

## WSR 23-18-007

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Washington Medical Commission)

[Filed August 23, 2023, 4:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-054.

Title of Rule and Other Identifying Information: Health equity continuing education (CE) requirements for allopathic physicians, WAC 246-919-445, and physician assistants, WAC 246-918-195. The Washington medical commission (WMC) is proposing new sections of rule to establish health equity CE requirements to implement ESSB 5229 (chapter 276, Laws of 2021).

Hearing Location(s): On October 20, 2023, at 8:30 a.m. Register for the virtual meeting via [Microsoft] Teams <https://events.gcc.teams.microsoft.com/event/8ab2751c-9156-4c44-94b2-39d78e013a63@11d0e217-264e-400a-8ba0-57dcc127d72d>; or attend in person at the Department of Health, 111 Israel Road S.E., Room 160, Tumwater, WA 98501. To join the WMC's rules interested parties email list, please visit [https://public.govdelivery.com/accounts/WADOH/subscriber/new?topic\\_id=WADOH\\_153](https://public.govdelivery.com/accounts/WADOH/subscriber/new?topic_id=WADOH_153).

Date of Intended Adoption: October 20, 2023.

Submit Written Comments to: Amelia Boyd, Program Manager, P.O. Box 47866, Olympia, WA 98504-7866, email <https://fortress.wa.gov/doh/policyreview>, by October 13, 2023.

Assistance for Persons with Disabilities: Contact Amelia Boyd, phone 1-800-525-0127, TTY 711, email [medical.rules@wmc.wa.gov](mailto:medical.rules@wmc.wa.gov), by October 13, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 43.70.613 (3)(b) directs the rule-making authority for each health profession licensed under Title 18 RCW that is subject to CE to adopt rules requiring a licensee to complete health equity CE training at least once every four years. The statute also directs the department of health (department) to create model rules establishing the minimum standards for health equity CE programs. The department filed model rules for health equity CE minimum standards on November 23, 2022, under WSR 22-23-167. Any rules adopted by WMC must meet or exceed the minimum standards in the model rules in WAC 246-12-800 through 246-12-830.

WMC is proposing new WAC 246-919-445 for allopathic physicians and new WAC 246-918-195 for physician assistants to implement ESSB 5229. WMC is proposing adopting the health equity model rules, WAC 246-12-800 through 246-12-830, for allopathic physicians and physician assistants to comply with RCW 43.70.613.

The proposed rule adds two hours of health equity education, as required in the model rules, to be completed as part of the current CE requirements every four years. The proposed rule does not change total CE hours but requires two hours in health equity CE every four years which is absorbed into the existing number of CE hours required. The health equity CE requirement is counted under existing, unspecified CE requirements for the profession.

Reasons Supporting Proposal: The goal of health equity CE is to equip health care workers with the skills to recognize and reduce health inequities in their daily work. The content of health equity trainings include implicit bias trainings to identify strategies to reduce bias during assessment and diagnosis in an effort to address

structural factors, such as bias, racism, and poverty, that manifest as health inequities.

Two hours of training allows individuals to gain a foundation in health equity that can have an immediate positive impact on the professional's interaction with those receiving care. Health equity training enables health care professionals to care effectively for patients from diverse cultures, groups, and communities, varying race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity. The two hours of health equity CE credits may be earned as part of the health professional's existing CE requirements, therefore not requiring completion of additional CE hours.

Statutory Authority for Adoption: RCW 18.71.017, 18.130.050, and 43.70.613.

Statute Being Implemented: RCW 43.70.613.

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

Name of Proponent: WMC, governmental.

Name of Agency Personnel Responsible for Drafting: Amelia Boyd, 111 Israel Road S.E., Tumwater, WA 98501, 360-918-6336; Implementation and Enforcement: Melanie de Leon, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2755.

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 Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, phone 360-918-6336, email amelia.boyd@wmc.wa.gov.

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule only applies to CE for professionals and does not apply to businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 21, 2023  
Melanie de Leon  
Executive Director

## OTS-4644.1

### NEW SECTION

**WAC 246-918-195 Health equity continuing education training requirements.** (1) A physician assistant must complete two hours of health equity continuing education training every four years as described in WAC 246-12-800 through 246-12-830.

(2) The two hours of health equity continuing education a physician assistant completes count toward meeting applicable continuing

education requirements in the same category specified in WAC 246-918-180.

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**OTS-4643.1**

NEW SECTION

**WAC 246-919-445 Health equity continuing education training requirements.** (1) A physician must complete two hours of health equity continuing education training every four years as described in WAC 246-12-800 through 246-12-830.

(2) The two hours of health equity continuing education a physician completes count toward meeting applicable continuing education requirements in the same category specified in WAC 246-919-460.

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## WSR 23-18-032

## PROPOSED RULES

## BOARD OF ACCOUNTANCY

[Filed August 29, 2023, 9:21 a.m.]

Supplemental Notice to WSR 23-16-122.

Preproposal statement of inquiry was filed as WSR 23-11-065.

Title of Rule and Other Identifying Information: WAC 4-30-062 Applying to take the CPA examination.

Hearing Location(s): On October 20, 2023, at 9:00 a.m., at the Capital Event Center, 6005 Tye Drive S.W., Tumwater, WA 98512; or via Microsoft Teams meeting. The link to join the meeting will be available on the board of accountancy's (BOA) website approximately two weeks before the hearing date at <https://acb.wa.gov/next-board-meeting>. A phone number will also be provided in case you are unable to attend online.

Date of Intended Adoption: October 20, 2023.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507, email [Kirsten.donovan@acb.wa.gov](mailto:Kirsten.donovan@acb.wa.gov), fax 360-664-9190, by October 18, 2023.

Assistance for Persons with Disabilities: Contact Kirsten Donovan, rules coordinator, phone 360-664-9191, fax 360-664-9190, TTY 771 [711], email [Kirsten.donovan@acb.wa.gov](mailto:Kirsten.donovan@acb.wa.gov), by October 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The supplemental notice is filed to further revise the draft language, while remaining consistent with the originally filed purposes included here.

BOA proposes amending the rule to: (1) Extend the time period (testing window) in which all sections of the CPA examination must be passed; and (2) eliminate outdated subsections which no longer apply after the implementation of continuous testing.

Reasons Supporting Proposal: See purposes above.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: BOA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael J. Paquette, CPA, 711 Capitol Way South, Suite 400, Olympia, WA 98501, 360-485-1659.

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. BOA is not a listed agency in RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

August 29, 2023  
Michael J. Paquette, CPA  
Executive Director

OTS-4803.2

AMENDATORY SECTION (Amending WSR 21-23-003, filed 11/3/21, effective 12/4/21)

**WAC 4-30-062 Applying to take the CPA examination.** (1) **Application process and due dates:** Your application to take the CPA examination must be submitted to the board's examination administrator. Applicants must submit all required information, documents, and fees to complete their application within 60 days of the date their application is submitted to the board's examination administrator. Your application is not considered complete until all ~~((of))~~ the following are provided:

- Complete application information and requested documents;
- Fee(s).

(2) **Fee refund and forfeiture:** Upon submission of your application to the examination administrator, no portion of the board's administrative fee is refundable. Upon the examination administrator's authorization to test, no portion of the total exam fee (both administrative fee and section fee(s)) is refundable. If you fail to meet the board's scheduling or admission requirements, you forfeit all ~~((of))~~ the exam fee(s) and you must reapply to take the section(s) of the exam.

(3) **Notice of admittance to the examination or denial of your application:** You must contact the approved test provider to schedule the time and location for your examination. The notice of eligibility to take the examination is called a Notice to Schedule (NTS) ~~((of))~~. The NTS will be valid for one taking of the examination section(s) within the six months following the date of the NTS.

Notice of a denial of your application ~~((of))~~ or notice of your eligibility to take the examination will be sent to you by the examination administrator.

