
- f. Financial statements such as statement of assets; liabilities, capital, and surplus, statement of revenue and expenses; or statement of case flow;

g. A letter from the building owner stating facts and explaining financial hardships;

h. Other documentation approved by the AHJ.

5. Signature and statement of *building owner* stating that the authorized representative of the building, affirm and attest to the accuracy, truthfulness and completeness of the statements of material fact provided in this form.

**Z7 Section 7—Tables as modified by Washington state.**

**Table 7-1 Commercial Building Types/Activities**

Building Activity Type <sup>1,2</sup>				
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes
1	Banking/financial services	Bank Branch		
2	Banking/financial services	Financial Office		
3	Education	Adult Education		
4	Education	College/University		
5	Education	K-12 School	Elementary/middle school	
6	Education	K-12 School	High school	
7	Education	Preschool/Daycare		
8	Education	Vocational School		
9	Education	Other - Education		
10	Entertainment/public assembly	Aquarium		
11	Entertainment/public assembly	Bar/Nightclub		
12	Entertainment/public assembly	Bowling Alley		
13	Entertainment/public assembly	Casino		
14	Entertainment/public assembly	Convention Center		
15	Entertainment/public assembly	Fitness Center/Health Club/Gym		
16	Entertainment/public assembly	Ice/Curling Rink		
17	Entertainment/public assembly	Indoor Arena		
18	Entertainment/public assembly	Movie Theater		
19	Entertainment/public assembly	Museum		
20	Entertainment/public assembly	Performing Arts		
21	Entertainment/public assembly	Race Track		
22	Entertainment/public assembly	Roller Rink		
23	Entertainment/public assembly	Social/Meeting Hall		
24	Entertainment/public assembly	Stadium (Closed)		
25	Entertainment/public assembly	Stadium (Open)		
26	Entertainment/public assembly	Swimming Pool		
27	Entertainment/public assembly	Zoo		
28	Entertainment/public assembly	Other - Entertainment/Public Assembly	Entertainment/culture	
29	Entertainment/public assembly	Other - Entertainment/Public Assembly	Library	
30	Entertainment/public assembly	Other - Entertainment/Public Assembly	Other public assembly	
31	Entertainment/public assembly	Other - Entertainment/Public Assembly	Recreation	
32	Entertainment/public assembly	Other - Entertainment/Public Assembly	Social/meeting	



No.	Building Activity Type <sup>1,2</sup>			Notes
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	
33	Entertainment/public assembly	Other - Recreation		
34	Entertainment/public assembly	Other - Stadium		
35	Food sales and service	Bar/Nightclub		
36	Food sales and service	Convenience Store with Gas Station		
37	Food sales and service	Convenience Store without Gas Station		
38	Food sales and service	Fast Food Restaurant		
39	Food sales and service	Food Sales	Grocery/food market	
40	Food sales and service	Food Sales	Convenience store with gas	
41	Food sales and service	Food Sales	Convenience store	
42	Food sales and service	Food Sales	Other food sales	
43	Food sales and service	Food Service	Fast food	
44	Food sales and service	Food Service	Restaurant/cafeteria	
45	Food sales and service	Food Service	Other food service	
46	Food sales and service	Restaurant		
47	Food sales and service	Supermarket/Grocery Store		
48	Food sales and service	Wholesale Club/Supercenter		
49	Food sales and service	Other - Restaurant/Bar		
50	Healthcare	Ambulatory Surgical Center		
51	Healthcare	Hospital (General Medical & Surgical)*		
52	Healthcare	Medical Office		3
53	Healthcare	Outpatient Rehabilitation/Physical Therapy		
54	Healthcare	Residential Care Facility		
55	Healthcare	Senior Care Community		
56	Healthcare	Urgent Care/Clinic/Other Outpatient		
57	Healthcare	Other - Specialty Hospital		
58	Lodging/residential	Barracks		
59	Lodging/residential	Hotel	Hotel	
60	Lodging/residential	Hotel	Motel or inn	
61	Lodging/residential	Multifamily Housing		
62	Lodging/residential	Prison/Incarceration		
63	Lodging/residential	Residence Hall/Dormitory		
64	Lodging/residential	Residential Care Facility		
65	Lodging/residential	Senior Care Community		
66	Lodging/residential	Other - Lodging/Residential		
67	Mixed use	Mixed Use Property		4
68	Office	Medical Office		3
69	Office	Office	Admin/professional office	
70	Office	Office	Bank/other financial	
71	Office	Office	Government office	
72	Office	Office	Medical office (diagnostic)	3
73	Office	Office	Other office	

No.	Building Activity Type <sup>1,2</sup>			Notes
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	
74	Office	Veterinary Office		
75	Office	Other - Office		
76	Public services	Courthouse		
77	Public services	Fire Station		
78	Public services	Library		
79	Public services	Mailing Center/Post Office		
80	Public services	Police Station		
81	Public services	Prison/Incarceration		
82	Public services	Social/Meeting Hall		
83	Public services	Transportation Terminal/Station		
84	Public services	Other - Public Service		
85	Religious worship	Worship Facility		
86	Retail	Automobile Dealership		
87	Retail	Convenience Store with Gas Station		
88	Retail	Convenience Store without Gas Station		
89	Retail	Enclosed Mall		5
90	Retail	Lifestyle Center	Enclosed mall	5
91	Retail	Lifestyle Center	Other retail	
92	Retail	Lifestyle Center	Retail store	
93	Retail	Lifestyle Center		4
94	Retail	Retail Store		
95	Retail	Strip Mall		4
96	Retail	Supermarket/Grocery Store		
97	Retail	Wholesale Club/Supercenter		
98	Retail	Other - Retail/Mall	Enclosed mall	5
99	Retail	Other - Retail/Mall		4
100	Technology/science	Data Center		6
101	Technology/science	Laboratory		
102	Technology/science	Other - Technology/Science	Other service	
103	Services	Personal Services (Health/Beauty, Dry Cleaning, etc.)		
104	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Repair shop	
105	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle service/repair shop	
106	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle storage/maintenance	
107	Services	Other - Services		
108	Utility	Energy/Power Station		7
109	Utility	Other - Utility		7
110	Warehouse/storage	Self-Storage Facility		
111	Warehouse/storage	Distribution Center		
112	Warehouse/storage	Nonrefrigerated Warehouse		
113	Warehouse/storage	Refrigerated Warehouse		

Notes: 1. Select the most specific building activity type that applies.

2. For building type definitions see Energy Star portfolio manager definitions except as follows:
  - Data center: Is an activity space designed and equipped to meet the needs of high density computing equipment, such as server racks, used for data storage and processing, including dedicated uninterruptible power supplies and cooling systems and require a constant power load of 75 kW or more. Gross floor area shall only include space within the building including raised floor computing space, server rack aisles, storage silos, control console areas, battery rooms and mechanical rooms for dedicated cooling equipment. Gross floor area shall not include a server closet, telecommunications equipment closet, computer training area, office, elevator, corridors, or other auxiliary space.
  - Urgent care center/clinic/other outpatient office means the buildings used to diagnose and treat patients, usually on an unscheduled, walk-in basis, who have an injury or illness that requires immediate care but is not serious enough to warrant a visit to an emergency department. Includes facilities that provide same-day surgical, diagnostic and preventive care.
3. All medical offices considered to be diagnostic type.
4. Must use of Section 7.2.3 method for mixed use buildings.
5. Suggest considering use of Section 7.2.3 method for mixed use buildings.
6. This is a building or activity without an energy target. Included to provide definition only.
7. This is a building or activity without an energy target. This may be exempt from the standard, see Section Z4.1 2, d.

**Table 7-2a Building Activity Site Energy Targets (EUI<sub>t</sub>) (I-P Units)**

No.	Building Activity Type <sup>1,2</sup>			Notes	Climate Zone 4C	Climate Zone 5B
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		EUI <sub>t</sub>	EUI <sub>t</sub>
1	Banking/financial services	Bank Branch			69	71
2	Banking/financial services	Financial Office			69	71
3	Education	Adult Education			49	51
4	Education	College/University			102	102
5	Education	K-12 School	Elementary/middle school		49	50
6	Education	K-12 School	High school		48	49
7	Education	Preschool/Daycare			59	59
8	Education	Vocational School			49	51
9	Education	Other - Education			49	51
10	Entertainment/public assembly	Aquarium			55	59
11	Entertainment/public assembly	Bar/Nightclub			55	59
12	Entertainment/public assembly	Bowling Alley			73	78
13	Entertainment/public assembly	Casino			55	59
14	Entertainment/public assembly	Convention Center			50	52
15	Entertainment/public assembly	Fitness Center/Health Club/Gym			73	78
16	Entertainment/public assembly	Ice/Curling Rink			73	78
17	Entertainment/public assembly	Indoor Arena			67	70
18	Entertainment/public assembly	Movie Theater			67	70
19	Entertainment/public assembly	Museum			67	70
20	Entertainment/public assembly	Performing Arts			55	59
21	Entertainment/public assembly	Race Track			67	70
22	Entertainment/public assembly	Roller Rink			73	78

	Building Activity Type <sup>1,2</sup>				Climate Zone 4C	Climate Zone 5B
No.	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed	Notes	EUI <sub>t</sub>	EUI <sub>t</sub>
23	Entertainment/public assembly	Social/Meeting Hall			50	52
24	Entertainment/public assembly	Stadium (Closed)			67	70
25	Entertainment/public assembly	Stadium (Open)			67	70
26	Entertainment/public assembly	Swimming Pool			73	78
27	Entertainment/public assembly	Zoo			55	59
28	Entertainment/public assembly	Other - Entertainment/ Public Assembly	Entertainment/culture		67	70
29	Entertainment/public assembly	Other - Entertainment/ Public Assembly	Library		56	59
30	Entertainment/public assembly	Other - Entertainment/ Public Assembly	Other public assembly		55	59
31	Entertainment/public assembly	Other - Entertainment/ Public Assembly	Recreation		73	78
32	Entertainment/public assembly	Other - Entertainment/ Public Assembly	Social/meeting		50	52
33	Entertainment/public assembly	Other - Recreation			73	78
34	Entertainment/public assembly	Other - Stadium			67	70
35	Food sales and service	Bar/Nightclub			361	378
36	Food sales and service	Convenience Store with Gas Station			244	253
37	Food sales and service	Convenience Store without Gas Station			260	269
38	Food sales and service	Fast Food Restaurant			427	454
39	Food sales and service	Food Sales	Grocery/food market		191	198
40	Food sales and service	Food Sales	Convenience store with gas		260	269
41	Food sales and service	Food Sales	Convenience store		244	253
42	Food sales and service	Food Sales	Other food sales		184	189
43	Food sales and service	Food Service	Fast food		427	454
44	Food sales and service	Food Service	Restaurant/cafeteria		361	378
45	Food sales and service	Food Service	Other food service		293	308
46	Food sales and service	Restaurant			361	378
47	Food sales and service	Supermarket/Grocery Store			191	198
48	Food sales and service	Wholesale Club/ Supercenter			68	75
49	Food sales and service	Other - Restaurant/Bar			361	378
50	Healthcare	Ambulatory Surgical Center			90	96
51	Healthcare	Hospital (General Medical & Surgical)*			215	215
52	Healthcare	Medical Office		3		

No.	Building Activity Type <sup>1,2</sup>			Notes	Climate Zone 4C	Climate Zone 5B
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		EUI <sub>t</sub>	EUI <sub>t</sub>
53	Healthcare	Outpatient Rehabilitation/Physical Therapy			90	96
54	Healthcare	Residential Care Facility			78	82
55	Healthcare	Senior Care Community			78	82
56	Healthcare	Urgent Care/Clinic/ Other Outpatient			90	96
57	Healthcare	Other - Specialty Hospital			196	196
58	Lodging/residential	Barracks			88	90
59	Lodging/residential	Hotel	Hotel		68	72
60	Lodging/residential	Hotel	Motel or inn		74	77
61	Lodging/residential	Multifamily Housing			32	33
62	Lodging/residential	Prison/Incarceration			101	106
63	Lodging/residential	Residence Hall/ Dormitory			88	90
64	Lodging/residential	Residential Care Facility			78	82
65	Lodging/residential	Senior Care Community			78	82
66	Lodging/residential	Other - Lodging/ Residential			71	74
67	Mixed use	Mixed Use Property		4		
68	Office	Medical Office		3	60	65
69	Office	Office	Admin/professional office		63	66
70	Office	Office	Bank/other financial		69	71
71	Office	Office	Government office		66	69
72	Office	Office	Medical office (diagnostic)	3	60	65
73	Office	Office	Other office		66	68
74	Office	Veterinary Office			90	96
75	Office	Other - Office			66	68
76	Public services	Courthouse			101	106
77	Public services	Fire Station			65	68
78	Public services	Library			56	59
79	Public services	Mailing Center/Post Office			51	54
80	Public services	Police Station			65	68
81	Public services	Prison/Incarceration			101	106
82	Public services	Social/Meeting Hall			50	52
83	Public services	Transportation Terminal/ Station			55	59
84	Public services	Other - Public Service			66	69
85	Religious worship	Worship Facility			39	42
86	Retail	Automobile Dealership			59	66
87	Retail	Convenience Store with Gas Station			260	269

No.	Building Activity Type <sup>1,2</sup>			Notes	Climate Zone 4C	Climate Zone 5B
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		EUI <sub>t</sub>	EUI <sub>t</sub>
88	Retail	Convenience Store without Gas Station			244	253
89	Retail	Enclosed Mall		5	58	64
90	Retail	Lifestyle Center	Enclosed mall	5	58	64
91	Retail	Lifestyle Center	Other retail		55	62
92	Retail	Lifestyle Center	Retail store		68	75
93	Retail	Lifestyle Center		4		
94	Retail	Retail Store			68	75
95	Retail	Strip Mall		4		
96	Retail	Supermarket/Grocery Store			191	198
97	Retail	Wholesale Club/ Supercenter			68	75
98	Retail	Other - Retail/Mall	Enclosed mall	5	58	64
99	Retail	Other - Retail/Mall		4		
100	Technology/science	Data Center		6		
101	Technology/science	Laboratory			237	249
102	Technology/science	Other - Technology/ Science	Other service		66	69
103	Services	Personal Services (Health/Beauty, Dry Cleaning, etc.)			66	69
104	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Repair shop		36	39
105	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle service/repair shop		60	64
106	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle storage/maintenance		41	44
107	Services	Other - Services			66	69
108	Utility	Energy/Power Station		7		
109	Utility	Other - Utility		7		
110	Warehouse/storage	Self-Storage Facility			36	44
111	Warehouse/storage	Distribution Center			36	44
112	Warehouse/storage	Nonrefrigerated Warehouse			36	44
113	Warehouse/storage	Refrigerated Warehouse			121	126

- Notes:
1. Select the most specific building activity type that applies.
  2. For building type definitions see Energy Star portfolio manager definitions except as follows:
    - Data center: Is an activity space designed and equipped to meet the needs of high density computing equipment, such as server racks, used for data storage and processing, including dedicated uninterruptible power supplies and cooling systems and require a constant power load of 75 kW or more. Gross floor area shall only include space within the building including raised floor computing space, server rack aisles, storage silos, control console areas, battery rooms and mechanical rooms for dedicated cooling equipment. Gross floor area shall not include a server closet, telecommunications equipment closet, computer training area, office, elevator, corridors, or other auxiliary space.
    - Urgent care center/clinic/other outpatient office means the buildings used to diagnose and treat patients, usually on an unscheduled, walk-in basis, who have an injury or illness that requires immediate care but is not serious enough to warrant a visit to an emergency department. Includes facilities that provide same-day surgical, diagnostic and preventive care.
  3. All medical offices considered to be diagnostic type.
  4. Must use of Section 7.2.3 method for mixed use buildings.
  5. Suggest considering use of Section 7.2.3 method for mixed use buildings.
  6. This is a building or activity without an energy target. Included to provide definition only.