(4) **Examination content ~~((and grading))~~:** The CPA examination shall test the knowledge and skills required for performance as an entry-level certified public accountant. The examination shall include the subject areas of accounting and auditing and related knowledge and skills as the board may require. ~~((The board may accept the advisory grading services of the American Institute of Certified Public Accountants.))~~

(5) **Examination process:**

(a) ~~((Conditions for examinations held prior to January 1, 2004: Contact a customer service representative at customerservice@acb.wa.gov or by phone at 360-753-2586.~~

~~((b) For examinations taken after December 31, 2003:))~~ The board uses all parts of the uniform CPA examination and the advisory grading services of the American Institute of Certified Public Accountants.

~~((i))~~ (b) To satisfy the examination requirement for a license you must have achieved a score of 75 on all sections of the examination within a rolling ~~((18))~~ 36-month period.

~~((ii))~~ (c) You may take the required sections ~~((individually and))~~ in any order. ~~((Credit for any section(s) taken and passed after December 31, 2003, will be valid for 18 months from the actual date you successfully passed any particular section of the examination.~~

~~((iii))~~ (d) You must pass all sections of the examination ~~((with-in a rolling 18-month period))~~, which begins on the date that the first section(s) is passed. A section is considered passed on the date that your grade is released.

~~((iv) You may not retake a failed section(s) in the same examination window. An examination window refers to a three-month period in~~

~~which candidates have an opportunity to take the examination (comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the examination is refreshed).~~

~~(v) If the board determines that the examination system changes necessary to eliminate the test window limitations have been implemented, (iv) of this subsection will no longer be effective, and a candidate) (e) You can retake a test section ((once their)) after the grade for any previous attempt of that same section has been released.~~

~~((vi)) (f) In the event you do not pass all sections of the examination within the rolling ((18)) 36-month period, credit for any section(s) passed prior to the ((18)) 36-month period will expire and you must retake any expired section.~~

[Statutory Authority: RCW 18.04.055. WSR 21-23-003, § 4-30-062, filed 11/3/21, effective 12/4/21; WSR 19-10-080, § 4-30-062, filed 5/1/19, effective 6/1/19; WSR 18-21-034, § 4-30-062, filed 10/8/18, effective 11/8/18. Statutory Authority: RCW 18.04.055, 18.04.105. WSR 16-10-019, § 4-30-062, filed 4/22/16, effective 5/23/16. Statutory Authority: RCW 18.04.105(2). WSR 10-24-009, amended and recodified as § 4-30-062, filed 11/18/10, effective 12/19/10; WSR 05-01-137, § 4-25-720, filed 12/16/04, effective 1/31/05; WSR 03-17-041, § 4-25-720, filed 8/15/03, effective 9/30/03. Statutory Authority: RCW 18.04.055(5) and 18.04.105(2). WSR 02-04-064, § 4-25-720, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055. WSR 93-12-070, § 4-25-720, filed 5/27/93, effective 7/1/93.]

**WSR 23-18-037**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(By the Code Reviser's Office)  
[Filed August 30, 2023, 9:19 a.m.]

WAC 388-825-0571, proposed by the department of social and health services in WSR 23-03-013, appearing in issue 23-04 of the Washington State Register, which was distributed on February 15, 2023, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register

**WSR 23-18-039**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**  
[Filed August 30, 2023, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-12-022.

Title of Rule and Other Identifying Information: Child welfare placement and foster care rate assessment (FCRA), chapter 110-50 WAC. The department of children, youth, and families (DCYF) will be revising placement WAC in chapter 110-50 WAC and other related rules regarding child placing agencies (CPAs) expectations and reimbursement as they relate to the revised foster care maintenance levels.

DCYF will also be making changes to the FCRA WAC in chapter 110-50 WAC and other related rules. The WAC revisions will allow DCYF to revise the foster care maintenance levels and rates and the standardized process that will be used to determine the level and rate paid to licensed foster parents. The standardized process will determine the child's or youth's level and rate based on their physical and mental health and behavioral needs. The WAC will also be reorganized, and redundancy removed, decreasing the number of placement and FCRA WAC.

The following WAC will be revised: Placement: WAC 110-50-0230 Child placing agency (CPA) expectations, 110-50-0240 CPA reimbursement and 110-50-0250 CPA contractual requirements; and foster care rate assessment: WAC 110-50-0400 Legal basis for the foster care program, 110-50-0410 Purpose, 110-50-0420 Definitions for foster care rate assessment (FCRA), 110-50-0430 Financial requirements of the department, 110-50-0440 Foster care maintenance payment and standardized assessment tool, 110-50-0450 Using the standardized assessment tool to determine foster care reimbursement levels, 110-50-0460 Reimbursement to foster families that reside in or move to another state, 110-50-0470 Payments to relative caregivers and suitable persons, 110-50-0480 Starting foster care maintenance payments, 110-50-0490 Terminating foster care maintenance payments, 110-50-0500 Foster parents' level notification, 110-50-0510 Requesting a department review of the foster care rate level, 110-50-0520 Department review of the foster care rate level, 110-50-0530 Foster parents' notification of department review, 110-50-0540 Foster parents' right to appeal, and 110-50-0550 Scope of administrative hearings.

Hearing Location(s): On October 10, 2023, telephonic. Make oral comments by calling 360-972-5385.

Date of Intended Adoption: October 11, 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 October 10, 2023.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, 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 October 5, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The WAC revisions will allow DCYF to pay additional levels of foster care maintenance payments based on the specific needs of the child or youth. The changes to the standardized assessment tool will be centered on the child's or youth's needs, not on the home they are placed in.

Reasons Supporting Proposal: See purpose.



Statutory Authority for Adoption: RCW 43.216.065 and 74.13.031.

Statute Being Implemented: RCW 43.216.065 and 74.13.031.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Campbell, Ellensburg, Washington, 509-654-4940; 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 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.

August 30, 2023  
Brenda Villarreal  
Rules Coordinator

## OTS-4873.2

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0230 ((Under what conditions and how much will the department reimburse to child placing agencies licensed or certified under chapter 74.15 RCW to provide care to children?)) Child placing agency (CPA) expectations.** ((1) The CPA representative must discuss with the department social worker for the child the roles of the agency and the department in the placement, permanency planning, and supervision of the child. The agency representative and the department social worker must also discuss services the department or the agency will provide to the child's parents and extended family.

(2) The CPA must maintain the documentation required by contract to demonstrate all services provided to children in care and for whom the department makes payment.

(3) The department will pay a monthly administrative fee to a CPA if the agency, in addition to supervision of the child, provides services to the child or the child's family.

(4) If the department wants to borrow a CPA-certified home for placement of a child, the department pays the agency for the use of the CPA's foster home with approval of the agency. The department pays

~~the borrowed home fee described in the contract between the department and the agency.~~

~~(5) The department will pay a set monthly fee to a child placing agency for a borrowed home if the agency provides supervision services only to the child and no services to the child's family. The department pays this fee only to enable the agency to maintain the foster care license and to provide any related licensing training and support services. This activity includes maintenance of a foster care license for foster parent dependency guardianships in the agency-certified home. The following conditions also apply:~~

~~(a) The department may pay for a maximum of two borrowed beds in one foster home.~~

~~(b) If one CPA borrows a bed from another CPA, the department will pay only one service fee to one agency for the child. The two private agencies and the department will mutually identify and agree upon the agency the department will pay.~~

~~(6) The department may enter into contracts with CPAs to provide intensive treatment and supervision services to children with behavioral, emotional, medical, or developmental disabilities. The department will assess the needs of the child, assign a service level, and pay the rate provided in the contract.~~

~~(7) Before making payment for care of a child, the department must determine initial and ongoing eligibility for financial support, approve the placement, and approve the case plan for care of the child and services to the family. The department will document this approval through written agreements, documentary reports, and supervisory conferences with the CPA.) The department requires CPAs to:~~

~~(1) Be licensed or certified under chapter 74.15 RCW.~~

~~(2) Have a contract with the department to provide child or youth placement and related services. The department will only place and pay for services to an agency that the department has a contract with.~~

~~(3) Document the services provided as required in their contract.~~

~~(4) Maintain the license of their foster family homes for placements of children or youth to occur.~~

~~(5) Provide support services to the foster parents.~~

~~(6) Be financially responsible for placement costs for a child or youth that the CPA brought from another country for adoption if the adoption is not finalized, disrupts prior to finalization, or until they reach age 18.~~

[WSR 18-14-078, recodified as § 110-50-0230, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.13.031. WSR 01-08-047, § 388-25-0430, filed 3/30/01, effective 4/30/01.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0240 ((What steps may the department take if a child placing agency does not meet the requirements of this chapter?)) CPA reimbursement.** ((~~(1) In addition to any sanctions included in the department's contract with the CPA, the DCFS social worker must stop payment of the agency administrative fees in accordance with department procedures if the department does not receive the child's report in the time frame stipulated in WAC 388-25-0425.~~

~~(2) The DCFS social worker must inform the regional licenser and contracts coordinator when there are continuing problems with reports.)~~ For licensed or certified CPAs under chapter 74.15 RCW:

(1) The department:

(a) Must:

(i) Determine initial and ongoing eligibility for financial support;

(ii) Approve placements before making payments;

(iii) Pay a monthly service fee if the agency provides services that are in addition to supervision of children or youth or their families; and

(iv) Discuss the following:

(A) Roles of the department;

(B) Placement support to foster parents;

(C) Caregiver support plan;

(D) Supervision of children or youth; and

(E) Services the department will provide to children or youth;

(b) May enter into contracts with them to provide intensive treatment and supervision services to children or youth with physical, mental health, or behavioral needs. This includes:

(i) Assessing the needs of each child or youth;

(ii) Assigning a service level for each child or youth; and

(iii) Paying the rate provided in the contract.

(2) CPAs must:

(a) Sign and return written service agreements to the department for each child or youth accepted;

(b) Document and maintain documentation required in their contract to demonstrate case management and support services provided to children or youth for whom the department makes payment; and

(c) Provide quarterly progress reports to the DCYF caseworker for each child or youth whose placement or services the department pays for.

[WSR 18-14-078, recodified as § 110-50-0240, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.13.031. WSR 01-08-047, § 388-25-0435, filed 3/30/01, effective 4/30/01.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0250** ~~((What are the department's expectations for child placing agencies (CPA) to which the department makes reimbursement for services or administrative costs?))~~ **CPA contractual requirements.** ~~((1) The department requires that the child placing agency (CPA) be licensed or certified under chapter 74.15 RCW and have a contract with the department for the provision of child placement and related services.~~

~~(2) The CPA must document the services provided in a format described by the department in the contract.~~

~~(3) When the department agrees to place a child with a CPA, the licensed or certified agency must maintain the license of the foster family home and provide support services to the foster parents. The department will only place and pay for services with an agency with which the department has a contract. The agency must provide payment to the foster family in accordance with this chapter.~~

~~(4) The department requires that private agencies bringing children from other countries for adoption remain financially responsible for the child's placement costs if the adoption is not finalized, disrupts prior to finalization, or until the child reaches age eighteen.)~~ The department must monitor CPA's compliance with their contract. If a CPA is found out of compliance with their contract, DCYF:

(1) Contracts managers must follow the sanctions included in the contract with the department and the CPA.

(2) Caseworkers must:

(a) Notify the fiduciary to stop agency service fee payments if the department does not receive the children's or youth's reports in the time frames outlined in the contract; and

(b) Inform their regional CPA lead when there are ongoing problems with reports or the CPA.

[WSR 18-14-078, recodified as § 110-50-0250, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.13.031. WSR 01-08-047, § 388-25-0415, filed 3/30/01, effective 4/30/01.]

#### **FOSTER CARE RATE ASSESSMENT LEGAL BASIS, PURPOSE, AND DEFINITIONS**

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0400 ((What kinds of financial support are available to licensed foster care providers?)) Legal basis for the foster care program.** ((In addition to medical assistance and other services that may be provided to meet the specific needs of a foster child, the department provides licensed foster parents with a monthly foster care maintenance payment. This payment is for the benefit of the child.)) The legal basis for the foster care program is RCW 74.13.031, which authorizes the department to provide foster care placement services.

[WSR 18-14-078, recodified as § 110-50-0400, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090. WSR 09-16-045, § 388-25-0001, filed 7/28/09, effective 8/28/09.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0410 ((What is the purpose of the foster care maintenance payment?)) Purpose.** ((The purpose of the foster care maintenance payment is to assist licensed foster parents in meeting the needs of their foster child. A basic rate payment (level 1) is paid to all foster parents to help cover the cost of food, clothing, shelter, and personal incidentals. In addition, there are three levels of supplemental payments (levels 2, 3 and 4) which are paid to foster pa-

~~rents who care for children with varying degrees of physical, mental, behavioral or emotional conditions that require increased effort, care or supervision that are above the needs of a typically developing child.)~~ The monthly foster care maintenance payment was established to assist licensed or certified foster parents, which includes licensed relatives and suitable persons, in meeting the needs of the children or youth placed in their care. The payment is for the benefit of the children or youth.

[WSR 18-14-078, recodified as § 110-50-0410, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090. WSR 09-16-045, § 388-25-0003, filed 7/28/09, effective 8/28/09.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0420** (~~What is the legal basis for the foster care program?)) Definitions for foster care rate assessment (FCRA). ((RCW 74.13.020 authorizes the department to provide foster care placement services.)) The following definitions apply to foster care rate assessments (FCRA):~~

"Behavior rehabilitation services" or "BRS" means a temporary wrap around support and treatment program for youth with extreme, high level service needs, used to safely stabilize them and assist them in achieving a permanent plan or less intensive service.

"Child placing agency" or "CPA" means an agency licensed to place children or youth for foster care or adoption.

"Department" or "DCYF" means the department of children, youth, and families.

"Foster care" means the placement of children or youth by DCYF or licensed child placing agencies in homes or facilities licensed or certified pursuant to chapter 74.15 RCW or in homes or facilities that are not required to be licensed pursuant to chapter 74.15 RCW.

"Foster home" or "foster family home" means individuals licensed to regularly provide a 24-hour care in their home to children or youth.

"Licensed health care provider" means a medical doctor (MD), doctor of osteopathy (DO), doctor of naturopathy (ND), physician's assistant (PA), or an advanced registered nurse practitioner (ARNP).

"Licensing division" or "LD" means the division of the department of children, youth, and families that licenses and monitors foster homes, child placing agencies, and licensed group care facilities under the authority of chapter 74.15 RCW.

"Relatives" means the same as defined in RCW 13.36.020(5), described in RCW 74.15.020(2), or caregivers of Indian children or youth who are defined by tribal code or custom as relatives or extended family.

"Suitable persons" means nonrelatives with whom the child or youth, or the child's or youth's family, has a preexisting relationship; who has completed all required criminal history background checks and otherwise appears to be suitable and competent to provide care for the child or youth, and with whom they have been placed pursuant to RCW 13.34.130.

[WSR 18-14-078, recodified as § 110-50-0420, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.13.031. WSR 01-08-047, § 388-25-0005, filed 3/30/01, effective 4/30/01.]

## REIMBURSEMENT

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0430** (~~(What definitions apply to the foster care program?)~~) Financial requirements of the department. (~~(The following definitions are important:~~

~~"Alcohol affected infant"~~ means a child age birth through twelve months who was exposed to alcohol in utero and may demonstrate physical, behavioral, or cognitive signs that may be attributed to alcohol exposure.