7. This is a building or activity without an energy target. This may be exempt from the standard, see Section Z4.1 2, d.

**Table 7-3 Building Operating Shifts Normalization Factor**

No.	Building Activity Type <sup>1,2</sup>			Notes	Weekly Hours <sup>1,2</sup>		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
1	Banking/financial services	Bank Branch		3	0.8	1.0	1.5
2	Banking/financial services	Financial Office		3	0.8	1.0	1.5
3	Education	Adult Education		4	0.9	1.1	1.9
4	Education	College/University		4	0.9	1.1	1.9
5	Education	K-12 School	Elementary/middle school	4	0.9	1.1	1.9
6	Education	K-12 School	High school	4	0.9	1.1	1.9
7	Education	Preschool/Daycare		4	0.9	1.1	1.9
8	Education	Vocational School		4	0.9	1.1	1.9
9	Education	Other - Education		4	0.9	1.1	1.9
10	Entertainment/public assembly	Aquarium		4	0.6	1.1	1.6
11	Entertainment/public assembly	Bar/Nightclub		4	0.6	1.1	1.6
12	Entertainment/public assembly	Bowling Alley		4	0.6	1.1	1.6
13	Entertainment/public assembly	Casino		4	0.6	1.1	1.6
14	Entertainment/public assembly	Convention Center		4	0.6	1.1	1.6
15	Entertainment/public assembly	Fitness Center/Health Club/Gym		4	0.6	1.1	1.6
16	Entertainment/public assembly	Ice/Curling Rink		4	0.6	1.1	1.6
17	Entertainment/public assembly	Indoor Arena		4	0.6	1.1	1.6
18	Entertainment/public assembly	Movie Theater		4	0.6	1.1	1.6
19	Entertainment/public assembly	Museum		4	0.6	1.1	1.6
20	Entertainment/public assembly	Performing Arts		4	0.6	1.1	1.6
21	Entertainment/public assembly	Race Track		4	0.6	1.1	1.6
22	Entertainment/public assembly	Roller Rink		4	0.6	1.1	1.6
23	Entertainment/public assembly	Social/Meeting Hall		4	0.6	1.1	1.6
24	Entertainment/public assembly	Stadium (Closed)		4	0.6	1.1	1.6
25	Entertainment/public assembly	Stadium (Open)		4	0.6	1.1	1.6
26	Entertainment/public assembly	Swimming Pool		4	0.6	1.1	1.6
27	Entertainment/public assembly	Zoo		4	0.6	1.1	1.6

No.	Building Activity Type <sup>1,2</sup>			Notes	Weekly Hours <sup>1,2</sup>		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
28	Entertainment/public assembly	Other - Entertainment/ Public Assembly	Entertainment/culture	4	0.6	1.1	1.6
29	Entertainment/public assembly	Other - Entertainment/ Public Assembly	Library	4	0.6	1.1	1.6
30	Entertainment/public assembly	Other - Entertainment/ Public Assembly	Other public assembly	4	0.6	1.1	1.6
31	Entertainment/public assembly	Other - Entertainment/ Public Assembly	Recreation	4	0.6	1.1	1.6
32	Entertainment/public assembly	Other - Entertainment/ Public Assembly	Social/meeting	4	0.6	1.1	1.6
33	Entertainment/public assembly	Other - Recreation		4	0.6	1.1	1.6
34	Entertainment/public assembly	Other - Stadium		4	0.6	1.1	1.6
35	Food sales and service	Bar/Nightclub		4	0.6	1.1	1.5
36	Food sales and service	Convenience Store with Gas Station		4	0.5	0.9	1.3
37	Food sales and service	Convenience Store without Gas Station		4	0.5	0.9	1.3
38	Food sales and service	Fast Food Restaurant		4	0.6	1.1	1.5
39	Food sales and service	Food Sales	Grocery/food market	4	0.5	0.9	1.3
40	Food sales and service	Food Sales	Convenience store with gas	4	0.5	0.9	1.3
41	Food sales and service	Food Sales	Convenience store	4	0.5	0.9	1.3
42	Food sales and service	Food Sales	Other food sales	4	0.5	0.9	1.3
43	Food sales and service	Food Service	Fast food	4	0.6	1.1	1.5
44	Food sales and service	Food Service	Restaurant/cafeteria	4	0.6	1.1	1.5
45	Food sales and service	Food Service	Other food service	4	0.6	1.1	1.5
46	Food sales and service	Restaurant		4	0.6	1.1	1.5
47	Food sales and service	Supermarket/Grocery Store		4	0.5	0.9	1.3
48	Food sales and service	Wholesale Club/ Supercenter		4	0.6	1.0	1.5
49	Food sales and service	Other - Restaurant/Bar		4	0.6	1.1	1.5
50	Healthcare	Ambulatory Surgical Center		4,7	0.8	1.1	1.3
51	Healthcare	Hospital (General Medical & Surgical)*			1.0	1.0	1.0
52	Healthcare	Medical Office		4,7	0.8	1.0	1.5
53	Healthcare	Outpatient Rehabilitation/Physical Therapy		4,7	0.8	1.1	1.3
54	Healthcare	Residential Care Facility			1.0	1.0	1.0
55	Healthcare	Senior Care Community			1.0	1.0	1.0
56	Healthcare	Urgent Care/Clinic/ Other Outpatient		4,7	0.8	1.1	1.3
57	Healthcare	Other - Specialty Hospital			1.0	1.0	1.0



No.	Building Activity Type <sup>1,2</sup>			Notes	Weekly Hours <sup>1,2</sup>		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
58	Lodging/residential	Barracks			1.0	1.0	1.0
59	Lodging/residential	Hotel	Hotel		1.0	1.0	1.0
60	Lodging/residential	Hotel	Motel or inn		1.0	1.0	1.0
61	Lodging/residential	Multifamily Housing			1.0	1.0	1.0
62	Lodging/residential	Prison/Incarceration			1.0	1.0	1.0
63	Lodging/residential	Residence Hall/ Dormitory			1.0	1.0	1.0
64	Lodging/residential	Residential Care Facility			1.0	1.0	1.0
65	Lodging/residential	Senior Care Community			1.0	1.0	1.0
66	Lodging/residential	Other - Lodging/ Residential			1.0	1.0	1.0
67	Mixed use	Mixed Use Property		6			
68	Office	Medical Office		4,7	0.8	1.1	1.3
69	Office	Office	Admin/professional office	3	0.8	1.0	1.5
70	Office	Office	Bank/other financial	3	0.8	1.0	1.5
71	Office	Office	Government office	3	0.8	1.0	1.5
72	Office	Office	Medical office (diagnostic)	4	0.8	1.1	1.3
73	Office	Office	Other office	3	0.8	1.0	1.5
74	Office	Veterinary Office		3	0.8	1.1	1.3
75	Office	Other - Office		3	0.8	1.0	1.5
76	Public services	Courthouse		4	0.8	0.8	1.1
77	Public services	Fire Station		3	0.8	0.8	1.1
78	Public services	Library		4	0.6	1.1	1.6
79	Public services	Mailing Center/Post Office		3	0.8	1.2	1.3
80	Public services	Police Station		3	0.8	0.8	1.1
81	Public services	Prison/Incarceration			1.0	1.0	1.0
82	Public services	Social/Meeting Hall		4	0.6	1.1	1.6
83	Public services	Transportation Terminal/Station		4	0.6	1.1	1.6
84	Public services	Other - Public Service		4	0.8	1.2	1.3
85	Religious worship	Worship Facility		5	0.9	1.7	1.7
86	Retail	Automobile Dealership		4	0.6	1.0	1.5
87	Retail	Convenience Store with Gas Station		4	0.5	0.9	1.3
88	Retail	Convenience Store without Gas Station		4	0.5	0.9	1.3
89	Retail	Enclosed Mall		4	0.6	1.0	1.5
90	Retail	Lifestyle Center	Enclosed mall	4	0.6	1.0	1.5
91	Retail	Lifestyle Center	Other retail	4	0.6	1.0	1.5
92	Retail	Lifestyle Center	Retail store	4	0.6	1.0	1.5
93	Retail	Lifestyle Center					
94	Retail	Retail Store		4	0.6	1.0	1.5

No.	Building Activity Type <sup>1,2</sup>			Notes	Weekly Hours <sup>1,2</sup>		
	Portfolio Manager Types	Portfolio Manager Sub-Types	Sub-Types: Detailed		50 or less	51 to 167	168
95	Retail	Strip Mall					
96	Retail	Supermarket/Grocery Store		4	0.5	0.9	1.3
97	Retail	Wholesale Club/Supercenter		4	0.6	1.0	1.5
98	Retail	Other - Retail/Mall	Enclosed mall	4	0.6	1.0	1.5
99	Retail	Other - Retail/Mall					
100	Technology/science	Data Center					
101	Technology/science	Laboratory		3	1.0	1.0	1.0
102	Technology/science	Other - Technology/Science	Other service	3	0.8	1.2	1.3
103	Services	Personal Services (Health/Beauty, Dry Cleaning, etc.)		4	0.8	1.2	1.3
104	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Repair shop	4	0.8	1.2	1.3
105	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle service/repair shop	4	0.8	1.2	1.3
106	Services	Repair Services (Vehicle, Shoe, Locksmith, etc.)	Vehicle storage/maintenance	4	0.8	1.2	1.3
107	Services	Other - Services		4	0.8	1.2	1.3
108	Utility	Energy/Power Station					
109	Utility	Other - Utility					
110	Warehouse/storage	Self-Storage Facility		4	0.8	1.0	1.4
111	Warehouse/storage	Distribution Center		3	0.8	1.0	1.4
112	Warehouse/storage	Nonrefrigerated Warehouse		3	0.8	1.0	1.4
113	Warehouse/storage	Refrigerated Warehouse		3,8	1.0	1.0	1.4

- Notes: 1. Do not count the hours when the property is occupied only by maintenance, security, the cleaning crew, or other support personnel. Do not count the hours when the property is occupied only by maintenance staff.
2. Working hours are based on the average use over the ((~~twelve month~~)) 12-month period selected to document energy use in form C.
3. The weekly hours are the total number of hours per week where the majority of workers are present. If there are two or more shifts of workers, add the hours. When developing targets using Section 7.2.3 for mixed use buildings, use the hours each separate activity, the hours per week the majority of workers are present.
4. The weekly hours are the hours that be majority of the building is open to serve the public. When developing targets using Section 7.2.3 for mixed use buildings, the hours each separate activity is open to the public.
5. The weekly hours the facility is open for operation, which may include worship services, choir practice, administrative use, committee meetings, classes, or other activities.
6. Must use of Section 7.2.3 method for mixed use buildings.
7. Health care buildings may use other weekly hours if they are required to operate building systems additional hours to protect patient and staff safety. Provide documentation of the requirement in the energy management plan.
8. Refrigerated warehouse greater than 167 hours assumes the workers on shift are loading and/or unloading vehicles.

[Statutory Authority: RCW 19.27A.210. WSR 20-22-059, § 194-50-150, filed 10/30/20, effective 11/30/20.]

## WSR 23-08-054

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed April 2, 2023, 12:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-15-044.

Title of Rule and Other Identifying Information: Chapter 246-720 WAC, Human donor milk bank standards. The department of health (DOH) is proposing new standards for ensuring human milk bank safety.

Hearing Location(s): On May 16, 2023, at 1:30 p.m. DOH will be holding a virtual-only hearing. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_zBaU-LkLTGanSFTVyyQCuQ](https://us02web.zoom.us/webinar/register/WN_zBaU-LkLTGanSFTVyyQCuQ). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: May 23, 2023.

Submit Written Comments to: Ashley Noble, P.O. Box 47380, Olympia, WA 98504-7380, email [donormilkbankrule@doh.wa.gov](mailto:donormilkbankrule@doh.wa.gov), <https://fortress.wa.gov/doh/policyreview/>, by May 16, 2023.

Assistance for Persons with Disabilities: Contact Ashley Noble, phone 360-628-3667, TTY 711, email [donormilkbankrule@doh.wa.gov](mailto:donormilkbankrule@doh.wa.gov), by May 2, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: E2SSB 5702 (chapter 236, Laws of 2022) requires health plans and medicaid to provide coverage for donor human milk and human milk derived products prescribed for inpatient use. The bill also requires DOH to develop minimum standards to ensure milk bank safety for donor human milk and human milk derived products. Milk banks are organizations that engage in the procurement, processing, storage, distribution, or use of human milk contributed by donors. To ensure the safety of donor human milk and human milk derived products, DOH is proposing rules to establish safety standards for donor screening, testing, milk handling and processing, and recordkeeping as required by the statute.

Reasons Supporting Proposal: E2SSB 5702 requires the department to adopt standards to ensure the safety of donor human milk and human milk derived products. Rules are necessary to create enforceable standards to ensure that donor human milk and human milk derived products prescribed for use in inpatient settings is safe for consumption by medically fragile infants. In the absence of rules concerning safety standards for milk banks, insurance carriers may be unable to determine whether to provide coverage for human milk or human milk derived products prescribed for inpatient use.

Statutory Authority for Adoption: E2SSB 5702 (chapter 236, Laws of 2022).

Statute Being Implemented: E2SSB 5702 (chapter 236, Laws of 2022).

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Ashley Noble, 111 Israel Road S.E., Mailstop 47830, Tumwater, WA 98501, 360-628-3667; Implementation and Enforcement: Shevonne Tsegaye, 111 Israel Road S.E., Mailstop 47830, Tumwater, WA 98501, 564-669-4454.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ashley Noble, P.O. Box 47380, Olympia, WA 98504-7380, phone 360-628-3667, TTY 711, email ashley.noble@doh.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Scope of exemption for rule proposal:

Is partially exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. DOH analyzed costs in the significant analysis and found that many of the costs (that were not exempted by alignment with national standards) were indeterminate, variable, or negligible. Of the costs that were known and analyzed by the department in the significant analysis, the costs of the proposed rule were found to be **less than** the minor cost thresholds (\$34,649.61 and \$64,775.78).

March 31, 2023  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

OTS-4401.3

**Chapter 246-720 WAC  
 HUMAN DONOR MILK BANK STANDARDS**

NEW SECTION

**WAC 246-720-001 Purpose and applicability.** The purpose of this rule is to promote and establish consistent standards for milk banks that provide health care facilities and providers and International Board-Certified Lactation Consultants donated human milk or human milk derived products prescribed for inpatient use that will be billed to an insurance carrier. To qualify for certification a milk bank must comply with this chapter, RCW 41.05.017, chapters 43.70, 48.43, and 74.09 RCW, and any other state or federal requirements.

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NEW SECTION

**WAC 246-720-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adulterated" means the addition of a substance other than human milk to artificially increase the volume of a donation to a milk bank.

(2) "Compensation" means monetary or in-kind payment or donation to either a milk donor or a third party made in exchange for donated human milk.

(3) "Current good manufacturing practice" or "CGMP" means the regulations adopted by the United States Food and Drug Administration (FDA) under Title 21, Chapter 1, Subchapter B, Part 117 of the Code of Federal Regulations.

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

(5) "Donor human milk" means human milk that has been contributed to a milk bank by one or more donors.