~~"Behavior rehabilitation services"~~ (BRS) is a comprehensive program of positive behavioral support and environmental structure in a supervised group or family living setting. Resources are designed to modify a child's behavior or to appropriately care for a child's intensive medical condition. Services are tailored to each client's needs and offered in the least restrictive setting possible.

~~"Child placing agency"~~ means a private licensed or certified agency that places a child or children for temporary care, continued care, or for adoption.

~~"Children's administration"~~ (CA) means the cluster of programs within the department of social and health services responsible for the provision of child welfare, child protective, child care licensing, and other services to children and their families.

~~"Crisis residential center"~~ (CRC) means a secure or semi-secure facility established under chapter 74.13 RCW.

~~"Department"~~ means the department of social and health services (DSHS).

~~"Dependency guardian"~~ means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to RCW 13.34.232 for the limited purpose of assisting the court in the supervision of the dependency.

~~"Division of children and family services"~~ (DCFS) is the division of children's administration that provides child welfare, child protective, family reconciliation, and support services to children in need of protection and their families.

~~"Division of licensed resources"~~ (DLR) is the division of children's administration responsible for licensing or certifying child care homes and facilities under the authority of chapter 74.15 RCW.

~~"Drug affected infant"~~ means a child age birth through twelve months who was exposed to drugs or substances in utero and demonstrates physical, behavioral, or cognitive signs that can be attributed to exposure to drugs or substances.

~~"Early and periodic screening, diagnosis and treatment" (EPSDT), also known as "healthy kids," is a federal program for preventive health care for children and teens served by medicaid. The physical/well child examination helps find health problems early and enables the child to receive treatment for concerns identified in the examination.~~

~~"Foster care" means twenty-four-hour per day temporary substitute care for the child placed away from the child's parents or guardians and for whom the department or a licensed or certified child placing agency has placement and care responsibility. This includes but is not limited to placements in foster family homes, foster homes of relatives, licensed group homes, emergency shelters, staffed residential facilities, and preadoptive homes, regardless of whether the department licenses the home or facility and/or makes payments for care of the child.~~

~~"Foster care services" for the department include:~~

- ~~(1) The determination of needs of the child;~~
- ~~(2) The determination of need for foster care;~~
- ~~(3) The placement of the child in the type of foster care setting that best meets the child's needs;~~
- ~~(4) The referral of a child to a private child placement agency or institution to meet the child's specific needs;~~
- ~~(5) Medical services according to the rules of the department's medical program;~~
- ~~(6) Reimbursement for the care of a child in a licensed family foster home;~~
- ~~(7) The purchase of care from a licensed private child placing agency, behavioral rehabilitation services provider, or maternity home;~~
- ~~(8) Supervision of the foster care placement by direct supervision through departmental social work services; or indirect supervision through evaluation of periodic reports from private child placing agencies, rehabilitation services providers, or maternity homes with which the department has contractual arrangements.~~

~~"Foster home or foster family home" means person(s) regularly providing care on a twenty-four-hour basis to one or more children in the person's home.~~

~~"Group care" means a twenty-four-hour facility licensed or certified under chapter 388-148 WAC for more than six children. The facility provides the basic needs for food, shelter, and supervision. The facility also provides therapeutic services required for the successful reunification of children with the children's family resource or the achievement of an alternate permanent living arrangement.~~

~~"Independent living services" means the program services and activities established and implemented by the department to assist youth sixteen years or older in preparing to live on their own after leaving foster care.~~

~~"Overpayment" means any money paid by the department for services or goods not rendered, delivered, or authorized or where the department paid too much for services or goods or services rendered, delivered, or authorized.~~

~~"Regional support network" is an administrative body which oversees the funding for provision of public mental health services.~~

~~"Relative" means a person who is related as defined in RCW 74.15.020 (2) (a).~~

~~"Responsible parent" means a birth parent, adoptive parent, or stepparent of a dependent child or a person who has signed an affida-~~

vit acknowledging paternity that has been filed with the state office of vital statistics.

~~"Responsible living skills program"~~ means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, lives outdoors or in another unsafe location not intended for use as housing.

~~"Staffed residential home"~~ means a licensed home providing twenty-four hour care for six or fewer children or expectant mothers. The home may employ staff to care for children or expectant mothers.

~~"Shelter care"~~ means the legal status of a child at entry in foster care prior to a disposition hearing before the court.

~~"Vendor"~~ means an individual or corporation that provides goods or services to or for clients of the department and that controls operational decisions.) The department must:

- (1) Pay for placements and service plans they have approved.
- (2) Provide final approval for determining initial and ongoing eligibility for financial support.
- (3) Maintain oversight of placements and payments.

[WSR 18-14-078, recodified as § 110-50-0430, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.13.031. WSR 01-08-047, § 388-25-0010, filed 3/30/01, effective 4/30/01.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

~~WAC 110-50-0440 ((What method does the department use to determine what foster care rate will be paid for a foster child?))~~ Foster care maintenance payment and standardized assessment tool. ((The department uses a standardized assessment tool, the foster care rate assessment, to determine the foster care rate that will be paid on behalf of the child. The tool assesses the needs of the child and the foster parent's ability and time required to meet those needs.)) (1) All children or youth placed in foster care will receive the basic foster care maintenance payment for their age category to help cover the cost of food, clothing, shelter, and personal incidentals.

(a) The department must pay foster care maintenance payments to individuals:

(i) That are licensed or certified foster parents when children or youth are placed in their home;

(ii) Identified by the tribe when they:

(A) Take placement of children or youth; and

(B) Meet the licensing requirements of their tribe.

(b) Residing out of Washington state, when:

(i) They take placement of a Washington state child or youth;

(ii) They meet the licensing requirements of the state they reside in, per WAC 110-50-0460; and

(iii) Approval is received from both the sending and receiving state offices, per WAC 110-50-0100.

(2) The amount of the monthly foster care maintenance payment is determined using a standardized assessment tool that assesses children's and youth's needs in the following areas:

(a) Physical health;



(b) Mental health; and

(c) Behavioral needs.

(3) The standardized assessment tool must be completed to determine the rate of the foster care maintenance payment:

(a) Within 40 calendar days of the children's or youth's placement being documented in a licensed or certified foster home or relative or suitable persons home;

(b) At least every six months after the first assessment; and

(c) When there is a significant change in circumstances for children or youth.

[WSR 18-14-078, recodified as § 110-50-0440, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090. WSR 09-16-045, § 388-25-0011, filed 7/28/09, effective 8/28/09.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0450 ((What are the essential features of the foster care rate assessment system?)) Using the standardized assessment tool to determine foster care reimbursement levels.** ((The foster care rate assessment system includes the following essential features:

~~(1) Foster care maintenance payments are based on foster parent time and the nature of activities needed to meet the needs of the child.~~

~~(2) A standardized assessment tool is used for all children.~~

~~(3) The assessment tool is completed jointly by foster parent and social worker or a rate assessment specialist.~~

~~(4) Assessments are updated periodically, in accordance with WAC 388-25-0032.~~

~~(5) The assessment process is automated.))~~ The basic maintenance payment level 1 is paid to foster parents depending upon the ages of the children and youth. In addition, there are six levels of supplemental payments paid to foster parents who care for children or youth with varying degrees of physical, mental health, or behavioral needs that require increased effort, care, or supervision. The standardized assessment tool must be used to determine the appropriate level for payment based on available information regarding children's or youth's needs, regardless of the foster home they are placed in. Children or youth will be assessed and paid at the highest level they qualify for. Children or youth assessed at:

(1) **Level 1:** Receive the basic foster care maintenance rate. The payment is based on the child's or youth's needs, who are developing comparably to children or youth in the same age range. The payments are based on three age categories:

(a) Birth to five years old;

(b) Six to 11 years old; or

(c) Twelve to 20 years old.

(2) **Level 2:** Require more support from foster parents due to the youth being 12 years of age or older. The payment is based on the youth's needs, who are developing comparably to youth in the same age range.

(3) **Level 3:** Are diagnosed by a licensed health care provider with at least one chronic medical condition that requires more support from foster parents due to the severity of their needs. Children and

youth in this level only have chronic medical conditions and do not have other conditions that would put them in a different level of care.

(4) Level 4: Are diagnosed by a licensed health care provider with a developmental disability that requires more support from foster parents due to the severity of their behaviors and needs. Children and youth in this level only have a diagnosed developmental disability and do not have other conditions that would put them in a different level of care.

(5) Level 5: Are diagnosed by a licensed health care provider with a developmental disability and have at least one chronic health condition. Children or youth in this level will not have any other conditions that would put them in a different level of care.

(6) Level 6: Have a current mental health diagnosis by a licensed health care provider or current prescription medication to assist with their mental health diagnosis.

(7) Level 7: Have complex mental health needs and need more support to help stabilize and keep the child or youth safe.

[WSR 18-14-078, recodified as § 110-50-0450, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090. WSR 09-16-045, § 388-25-0016, filed 7/28/09, effective 8/28/09.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0460 ((How does the foster care rate assessment work?)) Reimbursement to foster families that reside in or move to another state.** ((The foster care rate assessment is a two-step process that includes the participation of the child's foster parent.

~~(1) Step one: The child's social worker or designated rate assessment specialist will meet with the foster parent in person or telephonically to jointly complete the standardized assessment form.~~

~~(2) Step two: After step one has been completed, the child's social worker or designated rate assessment specialist enters the information from the assessment into the computer and, based on the responses to the questions in the standardized assessment, the rate assessment software program automatically calculates the foster care rate that will be paid on behalf of the child.)~~ Department caseworkers must:

(1) Arrange with other states or local social service agencies to license and supervise the homes and placements when foster families reside in or move to another state, per chapter 26.34 RCW.

(2) Obtain the reimbursement rates from receiving states and DCYF will reimburse at their rate, unless the Washington state rate is approved.

(3) Authorize payments to the out-of-state foster homes after a copy of their foster family home license is received.

[WSR 18-14-078, recodified as § 110-50-0460, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090. WSR 09-16-045, § 388-25-0022, filed 7/28/09, effective 8/28/09.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0470** (~~(When may the department or a child placing agency authorize foster care placement?)~~) Payments to relative caregivers and suitable persons. ((The department or a child placing agency may place a child in foster care only under the following circumstances:

~~(1) The child has been placed in temporary residential care after having been taken into custody under chapter 13.32A RCW, Family Reconciliation Act, to alleviate personal or family situations that present an imminent threat to the health or stability of the child or family.~~

~~(2) The child, the child's parent(s), or the department has filed a petition requesting out-of-home placement for the child pursuant to RCW 13.32A.120 or 13.32A.140:~~

~~(a) Placement has been approved after a fact finding hearing under RCW 13.32A.170; or~~

~~(b) A child has been admitted directly to placement in a crisis residential center (CRC), and the parents have been notified of the child's whereabouts, physical and emotional condition, and the circumstances surrounding the child's placement.~~

~~(3) A child has been placed in shelter care under one of the following circumstances:~~

~~(a) The child has been taken into custody by law enforcement or through a hospital administrative hold and placed in shelter care; or~~

~~(b) A petition has been filed with the juvenile court alleging that the child is dependent; that the child's health, safety, and welfare will be seriously endangered if not taken into custody; and the juvenile court enters an order placing the child in shelter care (see RCW 13.34.050 and 13.34.060).~~

~~(4) A juvenile court has made a determination of dependency for a child and has issued a disposition order under RCW 13.34.130 that removes the child from the child's home.~~

~~(5) A juvenile court has terminated the parent and child relationship as provided in chapter 13.34 RCW and has placed the custody of the child with the department or with a licensed or certified child placing agency.~~

~~(6) The child's parent(s) or persons legally responsible to sign a consent for voluntary placement that demonstrates agreement with an out-of-home placement as described in RCW 74.13.031.))~~ Relative caregivers and suitable persons:

(1) Licensed or certified as family foster homes under chapter 74.15 RCW will receive foster care maintenance payments on behalf of children or youth. If the family is eligible for a nonneedy grant for the same child or youth through the department of social and health services (DSHS) community services office (CSO), they must either receive foster care maintenance payments or nonneedy grants, but not both.

(2) Not licensed or certified for foster care, may apply for the nonneedy grant through the DSHS CSO.

[WSR 18-14-078, recodified as § 110-50-0470, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.13.031. WSR 01-08-047, § 388-25-0025, filed 3/30/01, effective 4/30/01.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0480** (~~(What factors are considered in the foster care rate assessment?)~~) **Starting foster care maintenance payments.** ((The assessment tool considers the average number of hours, beyond those expected for a typically developing child of the same age, the foster parent spends in:

- ~~(1) Caring and/or advocating for the child to meet the child's physical and behavioral needs;~~
- ~~(2) Participating in parenting activities related to the child's physical or emotional/behavioral therapeutic plan;~~
- ~~(3) Engaging in parenting activities related to supervising and supporting the educational needs of the child;~~
- ~~(4) Participating in parenting activities related to scheduling, arranging, and supervising activities, such as medical and dental appointments for the child, visits between the child and his or her parents and/or siblings, or other school or recreational activities;~~
- ~~(5) Repairing, cleaning or replacing household items, over and above normal repair, due to the child's chronic physical problems or destructive behavior; and~~
- ~~(6) Preparing the child to transition back to the child's parents or to an adoptive or other foster care placement.)~~) The department pays foster care maintenance payments for:

- (1) Children and youth beginning on the date the department places them in a licensed or certified foster home.
- (2) Each night children or youth reside in foster homes.

[WSR 18-14-078, recodified as § 110-50-0480, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090. WSR 09-16-045, § 388-25-0027, filed 7/28/09, effective 8/28/09.]

AMENDATORY SECTION (Amending WSR 19-16-094, filed 8/1/19, effective 9/1/19)

**WAC 110-50-0490** (~~(How often do the foster parent and caseworker meet to complete the rate assessment?)~~) **Terminating foster care maintenance payments.** ((The caseworker or designated rate assessment specialist will meet with the foster parent in person or telephonically to complete the assessment:

- ~~(1) Within thirty days of the child's placement in the foster parent's home;~~
- ~~(2) At least every six months after the first assessment, except under limited circumstances that serve the best interests of the child; and~~
- ~~(3) When there is a significant change in circumstances for the child or in the foster parent's ability or time required to meet the child's needs.)~~) The department must terminate foster care maintenance payments:

- (1) On the day before the child or youth leaves the foster home or facility. The department does not pay for the last day they are in a foster home or facility.
- (2) For children or youth in foster care, effective the date they:
  - (a) No longer reside in or need foster care;

(b) Reach the age of 18, unless they meet the criteria in RCW 13.34.267 and are participating in the extended foster care (EFC) program; or

(c) Are no longer eligible for EFC and the:

(i) Dependency action is dismissed; or

(ii) Voluntary placement agreement (VPA) has expired.

(3) For children or youth in a behavior rehabilitation services (BRS) program, effective the day they start BRS.

[Statutory Authority: RCW 74.13.031. WSR 19-16-094, § 110-50-0490, filed 8/1/19, effective 9/1/19. WSR 18-14-078, recodified as § 110-50-0490, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090. WSR 09-16-045, § 388-25-0032, filed 7/28/09, effective 8/28/09.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0500 ((What are the reimbursement levels?)) Foster parents' level notification.** ((The amount of foster care maintenance payments may change slightly from year to year. A basic rate payment (level 1) is paid to all foster parents to help cover the cost of food, clothing, shelter, and personal incidentals. In addition, there are three levels of supplemental payments that are paid to foster parents who care for children with varying degrees of physical, mental, behavioral, emotional and/or intellectual conditions that require increased effort, care or supervision. The levels of payments are as follows:

(1) **Level 1:** Children assessed at this level receive the basic foster care maintenance rate. The payment is based on the time typically spent by a foster parent to meet the needs of a child, who is developing comparably to children in the same age range. The payments are based on three age categories: birth to five years old, six to eleven years old, and twelve to eighteen years old.