(6) "Food safety plan" or "FSP" means a written plan to significantly minimize or prevent biological, chemical, and physical hazards in a milk bank.

(7) "Human milk derived product" means donor human milk which has been processed to alter or concentrate the nutrient composition including, but not limited to, human milk derived fortifiers.

(8) "Milk bank" means an organization that engages in the procurement, processing, storage, distribution, or use of human milk contributed by donors. This definition does not include hospitals that act as milk collection sites or distribute or use donor milk received from an offsite milk bank.

(9) "Milk depot" means a drop-off or collection site for donor milk that then gets transported to a milk bank.

(10) "Milk donor" means a lactating person who has passed a health screening and voluntarily donates milk.

(11) "Preventive controls qualified individual" or "PCQI" means a person who has completed a formal certification program through the Food Safety Preventive Controls Alliance (FSPCA).

(12) "Processing" means the use of evidence-based methodologies to prepare safe milk for recipients including, but not limited to, pasteurization.

(13) "Unit of alcohol" means a standard drink which contains 0.6 ounces (14.0 grams or 1.2 tablespoons) of pure alcohol.

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NEW SECTION

**WAC 246-720-020 Milk bank organizational structure.** A milk bank must, at a minimum, have:

(1) An executive director or milk bank coordinator to oversee business, clinical, and laboratory operations;

(2) A medical director who provides clinical guidance and policy review;

(3) Staff, including health care professionals, donor screeners, and lab technicians, who demonstrate:

- (a) Knowledge of food safety, food processing, PCQI training content, and applicable municipal, state, and federal regulations; and
- (b) Documented on-going education and training critical to the safe provision of donor human milk;
- (4) A board of directors and a medical advisory committee with a wide representation of relevant experience and skills.

[ ]

NEW SECTION

**WAC 246-720-030 Screening milk donors.** A milk bank must screen a milk donor consistent with the requirements of this section in order to register with the department.

(1) A milk bank must screen a milk donor prior to their first milk donation including, but not limited to:

(a) A donor must be screened verbally as well as in writing and provided educational materials. Screenings must be conducted in the language in which the donor is most comfortable communicating whenever possible. Educational materials provided to milk donors must also be written in the language of the milk donor's choice.

(b) A milk bank must serologically screen a potential milk donor for human immunodeficiency virus (HIV)-1 and -2, human T-lymphotropic virus (HTLV)-1 and -2, hepatitis C, hepatitis B, and syphilis.

(c) As part of the screening process, a milk bank must instruct a milk donor about situations in which they must temporarily or permanently discontinue donation and report such situations to the milk bank.

(2) A milk bank must prohibit a milk donor from donating milk temporarily or permanently if any of the following situations apply. The milk donor:

(a) Consumes any product that contains tobacco or nicotine within 30 days of milk donation;

(b) Consumes any product that contains cannabis or cannabidiol (CBD) at any time if they wish to donate milk;

(c) Consumes recreational drugs at any time if they wish to donate milk;

(d) Is at risk of developing Creutzfeldt-Jakob disease (CJD) or must defer travel related to CJD risk. A person who is at risk of developing CJD is not eligible to donate milk under this chapter;

(e) Receives a positive serological test result for HIV-1 or -2, HTLV-1 or -2, hepatitis B or C, or syphilis. The milk donor may donate milk after receiving a negative serological test for any of these viruses;

(f) Uses medications which are determined by a medical advisory council or a medical director qualified in pharmacology to be contraindicated during lactation;

(g) Has received a blood transfusion within the last 90 days;

(h) Is at risk for contracting a bloodborne illness;

(i) Has received body piercings, tattoos, or permanent makeup within the last 90 days;

(j) Has undergone an organ or tissue transplant within the past 90 days. If the donor is receiving immunosuppressive therapy, a medical advisory board or medical director must determine if the donor is eligible to donate milk;

(k) Practices a vegan diet and does not supplement their diet with vitamin B-12 (cobalamin);

(1) Has consumed one unit of alcohol within six hours (360 minutes) of milk expression for donation. If a milk donor has consumed two units of alcohol, then the donor must wait a total of 12 hours (720 minutes) prior to milk expression for donation. Daily alcohol intake may require permanent suspension of milk donation to ensure donor milk safety.

(3) A milk bank must communicate with each milk donor at least every two months during the donation period to update changes in the donor's health, medical status, medications, tobacco use, and recreational drug use.

(4) All information pertaining to donor screening, including written and verbal communication with donors, comply with the Washington state's Uniform Health Care Information Act (chapter 70.02 RCW) and applicable federal health care information privacy laws.

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#### NEW SECTION

**WAC 246-720-040 Milk handling restrictions.** A milk bank must meet the following milk handling restrictions in order to register with the department:

(1) Milk may not be donated if it has been heat-treated in any way by the milk donor.

(2) Milk may be temporarily stored by a milk donor in the refrigerator for a maximum of 96 hours before being moved to the freezer for long-term storage.

(3) Milk that has been frozen for storage purposes expires one year from the date of expression and may not be donated.

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#### NEW SECTION

**WAC 246-720-050 Milk donor education and procedures.** (1) A milk bank must instruct a milk donor both verbally and in writing in a language of the donor's choice about:

(a) Potential risks such as medication, dietary supplement, and herbal supplement use, illnesses, and recreational drug use;

(b) The potential that the milk bank may require a milk donor to defer or cease donation in the event the milk bank identifies risks related to the milk donor;

(c) Appropriate methods for clean expression, handling, storage, and transportation of human milk; and

(d) Contacting the milk bank to report household illnesses and any changes in the milk donor's health status or medication use.

(2) A milk bank must provide a milk donor with written instructions, in a language of the donor's choice, containing, at a minimum:

(a) Clean technique for milk collection, including, at a minimum:

(i) Hand washing;

(ii) Washing pump parts and containers;

- (iii) Appropriate containers for storing donor milk; and
- (iv) Handling of milk containers, both while storing milk and during transit to the milk bank.
- (b) When a milk donor should refrain from donating and circumstances that may affect their eligibility as a donor.
- (c) Labeling of donated milk including, but not limited to, donor identification and date of collection.
- (d) Optimal procedure for freezing and storage of milk.
- (e) How to transport milk safely to the milk bank or depot.
- (3) A milk bank must provide a milk donor with the following written information to ensure that donors are fully informed of their rights and responsibilities in the language of the donor's choice:
  - (a) A statement regarding confidentiality of records;
  - (b) A statement that approval as a milk donor does not indicate that a donor's milk is safe to share or sell informally;
  - (c) An explanation of the required serology tests and what actions are taken when positive tests are received, according to a plan developed by each milk bank, and in accordance with state or federal regulations.

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#### NEW SECTION

**WAC 246-720-060 Milk bank standard operating procedures.** A milk bank must maintain detailed standard operating procedures that are available to all staff. Standard operating procedures must be updated annually. Standard operating procedures must include, at a minimum, procedures addressing the following:

- (1) Donor screening and serological testing;
- (2) Pasteurization or thermal processing;
- (3) Microbiological testing;
- (4) Receiving, storage, and transport of donor milk;
- (5) Sanitation and cGMPs;
- (6) Emergency preparedness;
- (7) Recall.

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#### NEW SECTION

**WAC 246-720-070 Milk bank minimum operating standards.** A milk bank must meet the following minimum operating standards to register with the department:

- (1) A milk processing facility must be suitable in size, construction, and design to ensure sanitary operations for milk processing activities and comply with all United States Food and Drug Administration food manufacturing safety requirements for food manufacturing facilities.
- (2) Equipment intended for milk processing must be used only for milk banking purposes or processing of human milk-derived products.
- (3) Equipment must be cleaned and maintained according to manufacturer's instructions.



(4) Equipment and utensils must be designed and made from noncorrosive food grade material that can be adequately cleaned and maintained. The design, construction, and use of equipment and utensils must not result in contamination of milk.

(5) Freezers must be locked or located in a secured area and inaccessible to the public.

(6) Freezer temperatures must be maintained at  $-18^{\circ}\text{C}$  ( $0^{\circ}\text{F}$ ) or less.

(7) Refrigerator temperatures must be maintained between  $1^{\circ}\text{C}$  and  $4^{\circ}\text{C}$  ( $40^{\circ}\text{F}$ ).

(8) Commercial dish washing machines must reach a minimum boost temperature of  $82.2^{\circ}\text{C}$  ( $180^{\circ}\text{F}$ ) with every cycle.

(9) Dish washing machine sanitizers and rinse agents must be food safe and appropriate for the make and model of the dish washing machine.

(10) Thermometers must be calibrated to a National Institute of Standards and Technology (NIST) reference thermometer each quarter, or more often if dropped, damaged, or any time a thermometer's accuracy is in question.

(11) Each milk bank must have a quality assurance program that includes, at a minimum:

(a) cGMP program monitoring and recordkeeping, including:

(i) Sanitation and pest control schedules and checklists;

(ii) Staff education and training records;

(iii) Equipment maintenance and calibration schedules and records.

(b) Verification and validation activities, including:

(i) Dish washing machine temperature verification;

(ii) Sanitizer and disinfectant chemical concentration verification;

(iii) Milk donor and batch record self-audits to validate critical limits are met.

(c) Records of safety meetings and root cause analyses.

(d) Mock donor human milk recalls.

(e) Annual standard operating procedure and FSP review and revision. An FSP must include a hazard analysis, preventive controls, monitoring actions, corrective actions, verifications and validations, supply chain management programs, a recall plan, and records of actions to support the food safety plan.

(12) A milk bank must comply with the Food Safety Modernization Act (FSMA) and register with the FDA as a food manufacturer biannually. Milk banks must maintain records of passing FDA inspections and provide those records to the department upon request.

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#### NEW SECTION

**WAC 246-720-080 Milk processing.** A milk bank must meet the following milk processing criteria in order to register with the department:

(1) A milk bank must use an electronic inventory system to account for every ounce of donated human milk received, processed, dispensed, discarded, or used for research.

(2) Donated human milk must be traceable to a specific milk donor throughout every step in the collection and donation process.

(3) A milk bank must maintain detailed logistics records, related to donated human milk including, but not limited to, incoming shipping records, receiving date, volume, and the condition of the donated human milk.

(4) Frozen donated human milk must be gradually thawed in a manner that prevents contamination, with careful monitoring and record-keeping documenting adherence to time and temperature requirements.

(5) Donated human milk from multiple donors may be pooled together to create a uniform batch of donor milk. Pooling must be performed with aseptic technique under clean conditions and must be adequately mixed to ensure an even macronutrient distribution throughout the batch.

(6) Donated human milk must be strained with a food grade filter before bottling.

(7) Processed donated human milk must be stored in FDA-approved glass or food-grade plastic containers. Containers must be airtight and leakproof.

(8) Stored donated human milk must be thermally processed, which includes, but is not limited to, pasteurization, prior to storage. Following thermal processing, milk must be rapidly chilled using either processing equipment manufactured to cool milk or ice baths. Human milk-derived products must be thermally processed in accordance with FDA regulations under the pasteurized milk ordinance (PMO), FDA Title 21 Code of Federal Regulations (C.F.R.) Subchapter B-Foods for Human Consumption Parts 100-169.

(9) Each batch of processed donated human milk or human milk-derived products must be cultured for bacteria. Post-pasteurization or thermal processing, bacteriological testing must be conducted by a third-party accredited lab. Clinical labs must maintain Clinical Laboratory Improvement Amendments (CLIA) or equivalent certification. Food testing labs must meet International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 17025 standards. Donated human milk or human milk-derived products that fail bacteriological testing must not be dispensed.

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#### NEW SECTION

**WAC 246-720-090 Additional requirements for donor human milk provided by compensated donors.** A milk bank that obtains donor human milk from donors who are compensated must also test the donor human milk to ensure that it is unadulterated and contains only human milk.

(1) To ensure donor human milk is unadulterated a milk bank may use methods including, but not limited to, a milk analyzer or DNA testing.

(2) If a milk bank finds donated human milk to be adulterated or to contain milk not from the milk donor, the milk bank must discard the donated human milk.

(3) If a milk bank finds more than once that donated human milk from a milk donor is adulterated or contains milk not from the screened milk donor, the milk bank must suspend the milk donor from participation in milk donation.

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NEW SECTION

**WAC 246-720-100 Certification.** (1) The department may issue a certification to a milk bank that demonstrates to the satisfaction of the department that it meets the standards under this chapter.

(2) Certifications are valid for five years and may be renewed with the department upon expiration.

(3) To apply for certification, a milk bank must submit to the department an application on forms provided by the department.

(4) The department may deny or revoke a certification for failure to meet minimum standards under this chapter.

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## WSR 23-08-055

## PROPOSED RULES

## EASTERN WASHINGTON UNIVERSITY

[Filed April 3, 2023, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-042.

Title of Rule and Other Identifying Information: WAC 172-100-120  
Parking rules.

Hearing Location(s): On May 31, 2023, at 8:00 a.m., at 215A Tawanka Commons, Cheney, WA 99004.

Date of Intended Adoption: June 22, 2023.

Submit Written Comments to: Annika Scharosch, 211 Tawanka, Cheney, WA 99004, email [ascharosch@ewu.edu](mailto:ascharosch@ewu.edu), website <https://inside.ewu.edu/policies>, by May 31, 2023.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, email [ascharosch@ewu.edu](mailto:ascharosch@ewu.edu), by May 26, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates Eastern Washington University's parking rules to clarify requirements for parking overnight and charging vehicles.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Statute Being Implemented: RCW 28B.10.902.

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

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Annika Scharosch, 211 Tawanka Commons, Cheney, WA 99004, 509-359-6724; Implementation and Enforcement: Dr. Shari McMahan, 214 Showalter Hall, Cheney, WA 99004, 509-359-6200.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not subject to RCW 34.05.328(5).

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

April 3, 2023

Annika Scharosch, Associate Vice President  
Civil Rights, Compliance and Enterprise Risk Management

**OTS-4481.1**

AMENDATORY SECTION (Amending WSR 20-12-060, filed 5/29/20, effective 6/29/20)

**WAC 172-100-120 Parking rules.** (1) Emergency access areas:

Parking is prohibited in:

- (a) Emergency access areas;
- (b) Fire lanes;
- (c) Within (~~fifteen~~) 15 feet of a fire hydrant.

(2) No parking/restricted parking areas: Parking is prohibited in any area that is not specifically designated for parking, unless explicitly authorized by parking services or university police. No parking and restricted parking areas include, but are not limited to:

- (a) Yellow curb areas;
- (b) Bus zones;
- (c) Driveways;
- (d) Sidewalks; and
- (e) Any grassy area.

(3) Loading zones: Parking is permitted in loading zones according to the restrictions and time limits posted for the zone. If no restrictions are posted, users shall:

- (a) Display a department permit issued under WAC 172-100-230; or
- (b) Obtain and display a permit from parking services.

(4) Service drives/areas: Driving or parking in a service drive without displaying a department or service permit is prohibited.

(5) Visitor spaces: Campus visitors may park in any visitor parking space on campus subject to any posted restrictions.

(6) Reserved spaces: Parking in a reserved parking space, without proper authorization, is prohibited.

(7) Permit-required lots: Except as provided herein, parking is prohibited in any campus parking lot that requires a parking permit unless the vehicle has a valid parking permit for that lot. The university uses license plate recognition technology to manage parking on its campus. Owners purchase parking permits for particular lots on campus and are required to provide the license plate numbers for any vehicles they are requesting a permit for. To be considered valid, parking permits must be issued by the university's parking services office, be current, and be for the license plate associated with the vehicle parked in a parking lot.