(2) **Level 2:** Children assessed at this level require the foster parent's increased attention, time and supervision, beyond that required to meet the child's basic or routine needs, to address specific physical, mental, behavioral, emotional and/or intellectual challenges.

(3) **Levels 3 and 4:** Children assessed at these levels have the highest needs for attention and care. These children require significantly more time from the foster parent because of the severity of their issues. These children often will be participating in more than one treatment program, and may need to participate in treatment in the foster parent's home. A child assessed at level 3 or 4 may have serious medical, behavioral or psychiatric issues or behaviors that require a safety plan.) Once the rate assessment has been completed, foster parents will receive written notification from the department notifying them of:

(1) The amount of the monthly foster care maintenance payment that will be paid to them on behalf of children or youth residing in their home;

(2) Their right to request a department review of the foster care rate level based on information that was not known or provided to the department; and

(3) The process to request a department review.

[WSR 18-14-078, recodified as § 110-50-0500, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090. WSR 09-16-045, § 388-25-0037, filed 7/28/09, effective 8/28/09.]

**DEPARTMENT REVIEW OF FOSTER CARE MAINTENANCE RATE**

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0510** ~~((Can the child be assessed at a different level, depending on the foster home?))~~ **Requesting a department review of the foster care rate level.** ~~((The assessment is based on both the child's needs and the foster parent's ability and time required to meet those needs. It is possible that a child would be assessed at a different rate in one home than in another, depending on the foster parent's abilities or circumstances as well as the resources and support services available to the child and foster family.))~~ (1) Foster parents must make a written request for the department to review their foster care rate level.

(2) Department review requests must:

(a) Be received by the department within 20 calendar days of the date of the letter informing the foster parent of their foster care rate level. If a request is not made within 20 days, the department will not review the foster care rate level.

(b) Include a statement explaining why the foster parent believes the rate level is incorrect. The foster parent must provide any additional information that was not known to the department when the rate was determined.

(c) Be sent to the individual and address identified in the department's letter informing the foster parent of the rate level for the child or youth.

[WSR 18-14-078, recodified as § 110-50-0510, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090. WSR 09-16-045, § 388-25-0042, filed 7/28/09, effective 8/28/09.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0520** ~~((Can the assessment change if the child's needs change?))~~ **Department review of the foster care rate level.** ~~((The child will always receive at least the basic rate (level 1) for the child's age category. However, the child may be assessed at level 2, 3, or 4, as the child's needs change or the circumstances of the foster parents change.))~~

~~**For example:** In cases where the child's needs decrease or the time required of the foster parent to meet the child's needs decreases, the standardized assessment may assess the child at a lower rate. For example, on a reassessment a child might be assessed at level 2, when the child's previous rate had been at level 3. In cases where the child's needs or the demands on the foster parent increase, the standardized assessment may assess the child at a higher level.)~~ Department management employees who have not administered the standardized assessment tool for the foster parents requesting the review, must:

(1) Conduct the department review of the foster care rate level and consider if:

(a) Additional information, provided by the foster parent as authorized in WAC 110-50-0510, is relevant to the assessment; and

(b) Information was accurately documented into the standardized assessment tool.

(2) Complete the review within 14 calendar days of receiving the request for review.

(3) Not consider information about any children or youth outside the standardized assessment tool.

[WSR 18-14-078, recodified as § 110-50-0520, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090. WSR 09-16-045, § 388-25-0047, filed 7/28/09, effective 8/28/09.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

~~**WAC 110-50-0530 ((How will the foster parent be notified of the rate the child will receive?)) Foster parents' notification of department review.**~~ ((The foster parent will receive a written letter and payment plan, generated by the department's foster care rate assessment computer program, which will notify the foster parent of

~~(1) The amount of the monthly foster care maintenance payment that will be paid on behalf of the child;~~

~~(2) The right to review of the assessment and;~~

~~(3) How to exercise the right of review.)~~ Once the review is complete, the department must:

(1) Send foster parents a letter notifying them that the department:

(a) Upholds the results of the standardized rate assessment tool;  
or

(b) Agrees the rate was wrongly calculated and will adjust the rate to the proper level.

(2) Include information in the letter to request an administrative hearing, per chapter 110-03 WAC, if the department upholds the results of the rate assessment.

[WSR 18-14-078, recodified as § 110-50-0530, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090. WSR 09-16-045, § 388-25-0052, filed 7/28/09, effective 8/28/09.]

## ADMINISTRATIVE HEARINGS

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-50-0540** (~~(Can a foster parent challenge the rate assessment?)~~) **Foster parents' right to appeal.** (~~(A foster parent, acting on behalf of the foster child, may request a review of the rate assessment for the child.)~~) (1) Foster parents have the right to an administrative hearing per chapter 110-03 WAC to contest the following department's failure to:

(a) Respond to the request within the time frames in WAC 110-50-0520.

(b) Take into consideration new information related to the child or youth provided by the foster parents.

(c) Follow the standardized assessment process.

(2) To request an administrative hearing, the foster parent must submit a request in writing for an administrative hearing and send the request to the office of administrative hearings (OAH). The request must be received by OAH within 90 calendar days of receipt of the notification of the department's decision on review, unless good cause for a later request is established under chapter 110-03 WAC.

(3) Foster parents do not have a right to request an administrative hearing to challenge or dispute:

(a) Established foster care rates;

(b) The standardized assessment tool; or

(c) The standardized procedure to determine the rate.

[WSR 18-14-078, recodified as § 110-50-0540, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090. WSR 09-16-045, § 388-25-0057, filed 7/28/09, effective 8/28/09.]

AMENDATORY SECTION (Amending WSR 19-16-094, filed 8/1/19, effective 9/1/19)

**WAC 110-50-0550** (~~(How does a foster parent seek a department review of the rate assessment?)~~) **Scope of administrative hearing.** (~~((1) The foster parent must make a written request for department review of the assessment.~~)

~~(2) The request must be received by the department within twenty calendar days of the date of the letter informing the foster parent of the rate assessed for the child. If a request is not made within twenty days, the department will not review the assessment.~~

~~(3) The request must include a statement explaining why the foster parent believes the assessed rate is incorrect. The foster parent may provide additional information relevant to the questions asked on the foster care rate assessment standardized form.~~

~~(4) The request must be sent to the individual and address identified in the letter informing the foster parent of the rate assessed~~



for the child.) When making a determination during administrative hearings, administrative law judges (ALJ):

(1) May only consider the following if the:

(a) Standardized assessment process was not followed;

(b) Information obtained for the initial rate determination was not documented on the standardized assessment tool; or

(c) New information provided by the foster parents for the department review was not accurately documented on the standardized assessment tool.

(2) Must apply the rules in this chapter during the administrative hearing.

(3) Must not:

(a) Consider:

(i) Information about children or youth:

(A) Outside the standardized assessment tool;

(B) That was not provided to the department at the time of the:

(I) Initial or ongoing completion of the standardized assessment tool; or

(II) Department review requested by the foster parents.

(ii) Challenges to the:

(A) Established foster care rates;

(B) Standardized assessment tool; or

(C) The foster care rate assessment program.

(b) Make a determination that conflicts with a properly completed standardized assessment tool.

[Statutory Authority: RCW 74.13.031. WSR 19-16-094, § 110-50-0550, filed 8/1/19, effective 9/1/19. WSR 18-14-078, recodified as § 110-50-0550, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090. WSR 09-16-045, § 388-25-0062, filed 7/28/09, effective 8/28/09.]

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 110-50-0260	What steps must the department take when a child whose case management responsibility remains with the department is placed in a home certified by a CPA?
WAC 110-50-0270	What activities must a child placing agency provide in order to receive payment from the department?
WAC 110-50-0600	What law and rules govern the administrative law judge?
WAC 110-50-0620	What are the department's expectations for foster care providers to whom the department makes reimbursement for services?
WAC 110-50-0640	What is the effective date for payment of foster care?

- WAC 110-50-0670      What are the department's general standards for family foster care reimbursement?
- WAC 110-50-0680      When may the department authorize a clothing allowance for a child in out-of-home care?
- WAC 110-50-0690      May the department consider foster care payments to the foster family in determining eligibility for public assistance?
- WAC 110-50-0720      What payment procedures must the department follow for children placed across state borders?
- WAC 110-50-0730      What limitations exist on administrative hearings regarding foster care payments?

**WSR 23-18-040**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**  
[Filed August 30, 2023, 10:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-103.

Title of Rule and Other Identifying Information: WAC 110-15-0249

Nonstandard hours bonus.

Hearing Location(s): On October 10, 2023, telephonic. Make oral comments by calling 360-972-5385 and leaving a voicemail that includes the comment and an email address or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including October 10, 2023, will be considered.

Date of Intended Adoption: October 11, 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 October 10, 2023.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, 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 October 3, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DCYF is amending this rule to increase the nonstandard hours bonus (NSHB) amount to \$135 per the governor's 2023 budget.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 74.04.050.

Statute Being Implemented: RCW 74.04.050.

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: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Ramynke, 360-688-0911; 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 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.

August 30, 2023

Brenda Villarreal  
Rules Coordinator

**OTS-4719.1**

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

**WAC 110-15-0249 Nonstandard hours bonus.** (1) Consumers' providers may receive a nonstandard hours bonus (NSHB) payments per child per month for care provided if:

(a) The providers are licensed or certified;

(b) They provide at least 30 hours of nonstandard hours care during one month; and

(c) The total cost of the state's NSHB payments do not exceed the amount appropriated for this purpose by the legislature for the current fiscal year.

(2) Nonstandard hours are defined as:

(a) Before 6 a.m. or after 6 p.m.;

(b) Any hours on Saturdays and Sundays; and

(c) Any hours on legal holidays, as defined in RCW 1.16.050.

(3) NSHB amounts are:

(a) (~~Ninety~~) One hundred thirty-five dollars for family homes;

and

(b) (~~Seventy-five~~) One hundred thirty-five dollars for centers.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-0249, filed 2/3/22, effective 3/6/22; WSR 19-12-058, § 110-15-0249, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0249, 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, § 170-290-0249, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0249, filed 10/28/09, effective 12/1/09.]

**WSR 23-18-041**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**  
[Filed August 30, 2023, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-012.

Title of Rule and Other Identifying Information: WAC 110-15-0200

Daily child care rates—Licensed or certified child care centers and DCYF contracted seasonal day camps, 110-15-0205 Daily child care rates—Licensed or certified family home child care providers, and 10-15-0240 [110-15-0240] Child care subsidy rates—In-home/relative providers.

Hearing Location(s): On October 10, 2023, telephonic. Make oral comments by calling 360-972-5385 and leaving a voicemail that includes the comment and an email address or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including October 10, 2023, will be considered.

Date of Intended Adoption: October 11, 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 October 10, 2023.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, 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 October 3, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DCYF is amending these rules to increase child care center and licensed family home provider rates to the 85th percentile of the current market and increasing family friends and neighbor rates to \$3.85 effective July 1, 2023, and delayed implementation for another increase to \$4 on July 1, 2024.

Reasons Supporting Proposal: These rules are needed to comply with E2SSB 5237 and chapter 199, Laws of 2021.

Statutory Authority for Adoption: RCW 74.04.050.

Statute Being Implemented: RCW 74.04.050.

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: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Ramynke, 360-688-0911; 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 rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

August 30, 2023  
 Brenda Villarreal  
 Rules Coordinator

**OTS-4718.2**

AMENDATORY SECTION (Amending WSR 22-16-081, filed 8/1/22, effective 9/1/22)

**WAC 110-15-0200 Daily child care rates—Licensed or certified child care centers and DCYF contracted seasonal day camps.** (1) **Base rate.** Effective July 1, (~~2022~~) 2023, the child care subsidy rates paid to licensed or certified child care centers or DCYF contracted seasonal day camps are:

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	<del>(\$48.02)</del> <u>\$62.05</u>	<del>(\$43.50)</del> <u>\$56.14</u>	<del>(\$39.67)</del> <u>\$53.18</u>	<del>(\$39.15)</del> <u>\$53.36</u>
	Half-Day	<del>(\$24.04)</del> <u>\$31.03</u>	<del>(\$21.75)</del> <u>\$28.07</u>	<del>(\$19.84)</del> <u>\$26.59</u>	<del>(\$19.58)</del> <u>\$26.68</u>
Spokane County	Full-Day	\$68.54	<del>(\$55.37)</del> <u>\$56.59</u>	\$52.14	<del>(\$40.59)</del> <u>\$49.00</u>
	Half-Day	\$34.27	<del>(\$27.69)</del> <u>\$28.30</u>	\$26.07	<del>(\$20.30)</del> <u>\$24.50</u>
Region 2	Full-Day	<del>(\$55.68)</del> <u>\$59.09</u>	<del>(\$42.44)</del> <u>\$49.09</u>	<del>(\$42.34)</del> <u>\$44.77</u>	<del>(\$31.74)</del> <u>\$32.73</u>
	Half-Day	<del>(\$27.84)</del> <u>\$29.55</u>	<del>(\$21.22)</del> <u>\$24.55</u>	<del>(\$21.17)</del> <u>\$22.39</u>	<del>(\$15.87)</del> <u>\$16.37</u>
Region 3	Full-Day	\$88.58	<del>(\$79.36)</del> <u>\$80.36</u>	<del>(\$66.89)</del> <u>\$72.50</u>	<del>(\$50.62)</del> <u>\$65.45</u>
	Half-Day	\$44.29	<del>(\$39.68)</del> <u>\$40.18</u>	<del>(\$33.45)</del> <u>\$36.25</u>	<del>(\$25.31)</del> <u>\$32.73</u>
Region 4	Full-Day	<del>(\$111.05)</del> <u>\$113.64</u>	<del>(\$92.28)</del> <u>\$101.59</u>	<del>(\$83.31)</del> <u>\$85.68</u>	<del>(\$52.20)</del> <u>\$90.64</u>
	Half-Day	<del>(\$55.53)</del> <u>\$56.82</u>	<del>(\$46.14)</del> <u>\$50.80</u>	<del>(\$41.66)</del> <u>\$42.84</u>	<del>(\$26.10)</del> <u>\$45.32</u>
Region 5	Full-Day	\$72.56	<del>(\$62.80)</del> <u>\$64.00</u>	\$55.77	<del>(\$40.60)</del> <u>\$54.18</u>
	Half-Day	\$36.28	<del>(\$31.40)</del> <u>\$32.00</u>	\$27.89	<del>(\$20.30)</del> <u>\$27.09</u>
Region 6	Full-Day	<del>(\$66.12)</del> <u>\$77.00</u>	<del>(\$59.16)</del> <u>\$67.50</u>	<del>(\$54.52)</del> <u>\$57.73</u>	<del>(\$41.66)</del> <u>\$50.23</u>
	Half-Day	<del>(\$33.06)</del> <u>\$38.50</u>	<del>(\$29.58)</del> <u>\$33.75</u>	<del>(\$27.26)</del> <u>\$28.87</u>	<del>(\$20.83)</del> <u>\$25.12</u>

(a) Centers in Clark County are paid Region 3 rates.