(a) All permit-required lots have designated days and times during which a permit is required.

(b) Motorcycles parked in a permit-required lot must have a valid parking permit.

(8) Disabled parking spaces: Any vehicle that is parked in a disabled parking space in a university owned or leased parking lot must register with parking services and provide evidence of a valid, state-issued disabled parking permit, license plate, or year tab. The vehicle must also have a valid EWU disabled parking permit if parking in a permit-required parking lot during the designated days and times that a permit is required for parking.

(9) Metered/mobile payment parking: A person who parks a vehicle in a metered or mobile payment parking space must pay for time used during posted times of operation.

(10) Vehicle size limits: Vehicles longer than (~~twenty~~) 20 feet, campers, trailers, buses, and pickup trucks with a camper may not be parked on university property without prior authorization from parking services.

(11) Bicycles: Bicycles must be parked in bicycle racks.

(12) Parking space violation: Vehicles may only occupy one parking space or stall as designated within a parking area.

(13) Disabled, and inoperative vehicles: A disabled or inoperative vehicle may not be parked on the university campus for more than (~~twenty-four~~) 24 hours without prior authorization from parking services.

(14) Overnight parking: Vehicles cannot be parked overnight in university parking lots or surrounding service drives owned by the university unless approved in advance by parking services for the purpose of special events or if the lot is designated for overnight use for students residing on campus.

(15) Electrical outlets: Vehicles may not be plugged into electrical outlets on campus unless the specific parking space has been designated as an electric vehicle charging space by parking services.

[Statutory Authority: RCW 28B.35.120(12). WSR 20-12-060, § 172-100-120, filed 5/29/20, effective 6/29/20; WSR 13-24-119, § 172-100-120, filed 12/4/13, effective 1/4/14.]

**WSR 23-08-056**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**

[Filed April 3, 2023, 11:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-028.

Title of Rule and Other Identifying Information: Working connections and seasonal child care subsidy programs; WAC 110-15-0075 Determining income eligibility and copayment amounts.

Hearing Location(s): On May 9, 2023, telephonic. Make oral comments by calling 360-972-5385 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including May 9, 2023, will be considered.

Date of Intended Adoption: May 10, 2023.

Submit Written Comments to: DCYF rules coordinator, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by May 9, 2023.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), by May 4, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adjust copayment amounts for families above 50 percent and at or below 60 percent of the state median income from \$115 to \$165.

Reasons Supporting Proposal: The adjustment complies with chapter 199, Laws of 2021's directive that the department adjust copayment amounts.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Statute Being Implemented: RCW 43.216.1368.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Ramynke, Olympia, 360-688-0911; Implementation and Enforcement: DCYF, state-wide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is fully exempt.

April 3, 2023  
Brenda Villarreal  
Rules Coordinator

OTS-4480.1

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

**WAC 110-15-0075 Determining income eligibility and copayment amounts.** (1) DCYF takes the following steps to determine consumers' eligibility and copayments, when care is provided under a WCCC voucher or contract:

- (a) Determine their family size as described in WAC 110-15-0015; and
- (b) Determine their countable income as described in WAC 110-15-0065.

(2) DCYF calculates consumers' copayments as follows:

If the household's income is:	Then the household's maximum monthly copayment is:
At or below 20 percent of the SMI	Waived
Above 20 percent and at or below 36 percent of the SMI	\$65
Above 36 percent and at or below 50 percent of the SMI	\$90
Above 50 percent and at or below 60 percent of the SMI	<del>(\$115)</del> <u>\$165</u>
At reapplication, above 60 percent and at or below 65 percent of the SMI	\$215

(3) DCYF does not prorate copayments when consumers use care for only part of a month.

(4) For parents age 21 years or younger who attend high school or are working towards completing a high school equivalency certificate, copayments are not required.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-0075, filed 2/3/22, effective 3/6/22. Statutory Authority: RCW 43.215.060, 43.215.070 and chapter 43.215 RCW. WSR 21-01-180, § 110-15-0075, filed 12/21/20, effective 1/21/21. WSR 18-14-078, recodified as § 110-15-0075, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0075, filed 4/15/16, effective 5/16/16. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0075, filed 10/5/12, effective 11/5/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.215.060, 43.215.070, 2011 1st sp.s. c 42, 2011 1st sp.s. c 50, and 2006 c 265 § 501. WSR 11-18-001, § 170-290-0075, filed 8/24/11, effective 9/24/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0075, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0075, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0075, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR



02-14-067, § 388-290-0075, filed 6/27/02, effective 8/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0075, filed 12/19/01, effective 1/19/02.]

## WSR 23-08-059

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed April 3, 2023, 3:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-038.

Title of Rule and Other Identifying Information: WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services.

Hearing Location(s): On May 9, 2023, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_hBvwLAWGQNaCbFhRKR7ciw](https://us02web.zoom.us/webinar/register/WN_hBvwLAWGQNaCbFhRKR7ciw). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: No later than May 10, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by May 9, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by April 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-531-1400(6) to update the requirements in subsection (6)(a) with a cross-reference to WAC 182-538D-0200 and to align requirements for professionals treating children with RCW 71.34.020 and WAC 182-538D-0200.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, and 71.34.020.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Christine Cole, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1368.

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

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

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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

costs were calculated. The revised rule does not impose more-than-minor costs on small businesses.

April 3, 2023  
Wendy Barcus  
Rules Coordinator

## OTS-4442.1

AMENDATORY SECTION (Amending WSR 22-11-028, filed 5/11/22, effective 6/11/22)

**WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services.** (1) The mental health services covered in this section are different from the mental health services covered under community mental health and involuntary treatment programs in chapter 182-538D WAC.

(2) Inpatient and outpatient mental health services not covered under chapter 182-538D WAC may be covered by the agency under this section.

### **Inpatient mental health services**

(3) For hospital inpatient psychiatric admissions, providers must comply with chapter 182-538D WAC.

(4) The agency covers professional inpatient mental health services as follows:

(a) When provided by a psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric mental health nurse practitioner-board certified (PMHNP-BC), or psychologist in conjunction with the prescribing provider;

(b) The agency pays only for the total time spent on direct psychiatric client care during each visit, including services provided when making rounds. The agency considers services provided during rounds to be direct client care services and may include, but are not limited to:

(i) Individual psychotherapy up to one hour;

(ii) Family/group therapy; or

(iii) Electroconvulsive therapy.

(c) One electroconvulsive therapy or narcosynthesis per client, per day, and only when performed by a psychiatrist.

### **Outpatient mental health services**

(5) The agency covers outpatient mental health services when provided by the following licensed health care (~~professionals~~) practitioners who are eligible providers under chapter 182-502 WAC:

(a) Psychiatrists;

(b) Psychologists;

(c) Psychiatric advanced registered nurse practitioners (ARNP);

(d) Psychiatric mental health nurse practitioners-board certified (PMHNP-BC);

(e) Mental health counselors;

(f) Independent clinical social workers;

(g) Advanced social workers; or

(h) Marriage and family therapists.

(6) With the exception of (~~licensed psychiatrists and psychologists~~) child psychiatrists, as defined in RCW 71.34.020, qualified ((health care professionals)) practitioners listed in subsection (5) of this section who diagnose and treat clients age 18 and younger must meet one of the following:

(a) (~~Have a minimum of 100 actual hours of specialized study of child development and treatment and a minimum of one year of supervised experience in the diagnosis and treatment of clients age 18 and younger~~) The education and experience requirements for a child mental health specialist found in WAC 182-538D-0200; or

(b) Be working under the supervision of a (~~professional~~) practitioner who meets these (~~criteria~~) requirements.

(7) The agency does not limit the total number of outpatient mental health visits a licensed health care professional can provide.

(8) The agency evaluates a request for covered outpatient mental health services in excess of the limitations in this section under WAC 182-501-0169.

(9) The agency covers outpatient mental health services with the following limitations:

(a) Diagnostic evaluations. One psychiatric diagnostic evaluation, per provider, per client, per calendar year, unless significant change in the client's circumstances renders an additional evaluation medically necessary and is authorized by the agency.

(i) For clients 20 years of age and younger, additional evaluations are paid for when medically necessary and authorized by the agency, per WAC 182-534-0100 and 182-501-0165.

(ii) For clients five years of age and younger, the agency pays for the following without requiring prior authorization:

(A) Up to five sessions to complete a psychiatric diagnostic evaluation; and

(B) Evaluations in the home or community setting, including reimbursement for provider travel.

(iii) For clients age five through age 20, the services in (a)(ii)(A) and (B) of this subsection are paid for when medically necessary and authorized by the agency.

(b) Psychotherapy. One or more individual or family/group psychotherapy visits, with or without the client, per day, per client, when medically necessary.

(c) Medication management. One psychiatric medication management service, per client, per day, in an outpatient setting when performed by one of the following:

(i) Psychiatrist;

(ii) Psychiatric advanced registered nurse practitioner (ARNP);

or

(iii) Psychiatric mental health nurse practitioner-board certified (PMHNP-BC).

(10) To receive payment for providing mental health services, providers must bill the agency using the agency's published billing instructions.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2021 c 126 § (2)(11). WSR 22-11-028, § 182-531-1400, filed 5/11/22, effective 6/11/22. Statutory Authority: RCW 41.05.021, 41.05.16 [41.05.160], and 2017 c 226. WSR 19-15-107, § 182-531-1400, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2014 c 225. WSR 16-06-053, § 182-531-1400, filed 2/24/16, effective 4/1/16. Statu-

tory Authority: RCW 41.05.021, 41.05.160. WSR 15-03-041, § 182-531-1400, filed 1/12/15, effective 2/12/15. WSR 11-14-075, recodified as § 182-531-1400, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.09.521. WSR 08-12-030, § 388-531-1400, filed 5/29/08, effective 7/1/08. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 01-01-012, § 388-531-1400, filed 12/6/00, effective 1/6/01.]

**WSR 23-08-061**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**

[Filed April 3, 2023, 4:27 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Working connections and seasonal child care subsidy programs, WAC 110-15-0211 Trauma-informed care supports.

Hearing Location(s): On May 9, 2023, telephonic. Make oral comments by calling 360-972-5385 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including May 9, 2023, will be considered.

Date of Intended Adoption: May 10, 2023.

Submit Written Comments to: DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, by May 9, 2023.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, by May 4, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new rule clarifies who is eligible to receive support from the department for trauma-informed child care and how recipients may use the trauma-informed care supports. The anticipated effect is that child cares will be better positioned to screen for and assess the needs of children in their care, compensate staff who have early childhood mental health or other department-approved credentials, access trauma-informed care professional development and training, and access supportive services for children with complex needs.

Reasons Supporting Proposal: The proposed new rule implements section 304, chapter 199, Laws of 2021, and complies with its requirement that the department must adopt rules. The 2021 legislature recognized that (1) quality child care can be a stabilizing factor for children experiencing homelessness and is a proven protective factor against the impacts of trauma they may experience; and (2) access to child care is a necessary support for families with young children in resolving homelessness and securing employment. The department intends that the proposed rule will increase access to quality child care by providing support to trauma-informed care.

Statutory Authority for Adoption: RCW 43.216.590.

Statute Being Implemented: RCW 43.216.590.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Jess Mayrer, 360-706-3570; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Scope of exemption for rule proposal:

Is fully exempt.

April 3, 2023  
Brenda Villarreal  
Rules Coordinator

## OTS-4270.2

### NEW SECTION

**WAC 110-15-0211 Trauma-informed care supports.** (1) Subject to available funds, DCYF will provide trauma-informed care support to aid eligible providers. For the purposes of this section, "eligible providers" means:

(a) An employee or owner of a licensed or certified child care center or outdoor nature-based program that accepts WCCC or SCC payments;

(b) An employee or owner of a licensed family home child care provider that accepts WCCC or SCC payments;

(c) A contractor or provider of the early childhood education and assistance program or birth to three early childhood education and assistance program;

(d) A license-exempt family, friends, and neighbors (FFN) provider accepting subsidy; or

(e) An early achievers coach.

(2) Trauma-informed care supports may be used by eligible providers for the following purposes:

(a) Additional compensation for individual staff who have a DCYF-approved infant and early childhood mental health credential or other DCYF-approved child development specialty credential;

(b) The purchase of screening tools, assessment materials, and relevant training associated with the use of such screening tools and assessment materials;

(c) Trauma-informed professional development and training;

(d) Supportive services for children with complex needs that are offered as fee-for-service within local communities; or

(e) Other expenses related to trauma-informed care.

[]

## WSR 23-08-062

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed April 4, 2023, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-107.

Title of Rule and Other Identifying Information: WAC 182-509-0300 Modified adjusted gross income (MAGI), 182-509-0305 MAGI-income—Persons subject to the modified adjusted gross income (MAGI) methodology, and 182-512-0880 SSI-related medical—Special income disregards.

Hearing Location(s): On May 9, 2023, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_hBvwLAWGQNaCbFhRKR7ciw](https://us02web.zoom.us/webinar/register/WN_hBvwLAWGQNaCbFhRKR7ciw). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: May 10, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by May 9, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by April 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is adding the 1915i income disregard equal to the difference between 150 percent of the federal poverty level and 300 percent of the federal benefit rate. This disregard is targeted to individuals seeking community behavioral health support services.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Paige Lewis, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-0757.

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

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

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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



costs were calculated. The proposed rules do not impose any costs on businesses.

April 4, 2023  
Wendy Barcus  
Rules Coordinator

#### OTS-4467.1

AMENDATORY SECTION (Amending WSR 20-17-136, filed 8/18/20, effective 9/18/20)

**WAC 182-509-0300 Modified adjusted gross income (MAGI).** (1) The agency uses the modified adjusted gross income (MAGI) methodology to determine eligibility for MAGI-based Washington apple health programs described in WAC 182-509-0305.

(2) MAGI methodology is described in WAC 182-509-0300 through 182-509-0375. Generally, MAGI includes adjusted gross income (as determined by the Internal Revenue Code (IRC)) increased by:

(a) Any amount of foreign income excluded from gross income under Section 911 of the IRC;

(b) Any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax; and

(c) Any amount of Title II Social Security income or Tier 1 Railroad Retirement income which is excluded from gross income under Section 86 of the IRC.

(3) When calculating a person's eligibility for the programs listed in WAC 182-509-0305, the agency uses the person's MAGI income with the following exceptions:

(a) Scholarships or fellowship grants described in WAC 182-509-0335 used for education purposes are excluded from income;

(b) Income received by American Indian/Alaskan Native individuals described in WAC 182-509-0340 is excluded from income;

(c) Any income received as a lump sum as described in WAC 182-509-0375 is counted as income only in the month in which it is received; and

(d) Income received by a child age ((~~eighteen~~) 18 or younger or a tax dependent as described in WAC 182-509-0360 is excluded from income.

(4) Countable MAGI income is reduced by an amount equal to five percentage points of the federal poverty level (FPL) based on household size to determine net income except that there is no such reduction of countable MAGI income for parents or caretaker relatives with an eligible dependent child (as described in WAC 182-509-0305(1)). Net income is compared to the applicable standard described in WAC 182-505-0100.

(5) When calculating a person's eligibility for MAGI-based programs listed in WAC 182-509-0305, the agency determines the medical assistance unit for each person according to WAC 182-506-0010 and 182-506-0012.

(6) When calculating a person's eligibility for the community behavioral health support services (CBHS) benefit described in chapter

182-561 WAC, the agency disregards or deducts the amount of the person's income over 150 percent of the FPL.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-17-136, § 182-509-0300, filed 8/18/20, effective 9/18/20. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-21-040, § 182-509-0300, filed 10/7/14, effective 11/7/14. Statutory Authority: RCW 41.05.021, P.L. 111-148, 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-01-021, § 182-509-0300, filed 12/9/13, effective 1/9/14.]

AMENDATORY SECTION (Amending WSR 22-12-033, filed 5/24/22, effective 6/24/22)

**WAC 182-509-0305 MAGI income—Persons subject to the modified adjusted gross income (MAGI) methodology.** (1) Eligibility for Washington apple health for the following people is determined using the modified adjusted gross income (MAGI) methodology described in WAC 182-509-0300:

(a) Parents or caretaker relatives with an eligible dependent child (described in WAC 182-503-0565) whose net countable income is below 54 percent of the federal poverty level (FPL) as described in WAC 182-505-0240.

(b) Parents or caretaker relatives with an eligible dependent child whose net countable income exceeds the standard described in (a) of this subsection but is at or below 133 percent FPL as described in WAC 182-505-0250 and 182-507-0110.

(c) Adults with no eligible dependent child with net countable income at or below 133 percent FPL as described in WAC 182-505-0250 and 182-507-0110.

(d) Pregnant people whose net countable income, based on a household size that includes any unborn children, is below 193 percent FPL at the time of application, as described in WAC 182-505-0115.

(e) People within the 12-month postpartum period beginning the month after the pregnancy ends whose net countable income is below 193 percent FPL at the time of application, as described in WAC 182-505-0115.

(f) Children age 18 or younger in households with net countable income which is below 210 percent FPL, as described in WAC 182-505-0210 (3) (a).

(g) Children age 18 or younger in households with net countable income that is between 210 percent and 312 percent FPL, as described in WAC 182-505-0215. Children who are eligible under this section are subject to premiums as described in WAC 182-505-0225.

(h) People age 18 and older who have income over 150 percent FPL who are financially and functionally eligible to receive the community behavioral health support services (CBHS) benefit, as described in chapter 182-561 WAC.

(2) Household size for a person who is subject to MAGI income methodologies is determined according to WAC 182-506-0010.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-12-033, § 182-509-0305, filed 5/24/22, effective 6/24/22. Statutory Authority: RCW 41.05.021, Patient Protection and Affordable Care Act (P.L.

111-148), 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-01-021, § 182-509-0305, filed 12/9/13, effective 1/9/14.]

### OTS-4468.1

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

#### **WAC 182-512-0880 SSI-related medical—Special income disregards.**

Portions of a person's income the agency otherwise counts are disregarded when determining eligibility for Washington apple health ((WAH)) SSI-related medical programs.

(1) The agency disregards cost of living adjustments (COLAs) to Social Security benefits and provides categorically needy (CN) SSI-related medicaid benefits under the Pickle Amendment criteria of 42 C.F.R. 435.135(1)(a) to a person who:

(a) Is currently receiving Title II Social Security benefits;  
 (b) Was eligible for and received SSI or State Supplement payments (SSP) but became ineligible for those payments after April, 1977; and

(c) Would still be eligible for SSI or SSP payments if the amount of Social Security COLA increases paid under section 215(i) of the Social Security Act were deducted from ((his or her)) the person's current Title II Social Security benefits.

(d) To satisfy this provision, a person must have been eligible for and received SSI or SSP payments and in the same month was entitled to, but did not necessarily receive, a Title II Social Security benefit for at least one month since April 1977. This includes a person who receives a Title II Social Security benefit payment the month after the last SSI or SSP payment is made due to the fact that Social Security is paid the month after entitlement begins.

(e) For purposes of this section, the agency also disregards COLAs received by a person, ((his or her)) their financially responsible spouse, and other financially responsible family members, such as a parent.

(2) In determining SSI-related CN-WAH coverage, the agency disregards:

(a) Widow(er)'s benefits for a person who:

(i) Was entitled to SSA title II (widow/widower's) benefits in December 1983;

(ii) Was at least ((fifty)) 50 years old, but not yet ((sixty)) 60 at that time;

(iii) Received title II benefits and SSI in January 1984;

(iv) Would continue to be eligible for SSI/SSP payments if the title II benefits were disregarded; and

(v) Filed an application for medicaid with the state by July 1, 1988.

(b) Widow, Widower or Surviving Divorced Spouse (title II) benefits for a person who:

(i) Received SSI/SSP benefits the month prior to receipt of title II benefits;

(ii) Would continue to be eligible for SSI/SSP benefits if the title II benefits or the COLA(s) to those benefits were disregarded; and

(iii) Is not eligible for medicare Part A. This person is considered an SSI recipient until becoming entitled to medicare Part A.

(3) A disabled adult child (DAC) who is ineligible for SSI/SSP solely due to receipt of either Social Security benefits as a disabled adult child of a person with a Social Security account or due to receipt of a COLA to the DAC benefits, may be income eligible for ((WAH)) Apple Health categorically needy (CN) health care coverage if disregarding the SSA DAC benefits and COLA brings countable income below the CN standards, and the person:

(a) Is ((eighteen)) 18 years of age or older;

(b) Remains related to the SSI program through disability or blindness;

(c) Lost SSI eligibility on or after July 1, 1988, due solely to the receipt of DAC benefits from SSA or a COLA to those benefits; and

(d) Meets the other ((WAH)) SSI-related CN medical requirements.

(4) A person is eligible for ((WAH)) CN coverage if:

(a) In August 1972, the person received:

(i) Old age assistance (OAA);

(ii) Aid to blind (AB);

(iii) Aid to families with dependent children (AFDC); or

(iv) Aid to the permanently and totally disabled (APTD).

(b) The person was entitled to or received retirement, survivors, and disability insurance (RSDI) benefits; or

(c) The person was ineligible for OAA, AB, AFDC, SSI, or APTD solely because of the ((twenty)) 20 percent increase in Social Security benefits under P.L. 92-336.

(5) ((Persons)) People who stop receiving an SSI cash payment due to earnings, but still meet all of the other SSI eligibility rules and have income below the higher limit established by the Social Security Act's Section 1619(b) are eligible for continued WAH CN medicaid.

(6) TANF income methodology is used to determine countable income for children and pregnant ((women)) people applying for ((WAH)) medically needy (MN) coverage unless the SSI methodology would be more beneficial to the person. When using the TANF income methodologies, deduct:

(a) A ((fifty)) 50 percent earned income disregard described in WAC 388-450-0170;

(b) Actual child care and dependent care expenses related to employment; and

(c) Child support actually paid.

(7) The agency disregards a person's income over 150 percent of the FPL when determining eligibility for the community behavioral health support services (CBHS) benefit under chapter 182-561 WAC. This disregard only applies to eligibility for the CHBS benefit and does not apply to:

(a) Long-term services and supports eligibility determinations under chapters 182-513 and 182-515 WAC; or

(b) Post-eligibility treatment of income (PETI).

[Statutory Authority: RCW 41.05.021 and Patient Protection and Affordable Care Act (Public Law 111-148), 42 C.F.R. §§ 431, 435, 457 and 45 C.F.R. § 155. WSR 14-07-059, § 182-512-0880, filed 3/14/14, effective 4/14/14. WSR 11-24-018, recodified as § 182-512-0880, filed 11/29/11,

effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 04-09-005, § 388-475-0880, filed 4/7/04, effective 6/1/04.]

## WSR 23-08-064

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed April 4, 2023, 8:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-15-092.

Title of Rule and Other Identifying Information: WAC 246-840-463 and 246-840-4659. The nursing care quality assurance commission (commission) is proposing amendments to clarify the application of the advanced practice pain management rules in nursing homes and long-term acute care hospitals.

Hearing Location(s): On May 12, 2023, at 1:15 p.m. The commission will provide a virtual and a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. Physical location: Hilton Seattle Airport & Conference Center, Crystal Ballroom, 17620 International Boulevard, Seattle, WA 98188; virtual <https://us02web.zoom.us/join/9tZ0tdu2tqz0sE9XESu2VI8vc-sf-wKwCGwpM>. Please follow this link to register for the virtual hearing which will give you instructions to either join the meeting on a device, or to call in to the meeting on the phone.

Date of Intended Adoption: May 12, 2023.

Submit Written Comments to: Jessilyn Dagum, P.O. Box 47864, Olympia, WA 98504-7864, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-4738, by April 28, 2023.

Assistance for Persons with Disabilities: Contact Jessilyn Dagum, phone 360-236-3538, fax 360-236-4738, TTY 711, email [NCQAC.rules@doh.wa.gov](mailto:NCQAC.rules@doh.wa.gov), by April 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to WAC 246-840-463 and 246-840-4659 create permanent rules from an interpretive statement titled NCIS-2.00 Application of WAC 246-840-4659 to nursing homes and long-term acute care hospitals (LTACs). These amendments will clarify that the pain management rules (WAC 246-840-460 through 246-840-4990) that apply to the treatment of patients by licensed practical nurses, registered nurses, and advanced registered nurse practitioners also extend to patients admitted under hospital orders to nursing homes licensed under chapter 18.51 RCW or chapter 388-97 WAC, Nursing homes, and LTACs as outlined in WAC 182-550-2565. The amendments will also clarify that a discharge facility's history and physical may be considered an appropriate history and physical under WAC 246-840-4659 to allow timely prescribing of needed medications for acute nonoperative pain or acute perioperative pain.

The proposed amendments to WAC 246-840-463 and 246-840-4659 clarify the application of the advanced practice pain management rules in nursing homes and LTACs.

Amendments to WAC 246-840-463 specifically state that WAC 246-840-460 through 246-840-4990 does not apply to the treatment of patients in nursing homes licensed under chapter 18.51 RCW or chapter 388-97 WAC, Nursing homes, and LTACs.

Amendments to WAC 246-840-4659 incorporates language that allows an advanced registered nurse practitioner to consider the discharge facility's appropriate history and physical examination to allow timely prescribing of needed medications for acute nonoperative pain or

acute perioperative pain in nursing homes licensed under chapter 18.51 RCW or chapter 388-97 WAC, Nursing homes, and LTACs.

Reasons Supporting Proposal: Pursuant to a legislative mandate, ESHB 2876 (chapter 209, Laws of 2010), the commission adopted rules in 2012 for the management of chronic, noncancer pain. These rules did not apply to the management of cancer-related pain or acute pain caused by an injury or surgical procedure. In 2017, the legislature enacted ESHB 1427, requiring the commission to adopt rules establishing requirements for prescribing opioid drugs. The adopted rules apply to the prescribing of opioids for the treatment of pain, including acute nonoperative, acute perioperative, subacute, and chronic pain.

There are certain types of pain management treatments excluded from the rules, including hospital patients receiving inpatient treatment for more than 24 hours. The commission recognizes that patients in nursing homes and LTACs are typically high acuity and are similarly situated to hospital patients receiving inpatient treatment. However, there is no specific exclusion for pain treatment of patients in nursing homes or LTACs.

Proper pain management is required by RCW 74.42.140 in nursing home and LTAC settings and is necessary for patient quality of life. Nursing homes and LTACs are not outpatient settings and medications are not controlled or handled by patients. When a patient is admitted to a nursing home from a hospital, a nursing home is required by WAC 388-97-1000 and RCW 74.42.150 to document that patient's history, physical examination results, and health care provider's orders for care. Often, nursing home patients are admitted with a limited prescription of pain medications. Similarly, LTACs are hospital settings designed for longer-term treatment, and patients receive 24-hour clinical care.

Patients admitted to nursing homes and LTACs are continuing their treatment protocol as applied when they were in an inpatient hospital setting. The current rules require an attending provider at a nursing home or LTAC to collect a patient history and conduct a physical examination prior to prescribing opioids, as well as consult the prescription monitoring program. An attending provider may not be able to immediately perform a new history and physical to authorize a prescription to continue pain management. This disrupts the continuity of pain management and may jeopardize the quality of care in nursing home or LTAC settings.

The proposed amendments to WAC 246-840-463 and 246-840-4659 clarify the application of the advanced practice pain management rules in nursing homes and LTACs.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110, and 18.79.250.

Statute Being Implemented: RCW 18.79.010, 18.79.110, and 18.79.250.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: Nursing care quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jessilyn Dagum, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-3538; and Enforcement: Catherine Woodard, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4757.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jessilyn Dagum, P.O. Box 47864, Olympia, WA 98504-7864, phone 360-236-3538, fax 360-236-4738, TTY 711, email NCQAC.Rules@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

April 3, 2023

Paula R. Meyer, MSN, RN, FRE

Executive Director

Nursing Care Quality Assurance Commission

### OTS-3981.3

AMENDATORY SECTION (Amending WSR 18-20-086, filed 10/1/18, effective 11/1/18)

**WAC 246-840-463 Exclusions.** WAC 246-840-460 through 246-840-4990 do not apply to:

(1) The treatment of patients with cancer-related pain;  
 (2) The provision of palliative, hospice, or other end-of-life care;

(3) The treatment of inpatient hospital patients; or

(4) Procedural premedications.

(5) The treatment of patients in nursing homes licensed under chapter 18.51 RCW or 388-97 WAC, nursing homes and long-term acute care hospitals (LTACs).

[Statutory Authority: RCW 18.79.800 and 2017 c 297. WSR 18-20-086, § 246-840-463, filed 10/1/18, effective 11/1/18. Statutory Authority: RCW 18.79.400. WSR 11-10-064, § 246-840-463, filed 5/2/11, effective 7/1/11.]

AMENDATORY SECTION (Amending WSR 18-20-086, filed 10/1/18, effective 11/1/18)

**WAC 246-840-4659 Patient evaluation and patient record—Acute.**

Prior to prescribing an opioid for acute nonoperative pain or acute perioperative pain, the advanced registered nurse practitioner shall:

(1) Conduct and document an appropriate history and physical examination including screening for risk factors for overdose and severe postoperative pain; or

(2) Consider the discharge facility's history and physical examination an appropriate history and physical examination to allow timely prescribing of needed medications for acute nonoperative pain or acute perioperative pain in nursing homes licensed under chapter 18.51 RCW



or 388-97 WAC, nursing homes and long-term acute care hospitals (LTACs);

(3) Evaluate the nature and intensity of the pain or anticipated pain following surgery; and

~~((3))~~ (4) Inquire about any other medications the patient is prescribed or is taking including type, dosage, and quantity prescribed.

[Statutory Authority: RCW 18.79.800 and 2017 c 297. WSR 18-20-086, § 246-840-4659, filed 10/1/18, effective 11/1/18.]

## WSR 23-08-072

## PROPOSED RULES

## WESTERN WASHINGTON UNIVERSITY

[Filed April 4, 2023, 10:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-05-049.

Title of Rule and Other Identifying Information: WAC 516-52-001  
Smoking on campus.

Hearing Location(s): On May 9, 2023, at 1:00 p.m. Virtual public hearings have proven effective in allowing greater public access, eliminating the burden of physical travel, and maintaining public safety. Accordingly, a virtual meeting will be held with an optional in-person component. To attend the virtual public hearing, you must register in advance at <https://wwu-edu.zoom.us/meeting/register/tJEsf-morDouGNHugPhBEfUQk3DwJtUXD2Xf>. After registering, you will receive a confirmation email containing information about joining the public hearing. To attend in person, email the university rules coordinator for meeting location. The hearing will start at 1:00 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: June 9, 2023.

Submit Written Comments to: Jennifer Sloan, Rules Coordinator, 516 High Street, Mailstop 9044, Bellingham, WA 98225, email [sloanj2@wwu.edu](mailto:sloanj2@wwu.edu), by May 8, 2023.

Assistance for Persons with Disabilities: Contact Jennifer Sloan, rules coordinator, phone 360-650-3117, TTY 711, email [sloanj2@wwu.edu](mailto:sloanj2@wwu.edu), by April 25, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Provide a healthful and productive environment for all employees, students, and the public visiting or conducting activities on Western Washington University property.

Reasons Supporting Proposal: Protect citizens, including students and employees, from the effects of secondhand smoke.

Statutory Authority for Adoption: RCW 28B.35.120(12).

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

Name of Proponent: Western Washington University, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Bruce Boyer, Interim Director, Environmental Health and Safety, 2001 Bill McDonald Parkway, Bellingham, WA 98225-9070, 360-650-2947; Enforcement: University Police Department, 2001 Bill McDonald Parkway, Bellingham, WA 98225-9130, 360-650-3555.

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

A cost-benefit analysis is not required under RCW 34.05.328. Western Washington University is not one of the enumerated agencies required to conduct cost-benefit analysis under RCW 34.05.328(5).

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

April 4, 2023  
Jennifer L. Sloan  
Rules Coordinator

## OTS-4431.2

AMENDATORY SECTION (Amending WSR 95-01-006, filed 12/8/94, effective 1/8/95)

**WAC 516-52-001 Smoking on campus.** (1) Purpose. Western Washington University is dedicated to providing a healthful ~~((and productive work))~~ environment for all employees, students, and the public ~~((visiting or conducting activities in university facilities. This policy is intended to provide a smoke-free environment for employees, students, and the public who do not wish to be affected by those who smoke.~~

~~(2) Policy. Smoking shall not be permitted inside any Western Washington University administrative or academic buildings and in identified external areas that may affect those people inside the administrative and academic buildings. Smoking will be allowed in identified outdoor smoking areas on campus.)~~ on campus. The university is committed to providing a smoke-free environment for anyone who does not wish to be affected by second-hand smoke.

(2) Smoke or smoking means the carrying, burning, or smoking of any lighted pipe, cigar, cigarette, electronic cigarette, vaporizing device, or any other lighted smoking equipment.

(3) Except as provided herein, smoking of all kinds is prohibited on university property. University property is all buildings, grounds, or assets owned or controlled by the university and the streets, sidewalks, plazas, parking lots to include all vehicles therein, and roadways within the boundaries of properties owned or controlled by the university. Smoking may be permitted for university-approved events such as cultural or religious uses, academic research, or theatrical productions. Advance vice president approval is required for event exemption.

(4) Any person violating this section may be subject to enforcement by the university police department. In addition, any employee, volunteer, or student who violates this section may be subject to disciplinary action.

[Statutory Authority: RCW 28B.35.120(12). WSR 95-01-006, § 516-52-001, filed 12/8/94, effective 1/8/95; WSR 93-01-080, § 516-52-001, filed 12/14/92, effective 1/14/93. Statutory Authority: RCW 28B.35.120(11). WSR 86-03-020 (Order 12-5-85), § 516-52-001, filed 1/8/86; Order 72-10, § 516-52-001, filed 11/17/72.]

## WSR 23-08-075

## PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed April 4, 2023, 2:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-21-096.

Title of Rule and Other Identifying Information: Amending WAC 192-500-195 Placement, 192-510-010 Election, withdrawal, and cancellation of coverage, 192-540-030 What are employers required to report to the department?, and 192-800-150 Can an employee designate a representative to act on their behalf?

Hearing Location(s): On May 9, 2023, at 9:00 a.m., Microsoft Teams. Join online, link available at [paidleave.wa.gov/rulemaking](https://paidleave.wa.gov/rulemaking); join by phone 564-999-2000, PIN 853 918 562#. Hearing will be held remotely.

Date of Intended Adoption: On or after May 16, 2023.

Submit Written Comments to: Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), by May 9, 2023.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-480-5708, email [teckstein@esd.wa.gov](mailto:teckstein@esd.wa.gov), by May 2, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The paid family and medical leave (PFML) program (Title 50A RCW) is proposing amendments to existing rules to provide additional clarity and improve program operations.

The proposed amendments add a new data field to employer quarterly reports to include employees' dates of birth and require a report of "no payroll" for up to a maximum of eight quarters when employers have no paid wages to report. The proposed amendments will affect both PFML and the long-term services and supports trust (WA Cares fund) since employers submit one report to the department for both programs.

Specific to PFML, the proposed amendments correct an RCW pointer reference, clarify the definition of "placement" for the purposes of family leave to bond with the employee's child, clarify that hours worked in self-employment prior to the effective date of the election of coverage for self-employed individuals do not count toward establishing benefit eligibility, and clarify that weekly claims may be filed by an estate executor or administrator if the employee dies after they've been approved for benefits.

Reasons Supporting Proposal: The proposed amendments to WAC 192-500-195 provide clear direction when determining eligibility for family leave to bond with the employee's child.

The proposed amendments to WAC 192-510-010 clarify eligibility requirements for self-employed individuals who elect PFML coverage.

The proposed amendments to WAC 192-540-030 are necessary in order to ensure that employers are reporting correct information to the department, including when no wages are paid during any given quarter. The report of "no payroll" will be required for up to a maximum of eight quarters unless the employer notifies the department before the end of eight consecutive quarters that they have no employees to report at that time and in the foreseeable future. In addition, since WA Cares fund premium assessment begins July 1, 2023, employers must submit quarterly reports that include information for both PFML and WA Cares fund. The department is utilizing one employer report for both programs. RCW 50B.04.020 (4)(c) requires the department to determine

the compliance of premium payments (employer audits) in coordination with the same activities conducted for PFML under Title 50A RCW. This requirement will assist the department because a report of "no payroll" will ensure the department does not flag a missing report for audit.

The proposed amendment adding employees' dates of birth will assist with ensuring employee work history and premium assessments are complete. RCW 50B.04.080 requires the department, to the extent feasible, to use the same premium assessment, collection, and reporting procedures for the WA Cares fund as it does for PFML. Requiring dates of birth for employees will assist with determining employee eligibility for prorated benefits for WA Cares fund under RCW 50B.04.050. The requirements will fulfill the department's obligation under RCW 50B.04.020 to assist the trust commission, council, and office of the state actuary in monitoring the solvency and financial status of the program because the information will assist with actuarial modeling and solvency projections. The requirements will also assist the department with projecting fund solvency for the PFML program, align with unemployment insurance practices of "no payroll" reports, and ensure the department has accurate data for annual PFML employer sizing determinations.

The proposed amendments to WAC 192-800-150 correct a pointer to a previously repealed RCW and clarify the requirements for executors or administrators of estates when filing weekly claims if an employee dies after being approved for paid family or medical leave.

Statutory Authority for Adoption: RCW 50A.05.060, 50A.10.010.

Statute Being Implemented: RCW 50B.04.020 (4) (c), 50B.04.080 (4) (b), 50A.05.010, 50A.10.010, 50A.10.030.

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

Name of Proponent: Employment security department, leave and care division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Olympia, Washington, 360-485-2816.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-790-6583, email rules@esd.wa.gov. Also posted online at [paidleave.wa.gov/rulemaking](http://paidleave.wa.gov/rulemaking). WAC 192-540-030 What are employers required to report to the department? This rule requires a cost-benefit analysis.

WAC 192-500-195 Placement. This rule is exempt under RCW 34.05.328 (5) (c) (ii) because it is an interpretive rule that sets forth the agency's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii).

WAC 192-510-010 Election, withdrawal, and cancellation of coverage. This rule is exempt under RCW 34.05.328 (5) (c) (ii) because it is an interpretive rule that sets forth the agency's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5) (c) (iii).

WAC 192-800-150 Can an employee designate a representative to act on their behalf? A portion of this rule is exempt under RCW 34.05.328 (5) (c) (ii) because it is an interpretive rule that sets forth the

agency's interpretation of statutory provisions. Interpretive rules are not significant legislative rules under RCW 34.05.328 (5)(c)(iii). A portion of this rule is exempt under RCW 34.05.328 (5)(b)(iv) because it corrects a reference to a repealed RCW pointer without changing the rule's effect.

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

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions:

	Proposed WAC Sections and Title	This proposed rule section is <u>not exempt</u> - Analysis is required.	This proposed rule section is <u>exempt</u> . Provide RCW to support this exemption.
1.	WAC 192-500-195 Placement.	<input type="checkbox"/>	RCW 19.85.025(4), the rule does not affect businesses and pertains only to individuals applying for PFML benefits.
2.	WAC 192-510-010 Election, withdrawal, and cancellation of coverage.	<input type="checkbox"/>	RCW 19.85.025(4), the rule does not affect businesses and pertains only to individuals applying for PFML benefits.
3.	WAC 192-540-030 What are employers required to report to the department?	X	
4.	WAC 192-800-150 Can an employee designate a representative to act on their behalf?	<input type="checkbox"/>	RCW 19.85.025(4), the rule does not affect businesses and pertains only to applicants and representatives acting on their behalf in order to claim PFML benefits. RCW 34.05.310 (4)(d), a portion of the rule corrects a reference to a previously repealed statute without changing the effect.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Proposed amendments to WAC 192-540-030 will affect all businesses required to submit quarterly reports for PFML and WA Cares fund. The department estimates the maximum annual cost of compliance for employers to report employees' dates of birth and submit a report of "no payroll" is a maximum of \$91 for the first year and a maximum of \$73 for each subsequent year. The cost will likely diminish year after year as employers become familiar with the requirements.

The administrative burden of reporting "no payroll" is low and requires employers to log into the system and check a box that indicates they have no payroll to report. Some employers will not have to report "no payroll" if they notify the department that they no longer have employees and don't intend to in the foreseeable future. Other employers will only be required to report "no payroll" for eight consecutive quarters. Employers impacted the most by the report of "no payroll" are those that have fluctuating employment throughout the year. The department determined the cost of compliance based on employers that are most impacted by this requirement. The administrative cost may be less than the department's estimate because this report is already a requirement of other programs, such as unemployment insurance. Adding employees' dates of birth to quarterly reports will require employers to add all employees' dates of birth during the first

quarter of reporting and then add only new employees for each subsequent quarter of reporting.

To calculate the administrative cost of compliance, the department used the average hourly wage of \$36.50 for payroll services taken from the North American Industry Classification System (NAICS) code 541214. The time estimated to comply with these requirements is 2.5 hours or less of administrative work in the first year, and then two hours or less in each subsequent year. Using NAICS code 541214 at the average of \$36.50 per hour x 2.5 hours = \$91 for the first year and \$36.50 per hour x 2 hours = \$73 for each subsequent year. This cost does not exceed the minor cost threshold estimates for businesses affected (using all NAICS codes for Washington employers required to submit quarterly reports); therefore, a small business economic impact statement is not required under RCW 19.85.030.

April 4, 2023  
April Amundson  
Policy and Rules Manager  
Leave and Care Programs

#### OTS-4460.1

AMENDATORY SECTION (Amending WSR 20-20-073, filed 10/2/20, effective 11/2/20)

**WAC 192-500-195 Placement.** (1) For the purposes of qualifying for paid family leave to bond with a child under RCW 50A.05.010, "placement" means the adoptive, guardianship, foster care, or nonparental custody placement of a child under the age of ((eighteen)) 18 with the employee. A placement is considered:

(a) An adoptive placement when the employee is legally and permanently assuming the responsibility of raising the child as their own, and the placement of the child into the employee's home is made through a private arrangement, a child placement agency, or a government agency.

(b) A guardianship placement when the employee is granted guardianship of a child by court order, and the child is placed in the home under:

(i) Title 11 RCW;  
(ii) Title 13 RCW; or  
(iii) Any other applicable guardianship that reflects the purpose, permanency, and legal authority of guardianships under Titles 11 and 13 RCW, including guardianships granted out of this state or country.

(c) A foster care placement when the employee is providing care for a child placed in the employee's home. Such placements must involve voluntary or involuntary removal of the child from the child's parents or guardian, and an agreement between a government agency and the foster family that the foster family will take care of the child. Although foster care placement may be with a relative of the child or another individual who may not have a foster care license, government agency action must be involved in the removal of the child.

(d) A nonparental custody placement when the child is placed into the home of the employee by court order granting the employee nonparental custody.

(2) For the purposes of this section, a "government agency" may include an agency of any branch of government at the county, state, or federal level, or a foreign jurisdiction.

(3) The entitlement to paid family leave benefits for placement of a child expires at the end of the (~~twelve~~) 12-month period beginning on the date the child was first placed in the home.

(4) When applying for paid family leave to bond with a child, the employee must provide documentation referenced in WAC 192-610-025 to verify placement of the child.

(5) Qualifying paid family leave to bond with a child placed for adoption, guardianship, foster care, or nonparental custody does not include:

(a) (~~(Placement with a birth parent; and)~~) Any arrangement where the child is already in the care and custody of a parent and remains in that same parent's care and custody;

(b) Any arrangement where a child is returned to the care and custody of a parent or is placed with a parent whose entitlement to family leave to bond with that child has already expired; and

(c) Any adoptive, guardianship, foster care, or nonparental custody placement of a child with an employee that occurs more than (~~twelve~~) 12 months after that child is first placed in the employee's home.

[Statutory Authority: RCW 50A.05.060. WSR 20-20-073, § 192-500-195, filed 10/2/20, effective 11/2/20.]

#### OTS-4461.1

AMENDATORY SECTION (Amending WSR 21-04-067, filed 1/29/21, effective 3/1/21)

**WAC 192-510-010 Election, withdrawal, and cancellation of coverage.** (1) Self-employed persons as defined in RCW 50A.10.010 and federally recognized tribes as defined in RCW 50A.10.020 may elect coverage under Title 50A RCW.

(2) Notice of election of coverage must be submitted to the department online or in another format approved by the department.

(3) Elective coverage begins on the first day of the quarter immediately following the notice of election.

(4) Hours worked in self-employment prior to the effective date of the election of coverage cannot be used to establish benefit eligibility.

(5) A period of coverage is defined as:

(a) Three years following the first day of elective coverage or any gap in coverage; and

(b) Each subsequent year.

(~~(5)~~) (6) Any self-employed person or federally recognized tribe may file a notice of withdrawal within (~~thirty~~) 30 calendar days after the end of each period of coverage.



~~((6))~~ (7) A notice of withdrawal from coverage must be submitted to the department online or in another format approved by the department.

~~((7))~~ (8) Any levy resulting from the department's cancellation of coverage is in addition to the due and unpaid premiums and interest for the remainder of the period of coverage.

[Statutory Authority: RCW 50A.05.060. WSR 21-04-067, § 192-510-010, filed 1/29/21, effective 3/1/21. Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-510-010, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-510-010, filed 3/22/19, effective 4/22/19; WSR 18-12-032, § 192-510-010, filed 5/29/18, effective 6/29/18.]

### OTS-4462.1

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

**WAC 192-540-030 What are employers required to report to the department?** (1) Each calendar quarter, every employer must file a complete report with the department, including employers that have no payroll for the quarter as outlined in subsection (4) of this section.

(2) The report must include each employee's:

- (a) Full name;
- (b) Social Security number; ~~((and))~~
- (c) Date of birth; and
- (d) Wages paid during that quarter and the associated hours.

~~((2))~~ (3) The report must include the total amount of premiums deducted from all employees' wages, if any, during the calendar quarter.

~~((3))~~ (4) (a) If no wages were paid to employees during a calendar quarter, a report of no payroll must be filed for that quarter.

(b) The requirement to report no payroll shall continue for eight consecutive calendar quarters unless the employer notifies the department before the end of eight consecutive quarters that they have no employees to report at that time and in the foreseeable future.

(5) If an employee does not have a Social Security number but does have an individual taxpayer identification number (ITIN), the ITIN qualifies as a Social Security number. If the employee later obtains a Social Security number, the employer should use the Social Security number when filing the report of the employee's wages.

[Statutory Authority: RCW 50A.04.215. WSR 18-22-080, § 192-540-030, filed 11/2/18, effective 12/3/18.]

### OTS-4463.1

AMENDATORY SECTION (Amending WSR 20-11-036, filed 5/14/20, effective 6/14/20)

**WAC 192-800-150 Can an employee designate a representative to act on their behalf?** (1) The department may authorize another individual to act on the employee's behalf for the purposes of paid family and medical leave benefits if:

(a) An employee designates an authorized representative by submitting written documentation as required by the department;

(b) A court-appointed legal guardian with authority to make decisions on a person's behalf submits documentation as required by the department;

(c) An individual designated as an attorney-in-fact under a power of attorney submits documentation satisfactory to the department to act on the employee's behalf; or

(d) If an employee is unable to designate an authorized representative due to a serious health condition, an individual may represent the employee by submitting a complete and signed authorized representative designation form made available by the department, which must include:

(i) Documentation from the employee's health care provider certifying that the employee is incapable of completing the administrative requirements necessary for receiving paid family and medical leave benefits and is unable to designate an authorized representative to act on the employee's behalf; and

(ii) An affidavit or declaration authorized by (~~RCW 9A.72.085~~) chapter 5.50 RCW attesting to the responsibility to act in the employee's best interest.

(2) A person meeting the requirements under subsection (1) of this section may file an initial application and weekly claims up to and including the week in which the employee died subject to WAC 192-620-010.

(3) If an employee has been approved for benefit payments and the employee dies, an estate executor or administrator may file ((a)) weekly claims for ((the)) any weeks in which the employee ((died)) was unable to file a weekly claim up to and including the week in which they died, subject to WAC 192-620-010.

(4) The department will terminate the authority given to the authorized representative:

(a) When the employee or authorized representative notifies the department verbally or in writing; or

(b) At the department's discretion.

(5) For the purposes of paid family and medical leave the term employee is used for both employee and authorized representative.

[Statutory Authority: RCW 50A.05.060. WSR 20-11-036, § 192-800-150, filed 5/14/20, effective 6/14/20. Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-150, filed 11/19/19, effective 12/20/19.]

**WSR 23-08-079**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed April 4, 2023, 4:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-24-028.

Title of Rule and Other Identifying Information: Concerning summer running start: WAC 392-121-119 Definition—Enrolled count dates, 392-121-123 Nonstandard school year programs, 392-169-030 Annual average full-time equivalent (AAFTE) running start enrollment—Definition, 392-169-055 Enrollment—Extent and duration of running start enrollment, and 392-169-100 Running start enrollment count dates.

Hearing Location(s): On May 12, 2023, at 10:00 a.m., virtual public hearing via Zoom (call-in option also available). Participation link available on the office of superintendent of public instruction (OSPI) rules web page [k12.wa.us/policy-funding/ospi-rulemaking-activity](http://k12.wa.us/policy-funding/ospi-rulemaking-activity). The hearing will be held as a virtual public hearing without a physical meeting space. Please visit the OSPI rules web page for information on participating in the hearing [k12.wa.us/policy-funding/ospi-rulemaking-activity](http://k12.wa.us/policy-funding/ospi-rulemaking-activity). For participation questions, please email [kristin.murphy@k12.wa.us](mailto:kristin.murphy@k12.wa.us).

Date of Intended Adoption: May 16, 2023.

Submit Written Comments to: Becky McLean, Enrollment Supervisor, OSPI, P.O. Box 47200, Olympia, WA 98504, email [becky.mclean@k12.wa.us](mailto:becky.mclean@k12.wa.us), by May 12, 2023.

Assistance for Persons with Disabilities: Contact Kristin Murphy, OSPI rules coordinator, phone 360-725-6133, TTY 360-664-3631, email [kristin.murphy@k12.wa.us](mailto:kristin.murphy@k12.wa.us), by May 5, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing rule changes related to students enrolling in running start courses for the summer college term. The proposed rule changes will open the summer term for running start, allow for running start enrollment to be claimed on a July and August count day, and change the calculation of the average annual full-time equivalent (AAFTE) to be based on the 11 months of reported enrollment divided by nine.

The proposed rule revisions will allow a student who is in grade 11 and 12 for the current school year, and who has available AAFTE, to enroll in a college summer term and to be claimed for running start funds. The funding for the summer quarter will be based on a two-month count.

Reasons Supporting Proposal: 2022 ESSB 5693, section 504(18) directs OSPI to adopt rules to fund participating student's enrollment in running start courses during the summer term.

As directed in RCW 28A.600.390 and WAC 392-169-005, OSPI, state board for community and technical colleges, and Washington student achievement council jointly agree on the proposed changes. Further, the council of presidents has reviewed the proposed changes.

Statutory Authority for Adoption: 2022 ESSB 5693, section 504(18); RCW 28A.600.390.

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

Name of Agency Personnel Responsible for Drafting: Becky McLean, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6306; Implementation: Michelle Matakas, OSPI, 600 South Washington Street, Olym-

pia, WA, 360-725-6019; and Enforcement: T.J. Kelly, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6301.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and, therefore, does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

Scope of exemption for rule proposal:

Is fully exempt.

April 4, 2023

Chris P. S. Reykdal

State Superintendent of Public Instruction

#### OTS-4354.1

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

**WAC 392-121-119 Definition—Enrollment count dates.** As used in this chapter, "enrollment count dates" means the fourth school day of September and the first school day of each of the nine subsequent months of the school year for all school districts and charter schools including districts and charter schools which commence basic education programs prior to September 1st. Exceptions are limited to the following:

(1) In school districts where not every school or grade follows the same calendar of school days, the calendar of an individual school or an entire grade level within a school may determine the monthly enrollment count date for that school or grade level within the school.

(2) The ((~~nine~~)) 11 count dates for running start enrollment shall be the first school day of each month of October through ((~~June~~)) August.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-121-119, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.305. WSR 13-02-004, § 392-121-119, filed 12/19/12, effective 1/19/13. Statutory Authority: RCW 28A.150.290. WSR 97-22-013 (Order 97-06), § 392-121-119, filed 10/27/97, effective 11/27/97.]

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

**WAC 392-121-123 Nonstandard school year programs.** A student participating in a program of education occurring during the nonstandard school year on a tuition-free basis may be claimed for state funding to the extent that the student was not claimed as a 1.0 AAFTE during the regular school year (September through June), subject to the following:

(1) Eligible student FTE in a nonstandard school year program shall be claimed based upon the following:

(a) Enrolled hours based upon the standards in WAC 392-121-122 or 392-121-182.

(b) Credit based for student enrolled in a college program under WAC 392-121-188.

(c) A student enrolled in transition school (~~(or a running start program)~~) is not eligible for nonstandard school year funding.

(2) A district or charter school shall make month by month evaluation of the student to determine if the following conditions were met during the regular school year:

(a) The student was not home schooled or enrolled in a private school.

(b) The student was not claimed as a 1.0 FTE in a regular or institution education program.

(3) For each month in which the conditions of subsection (2) of this section are met, the district or charter school shall determine the amount of student FTE claimed for the student. To the extent the enrollment claimed is less than 1.0 FTE for each month, the school district or charter school may claim nonstandard school year FTE based upon the student enrollment in the nonstandard school year school program.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-121-123, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.305. WSR 13-02-004, § 392-121-123, filed 12/19/12, effective 1/19/13. Statutory Authority: RCW 28A.150.290. WSR 09-01-173, § 392-121-123, filed 12/23/08, effective 1/23/09; WSR 95-01-013, § 392-121-123, filed 12/8/94, effective 1/8/95. Statutory Authority: RCW 28A.41.055 and 28A.41.170. WSR 88-03-013 (Order 88-8), § 392-121-123, filed 1/11/88.]

#### OTS-4355.1

AMENDATORY SECTION (Amending WSR 16-10-115, filed 5/4/16, effective 6/4/16)

**WAC 392-169-030 Annual average full-time equivalent (AAFTE) running start enrollment—Definition.** For purposes of this chapter and chapter 392-121 WAC, "annual average full-time equivalent (AAFTE) running start enrollment" means the sum of the AAFTE of all running start students for a school year when each running start student's AAFTE

equals the sum of the student's running start FTE enrollment on the ~~((nine))~~ 11 running start count dates divided by nine.

[Statutory Authority: RCW 28A.600.390. WSR 16-10-115, § 392-169-030, filed 5/4/16, effective 6/4/16; WSR 14-22-079, § 392-169-030, filed 11/3/14, effective 12/4/14. Statutory Authority: RCW 28A.600.390, 28A.150.260 and [28A.150.]290. WSR 94-04-095 (Order 94-01), § 392-169-030, filed 2/1/94, effective 3/4/94.]

AMENDATORY SECTION (Amending WSR 16-10-115, filed 5/4/16, effective 6/4/16)

**WAC 392-169-055 Enrollment—Extent and duration of running start enrollment.** Running start program enrollment under this chapter is limited as follows (and as may be further limited for academic reasons under WAC 392-169-057):

(1) An eligible student who enrolls in grade ~~((eleven))~~ 11 may enroll in an institution of higher education while in the ~~((eleventh))~~ 11th grade for no more than the course work equivalent to one academic year of enrollment as an annual average full-time equivalent running start student ~~((i.e., three college or university quarters as a full-time equivalent college or university student, two semesters as a full-time equivalent college or university student, or nine months as a full-time equivalent technical college student))~~.

(2) An eligible student who enrolls in grade ~~((twelve))~~ 12 may enroll in an institution of higher education while in the ~~((twelfth))~~ 12th grade for no more than the course work equivalent to one academic year of enrollment as an annual average full-time equivalent running start student ~~((i.e., three college or university quarters as a full-time equivalent community college or university student, two semesters as a full-time equivalent college or university student, or nine months as a full-time technical college student))~~.

~~((3)) Enrollment in an institution of higher education is limited to the fall, winter and spring college quarters, and the fall and spring college semesters).~~

~~((4))~~ (3) As a general rule a student's eligibility for running start program enrollment terminates at the end of the student's ~~((twelfth))~~ 12th grade regular academic year, notwithstanding the student's failure to have enrolled in an institution of higher education to the full extent permitted by subsections (1) and (2) of this section: Provided, That a student who has failed to meet high school graduation requirements as of the end of the student's ~~((twelfth))~~ 12th grade regular academic year (September through June) due to the student's absence, the student's failure of one or more courses, or another similar reason may continue running start program enrollment for the sole and exclusive purpose of completing the particular course or courses required to meet high school graduation requirements, subject to the enrollment limitation established by subsection (2) of this section.

[Statutory Authority: RCW 28A.600.390. WSR 16-10-115, § 392-169-055, filed 5/4/16, effective 6/4/16; WSR 14-22-079, § 392-169-055, filed 11/3/14, effective 12/4/14. Statutory Authority: RCW 28A.300.390, 28A.150.260 and 28A.150.290. WSR 95-09-042 (Order 95-02), §

392-169-055, filed 4/14/95, effective 5/15/95. Statutory Authority: RCW 28A.600.390, 28A.150.260 and [28A.150.]290. WSR 94-04-095 (Order 94-01), § 392-169-055, filed 2/1/94, effective 3/4/94.]

AMENDATORY SECTION (Amending WSR 16-10-115, filed 5/4/16, effective 6/4/16)

**WAC 392-169-100 Running start enrollment count dates.** Enrollment count dates for the running start program shall be as follows:

(1) For community and technical colleges and for Central Washington University and Eastern Washington University, the first college or university day of each of the months of October through (~~June~~) August; and

(2) For Washington State University, the first university day of each of the months of September through (~~May~~) July.

[Statutory Authority: RCW 28A.600.390. WSR 16-10-115, § 392-169-100, filed 5/4/16, effective 6/4/16; WSR 14-22-079, § 392-169-100, filed 11/3/14, effective 12/4/14. Statutory Authority: RCW 28A.300.390, 28A.150.260 and 28A.150.290. WSR 95-09-042 (Order 95-02), § 392-169-100, filed 4/14/95, effective 5/15/95. Statutory Authority: RCW 28A.600.390, 28A.150.260 and [28A.150.]290. WSR 94-04-095 (Order 94-01), § 392-169-100, filed 2/1/94, effective 3/4/94.]

**WSR 23-08-084**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**

[Filed April 5, 2023, 9:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-04-024.

Title of Rule and Other Identifying Information: WAC 110-110-0010  
Foster care planning for Indian children—Definitions. More specifically, the definition of "Indian child."

Hearing Location(s): On May 9, 2023, telephonic. Oral comments may be made by calling 360-972-5385 and leaving a voicemail that includes the comment and an email or a physical address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including May 9, 2023, will be considered.

Date of Intended Adoption: May 12, 2023.

Submit Written Comments to: DCYF rules coordinator, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by May 9, 2023.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-972-5385, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), by May 4, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules are needed for the delivery of child welfare services and, more specifically, for DCYF to better identify when to apply state and federal Indian Child Welfare Acts codified at chapter 13.38 RCW and 25 U.S.C. chapter 21, respectively. This rule making will address issues identified in the court's opinion in Matter of Dependency of Z.J.G., 196 Wn.2d 152, 471 P.3d 853 (2020).

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 74.08.090; chapter 13.38 RCW; and 25 U.S.C. chapter 21.

Statute Being Implemented: RCW 74.08.090; chapter 13.38 RCW; and 25 U.S.C. chapter 21.

Rule is necessary because of state court decision, Matter of Dependency of Z.J.G., 196 Wn.2d 152, 471 P.3d 853 (2020).

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Robert Smith, Olympia, 360-407-1602; Implementation and Enforcement: DCYF, state-wide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

April 5, 2023



Brenda Villarreal  
Rules Coordinator

**OTS-4324.3**

AMENDATORY SECTION (Amending WSR 20-04-019, filed 1/27/20, effective 2/27/20)

**WAC 110-110-0010 Foster care planning for Indian children—Definitions.** For the purposes of this section through WAC 110-110-0100, the term "Indian child" is defined as any unmarried and unemancipated Indian person who is under age (~~eighteen~~) 18 and is, as determined by the Indian child's tribe or tribes, one of the following:

- (1) A member of an Indian tribe; or
- (2) Is eligible for membership in an Indian tribe (~~(and is the biological child of a member of an Indian tribe)~~).

[Statutory Authority: 2017 c 6. WSR 20-04-019, § 110-110-0010, filed 1/27/20, effective 2/27/20. WSR 18-14-078, recodified as § 110-110-0010, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090, chapter 13.38 RCW, and 25 U.S.C. chapter 21. WSR 16-13-151, § 388-70-091, filed 6/22/16, effective 7/23/16; Order 1167, § 388-70-091, filed 10/27/76.]

**WSR 23-08-086**  
**PROPOSED RULES**  
**OFFICE OF**  
**ADMINISTRATIVE HEARINGS**  
[Filed April 5, 2023, 11:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-19-088.

Title of Rule and Other Identifying Information: WAC 10-24-010  
Representation as an accommodation for a party with disabilities.

Some parties with disabilities may not be able to meaningfully participate in adjudicative proceedings before the office of administrative hearings (OAH). Such parties may require a disability accommodation that provides them with a representative. This rule describes a process for determining if a party qualifies for this accommodation. It also describes how the appointment of a suitable representative is made.

Hearing Location(s): On May 9, 2023, at 1:00 p.m., at the Office of Administrative Hearings, 2420 Bristol Court S.W., Olympia, WA 98502. For directions, call or go to our public website <https://oah.wa.gov>.

Date of Intended Adoption: June 6, 2023.

Submit Written Comments to: Sabiha Malikani Ahmad, P.O. Box 42488, Olympia, WA 98504-2488, email [rulemaking@oah.wa.gov](mailto:rulemaking@oah.wa.gov), fax 360-664-8721, by May 9, 2023.

Assistance for Persons with Disabilities: Contact Johnette Sullivan, deputy chief ALJ, ADA coordinator, phone 360-407-2700, fax 360-664-8721, TTY 711, email [OAH\\_ADACoordinator@oah.wa.gov](mailto:OAH_ADACoordinator@oah.wa.gov), by May 2, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes are intended to improve clarity and readability. The proposal clarifies the records that are confidential under the Public Records Act. We have made certain other changes to improve the transparency of the process. Subsections that expired two years after implementation are being removed. OAH failed to establish a network of suitable representatives and that section is removed. The proposal does not change the eligibility requirements for the accommodation.

Reasons Supporting Proposal: The purpose serves to ensure that OAH's accommodation rule for people with disabilities is "clearly and simply stated, so that it can be understood by those required to comply," RCW 34.05.220(5). Furthermore, the transparent articulation of our current process as it has developed in the early years of this rule's implementation serves our mandate under the Public Records Act whereby "Each state agency shall separately state and currently publish in the Washington Administrative Code [...] (b) Statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available; (c) Rules of procedure[.]" RCW 42.56.040.

Statutory Authority for Adoption: RCW 34.12.080, 34.05.250, and 34.12.030.

Statute Being Implemented: This rule implements the accommodation mandates under the Americans with Disabilities Act (ADA) and antidiscrimination mandates under the Washington law against discrimination (WLAD). OAH is obligated to ensure parties have access to its services under the ADA and WLAD. The OAH possesses obligations pertinent to

this rule under Title II of ADA as a state agency, as well as Title III of ADA as a place of public accommodation.

Rule is necessary because of federal law, ADA, 42 U.S.C. §§ 12131-12134, 12181-12189; The Rehabilitation Act of 1973 29 U.S.C. §701 *et seq.*

Name of Proponent: OAH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Johnette Sullivan, Deputy Chief ALJ, 2420 Bristol Court S.W., Olympia, WA 98502, 360-407-2700.

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

A cost-benefit analysis is not required under RCW 34.05.328.

OAH's proposed amendment does not involve rules of any of the agencies identified in RCW 34.05.328(5) for which a cost-benefit analysis is required.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: "Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

"No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity." 28 C.F.R. § 35.130(a).

"A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130 (b) (7) (i).

"Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability, including a claim that an individual with a disability was granted a reasonable modification that was denied to an individual without a disability." 28 C.F.R. § 35.130(i).

"No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182.

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related

process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:  
Is fully exempt.

April 5, 2023

Lorraine Lee

Chief Administrative Law Judge

## OTS-4497.2

AMENDATORY SECTION (Amending WSR 17-17-079, filed 8/16/17, effective 1/1/18)

**WAC 10-24-010 ((Accommodation-)) Representation as an accommodation for a party with disabilities.** (1) ~~((Accommodation requests under the federal Americans with Disabilities Act (ADA) by a party to an office of administrative hearings adjudicative proceeding are handled pursuant to the office of administrative hearings' policy.))~~ **Purpose.** This section specifically applies to ~~((requests for))~~ representation as ~~((an))~~ a necessary accommodation in adjudicative proceedings before the office of administrative hearings (OAH). The appointment of a suitable representative may be an appropriate response in those cases where the party is unable to meaningfully participate in an adjudicative proceeding due to a disability. This section is intended to ensure that all requests for accommodation are addressed in accordance with the requirements of the Americans with Disabilities Act (ADA) and ~~((that any accommodation response is the minimum necessary to effectively address the needs of the party))~~ the Washington law against discrimination.

(2) **Definitions.**

(a) "Disability" as used in this section is defined under 42 U.S.C. Sec. 12102. ~~((Disability does not include factors such as lack of education, lack of English proficiency, or other nondisability factors.))~~

(b) "Suitable representative" means an individual who is qualified under subsection (1) of this section to provide the assistance needed to enable ~~((an otherwise unrepresented))~~ a self-represented party with a disability to meaningfully participate in the adjudicative proceeding.

(c) "~~((Agency))~~ ADA coordinator" is an ~~((administrative law judge))~~ employee designated by the chief administrative law judge ~~((to make the assessment and accommodation determinations described in subsection (3) of this section))~~.

(3) ~~((If,))~~ **Requests and referrals.** The representative accommodation process can begin by the party's own request or another person's referral.

(a) Requests. The party may request a representative accommodation verbally, online, in the hearing request form, or by contacting OAH. Requests should be made in advance whenever possible.

(b) Referrals by others. Other persons, including a party to the proceeding, may inform the ADA coordinator that the party may need accommodation. The ADA coordinator will contact the party.

(c) Referral by administrative law judge (ALJ). During any stage of an adjudicative proceeding, the ~~((administrative law judge or any party has a reasonable belief that an otherwise unrepresented party may be))~~ ALJ may believe that a self-represented party is unable to meaningfully participate in the adjudicative proceeding because of a disability ~~((, with that))~~. In forming this belief, the ALJ may refer to subsection (7) of this section. With the party's consent the ~~((ad-~~ministrative law judge)) ALJ shall refer the party to the ~~((agency))~~ ADA coordinator and delay ~~((commencing))~~ starting or resuming the adjudicative proceeding until the ~~((accommodation request is addressed by the))~~ ADA coordinator issues an accommodation determination.

(4) **Expedited process.** The ~~((agency))~~ ADA coordinator will expedite the assessment and accommodation process to the greatest extent practicable ~~((and consistent with the party's limitations.~~

~~(5) All records considered in the decision whether to appoint a suitable representative shall be kept confidential and held separately from the adjudicative proceeding record.~~

~~(6) Upon a party's request for a suitable representative or referral from the administrative law judge, the agency)) while minimizing undue burdens, fundamental alterations of process, and prejudice to parties.~~

(5) Confidentiality. OAH keeps confidential all health information from health care providers, health plans, and other covered entities under the federal Health Insurance Portability and Accountability Act and the state Health Care Information Access and Disclosure Act in chapter 70.02 RCW. However, all other records considered or created during the accommodation process may be subject to public disclosure under the state Public Records Act in chapter 42.56 RCW. The ADA coordinator will not add records to the adjudicative proceeding record unless at the self-represented party's request.

(6) Disability determination. The ADA coordinator must promptly review requests and referrals and determine whether the party ~~((is a person with))~~ has a disability. The ~~((agency))~~ ADA coordinator may require documentation from the party at the coordinator's discretion.

(7) Meaningful participation determination. If the party ~~((is a person with))~~ has a disability, the ~~((agency))~~ ADA coordinator must determine whether the party is unable to meaningfully participate in the adjudicative proceeding ~~((as a result of))~~ due to the disability. The existing assistance of a legal guardian, near relative, or friend shall not affect the ~~((agency))~~ ADA coordinator's determination of whether the party is able to meaningfully participate in the adjudicative proceeding. The ~~((agency))~~ ADA coordinator shall consider the following:

- (a) Whether the party has a rational and factual understanding of:
- (i) The nature and object of the adjudicative proceeding;
  - (ii) The right of representation;
  - (iii) The right to present, examine, and object to evidence;
  - (iv) The right to cross-examine witnesses; and
  - (v) The right to appeal.
- (b) Whether the party has sufficient present ability to:
- (i) Exercise the rights in (a) of this subsection;
  - (ii) Make informed decisions about whether to waive the rights in (a) of this subsection;
  - (iii) Physically participate in the adjudicative proceeding;
  - (iv) Respond to any allegations, issues, arguments, and evidence presented by other parties;

(v) Evaluate and coherently discuss arguments and defenses;  
 (vi) Present evidence relevant to eligibility for relief;  
 (vii) Present coherent testimony based upon adequate recall; and  
 (viii) Act upon instructions and information presented by other parties and the ((administrative law judge)) ALJ.

(c) Whether the party's spouse or registered domestic partner is their co-party in the adjudicative proceeding and the co-party can meaningfully participate without a suitable representative.

(8) **Accommodation determination.** If the party is unable to meaningfully participate in the adjudicative proceeding ((as a result of)) due to a disability, the ((agency)) ADA coordinator will ((commence an interactive process)) communicate with the party to determine the type of accommodation required to allow the party to meaningfully participate in the adjudicative proceeding, specifically:

(a) Whether an alternative accommodation can adequately address the party's specific disability-related limitations; or

(b) Whether a suitable representative is the most appropriate accommodation.

(9) **Accommodation denial.** If the ((agency)) ADA coordinator determines ((that appointment of)) a suitable representative is not ((the accommodation)) needed, the ((agency)) ADA coordinator will inform the party in writing ((, or any other communication appropriate to the situation, of the denial of a suitable representative, including how to seek review of the decision under subsection (16))) of the reasons for denial and how to seek review of the decision under subsection (17) of this section.

(10) **No cost to party.** If the ((agency)) ADA coordinator determines that appointment of a suitable representative is the necessary accommodation ((necessary for a party's meaningful participation in an adjudicative proceeding)), the ((agency)) ADA coordinator will identify an individual to assist the party at no cost to the party.

(11) **Suitable representative factors.** To identify an individual, the ((agency)) ADA coordinator will consider the needs identified in the assessment under subsection (7) of this section and any other factors, including:

(a) The party's preferences;

(b) The knowledge, skills and abilities of the individual being considered, including:

(i) Knowledge of or the ability to timely attain knowledge of the procedural rules;

(ii) Knowledge of or ability to timely attain knowledge of the substance at issue;

(iii) Experience and training in advocating for people with disabilities; and

(iv) The individual's availability to meet the timelines and duration of the particular adjudicative proceeding.

~~((c) An individual is not eligible to be appointed as a suitable representative if the individual is employed by the office of administrative hearings, or is prohibited by law from representing the party.~~

~~(d))~~ **(12) Acceptance and appointment.** The ((agency)) ADA coordinator will inform the party with a disability that an individual has been identified to assist as the party's suitable representative. The party will show acceptance of the appointment in writing or in any other form consistent with the party's disability. The appointment of a suitable representative is made by the chief ALJ. The appointment is effective upon acceptance of the accommodation by the party with a disability.

~~(13) **Rejection.** The party has the right to reject the identified suitable representative. If the party disagrees with the appointment, the party will contact the ((agency)) ADA coordinator ((. The agency)) to request a new representative. If the request contains new disability or suitability-related information, the ADA coordinator ((will evaluate the party's reconsideration request, and)) may consider identifying another individual to be appointed as the party's suitable representative ((, if the request for reconsideration contains new disability or suitability related information.~~

~~(12) The appointment of a suitable representative is made by the chief administrative law judge. The appointment is effective upon acceptance of the accommodation by the party with a disability. The party has the right to reject the appointment of a suitable representative).~~

~~((13))~~ **(14) Notice of appearance.** Upon appointment the suitable representative will file a notice of appearance under WAC 10-08-083 or other applicable rule or law to inform all parties and representatives of record of the ((suitable representative's)) individual's name, address, and telephone number.

~~((14))~~ **(15) End of appointment.** The appointment under this section ends automatically when the time expires to file a petition for review of the ((administrative law judge's)) ALJ's initial or final order ((, unless earlier terminated by the party or the suitable representative)). Alternatively, the appointment may be terminated at any stage by the party or the suitable representative. The suitable representative will file a notice of withdrawal under WAC 10-08-083 or other applicable rule or law if the appointment is terminated prior to the deadline for the petition for review.

~~((15) In the event)~~ **(16) In case of remand.** If a higher authority remands the case to ((the office of administrative hearings, the agency)) OAH, the ADA coordinator will ((determine)) redetermine whether ((the party is able to meaningfully participate in the remanded adjudicative proceeding under subsection (7) of this section and the appropriate accommodation under subsection (8) of this section. If)) a suitable representative is still the most appropriate accommodation ((, the agency)). The ADA coordinator will ((determine)) verify if the individual previously appointed is available or will identify another individual to be the suitable representative. The party ((with a disability may state a preference for or disagree with an individual's appointment, or reject an appointment)) retains the right to accept or reject the identified suitable representative.

~~((16))~~ **(17) Grievance.** If the party is not satisfied with a decision by the ((agency)) ADA coordinator, the party may request review of the accommodation request by the chief ((administrative law judge)) ALJ, whose decision shall be final.

~~((17) The office of administrative hearings will establish a network of individuals who are able and available to be appointed by the chief administrative law judge as suitable representatives.~~

~~(18) The chief administrative law judge will ensure that all office of administrative hearings staff receive both initial and annual training commensurate with the scope of their duties. The training selected will include specific reference to the requirements of the ADA, as amended, as well as the Washington state law against discrimination, as they relate to the issues of reasonable accommodation throughout an adjudicative proceeding, with particular regard to the process for assessing and determining accommodations necessary to ensure meaningful participation in an adjudicative proceeding.~~

~~(19))~~ **(18) ADA coordinator training.** The ~~((agency))~~ ADA coordinator will ~~((also))~~ receive specialized training ~~((initially and thereafter))~~ as necessary to assure an adequate knowledge and understanding of ~~((the requirements of))~~ adjudicative proceedings and federal and state law requirements with respect to assessing the need for reasonable accommodations. The ~~((agency))~~ ADA coordinator will make recommendations to the chief ~~((administrative law judge))~~ ALJ regarding the necessary training for agency staff and for suitable representatives.

~~((20) Suitable representatives shall receive))~~ **(19) Suitable representative training.** Before serving as a suitable representative, an individual must complete uniform qualification training, or demonstrate equivalent experience or training, as established by the chief ~~((administrative law judge))~~ ALJ.

~~((21) The chief administrative law judge or his/her designee will develop routine reports that reflect the number of requests for accommodation pursuant to this section, the result of those requests, and the costs, if any, associated with any such accommodation. Personal health information and other confidential data will be redacted from reports in order to comply with relevant privacy laws.~~

~~(22) Two years following the effective date of this section the program will be reviewed and assessed for its effectiveness. The results of this assessment will be made available on the OAH public website for inspection and will also be provided to the office of financial management and all persons or organizations who express an interest in receiving the report. The assessment will include a review of:~~

~~(a) The timeliness of the process, including the suitable representative process and the impact on the scheduling of the adjudicative proceeding;~~

~~(b) The adjudicative proceeding outcome for parties with suitable representation, including how many cases resulted in: Settlement, orders affirming or reversing agency action, or defaults;~~

~~(c) The number of suitable representation requests granted and denied;~~

~~(d) The sources of referrals to the agency ADA coordinator;~~

~~(e) The number and outcome of appeals of denials to the chief administrative law judge; and~~

~~(f) Feedback from parties, the agency ADA coordinator, persons appointed as suitable representatives, administrative law judges, and referring agency representatives on how the provisions of this section may be improved.))~~

[Statutory Authority: RCW 34.12.080, 34.05.250, and 34.12.030. WSR 17-17-079, § 10-24-010, filed 8/16/17, effective 1/1/18.]