(b) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) WAC 110-300-0005 and 110-300-0356 allow providers to care for children from birth up to and including the end of their eligibility period after their 13th birthday.

(3) Providers must obtain child-specific and time-limited exceptions from DCYF to provide care for children outside the age listed on the center's license.

(4) If providers are granted an exception to care for a child who is 13 years old or older at application or reapplication:

(a) The payment rate is the same as subsection (1) of this section, and the five through 12 year age range column is used for comparison; and

(b) The children must meet the special needs requirement described in WAC 110-15-0220.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-16-081, § 110-15-0200, filed 8/1/22, effective 9/1/22; WSR 22-05-007, § 110-15-0200, filed 2/3/22, effective 3/6/22; WSR 20-15-161, § 110-15-0200, filed 7/22/20, effective 8/22/20; WSR 19-12-058, § 110-15-0200, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0200, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1. WSR 17-21-077, § 170-290-0200, filed 10/16/17, effective 11/16/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0200, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0200, filed 4/15/16, effective 5/16/16; WSR 14-24-070, § 170-290-0200, filed 11/26/14, effective 1/1/15; WSR 14-20-088, § 170-290-0200, filed 9/29/14, effective 10/30/14; WSR 14-12-050, § 170-290-0200, filed 5/30/14, effective 6/30/14; WSR 13-21-113, § 170-290-0200, filed 10/22/13, effective 11/22/13. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0200, filed 10/5/12, effective 11/5/12. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0200, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0200, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0200, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). WSR 05-20-051, § 388-290-0200, filed 9/30/05, effective 11/1/05. 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, § 388-290-0200, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0200, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0200, filed 12/19/01, effective 1/19/02.]

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

**WAC 110-15-0205 Daily child care rates—Licensed or certified family home child care providers.** (1) **Monthly unit.** DCYF authorizes care as monthly units as described in WAC 110-15-0190, the calculation of which is based on the full-day, partial-day, and half-day rates in subsection (2) of this section.

(2) Effective July 1, (~~2021~~) 2023, DCYF calculates licensed or certified family home providers' monthly units based on the following child care subsidy rates:

	Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
<b>((Region</b> Full-Day	\$40.00	\$40.00	\$35.00	\$32.00	\$30.00
<b>†</b> Half-Day	\$20.00	\$20.00	\$17.50	\$16.00	\$15.00
Partial-Day	\$30.00	\$30.00	\$26.25	\$24.00	\$22.50
<b>Spokane</b> Full-Day	\$42.00	\$42.00	\$40.00	\$37.00	\$36.00
<b>County</b> Half-Day	\$21.00	\$21.00	\$20.00	\$18.50	\$18.00
Partial-Day	\$31.50	\$31.50	\$30.00	\$27.75	\$27.00

	Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 2 Full-Day	\$45.00	\$45.00	\$37.50	\$35.00	\$32.00
Half-Day	\$22.50	\$22.50	\$18.75	\$17.50	\$16.00
Partial-Day	\$33.75	\$33.75	\$28.13	\$26.25	\$24.00
Region 3 Full-Day	\$55.00	\$55.00	\$48.86	\$48.00	\$40.00
Half-Day	\$27.50	\$27.50	\$24.43	\$24.00	\$20.00
Partial-Day	\$41.25	\$41.25	\$36.65	\$36.00	\$30.00
Region 4 Full-Day	\$68.18	\$68.18	\$63.64	\$59.09	\$40.00
Half-Day	\$34.09	\$34.09	\$31.82	\$29.55	\$20.00
Partial-Day	\$51.14	\$51.14	\$47.73	\$44.32	\$30.00
Region 5 Full-Day	\$48.86	\$48.86	\$42.00	\$39.09	\$35.71
Half-Day	\$24.43	\$24.43	\$21.00	\$19.55	\$17.86
Partial-Day	\$36.65	\$36.65	\$31.50	\$29.32	\$26.78
Region 6 Full-Day	\$45.00	\$45.00	\$43.18	\$38.00	\$32.50
Half-Day	\$22.50	\$22.50	\$21.59	\$19.00	\$16.25
Partial-Day	\$33.75	\$33.75	\$32.39	\$28.50	(\$24.38))
Region 1 Full-Day	\$49.23	\$49.23	\$47.09	\$40.00	\$36.59
Half-Day	\$24.62	\$24.62	\$23.55	\$20.00	\$18.30
Partial-Day	\$36.92	\$36.92	\$35.32	\$30.00	\$27.44
Spokane County Full-Day	\$48.00	\$48.00	\$48.00	\$45.00	\$45.00
Half-Day	\$24.00	\$24.00	\$24.00	\$22.50	\$22.50
Partial-Day	\$36.00	\$36.00	\$36.00	\$33.75	\$33.75
Region 2 Full-Day	\$66.00	\$66.00	\$59.09	\$48.00	\$40.00
Half-Day	\$33.00	\$33.00	\$29.55	\$24.00	\$20.00
Partial-Day	\$49.50	\$49.50	\$44.32	\$36.00	\$30.00
Region 3 Full-Day	\$65.00	\$65.00	\$59.09	\$54.18	\$49.23
Half-Day	\$32.50	\$32.50	\$29.55	\$27.09	\$24.62
Partial-Day	\$48.75	\$48.75	\$44.32	\$40.64	\$36.92
Region 4 Full-Day	\$81.82	\$81.82	\$75.00	\$68.95	\$60.00
Half-Day	\$40.91	\$40.91	\$37.50	\$34.48	\$30.00
Partial-Day	\$61.37	\$61.37	\$56.25	\$51.71	\$45.00
Region 5 Full-Day	\$59.09	\$59.09	\$59.09	\$49.23	\$44.32
Half-Day	\$29.55	\$29.55	\$29.55	\$24.62	\$22.16
Partial-Day	\$44.32	\$44.32	\$44.32	\$36.92	\$33.24
Region 6 Full-Day	\$59.09	\$59.09	\$55.00	\$53.00	\$45.00
Half-Day	\$29.55	\$29.55	\$27.50	\$26.50	\$22.50
Partial-Day	\$44.32	\$44.32	\$41.25	\$39.75	\$33.75

(3) The monthly unit for family home providers in all regions and for all ages will include a partial-day rate that is 75 percent of the full-day rate when:

(a) Providers provide child care services for a child during a morning session and an afternoon session. A morning session begins at any time after 12:00 a.m. and ends before 12:00 p.m. An afternoon session begins at any time after 12:00 p.m. and ends before 12:00 a.m.;

(b) The child is absent from care in order to attend school or preschool; and

(c) Family home providers are not entitled to payment at the full-day rate.

(4) Monthly units for school age children will be adjusted for the months of July and August based on the consumers' approved activities and the children's schedules for care during the summer.

(5) School age children will be authorized for 22 full days in July and August when:

(a) They are authorized for a full-time, full-time partial-day, monthly unit; or



(b) They are authorized for a part-time, part-time partial-day, monthly unit;

(c) Are scheduled for child care with a single provider at least 110 hours per month; and

(d) The consumer participates in an approved activity at least 110 hours per month.

(6) Monthly units will be prorated for partial months of authorization.

(7) The monthly unit amount is averaged over all months of authorized care. Supplemental payments will not be made for calendar months with more than the average number of care days.

(8) Supplemental authorization for payment may be requested by consumers for unexpected hours of care needed for allowable activities or changes in their schedules.

(9) WAC 110-300-0005 and 110-300-0355 allow providers to care for children from birth up to and including the end of their eligibility period after their 13th birthday.

(10) Providers must obtain a child-specific and time-limited exception from DCYF to provide care for children outside the age listed on their licenses.

(11) For providers who are granted an exception to care for a child who is 13 years of age or older at application or reapplication:

(a) The payment rate is the same as subsection (1) of this section and the five through 12 year age range column is used for comparison; and

(b) The child must meet the special needs requirement as described in WAC 110-15-0220.

(12) DCYF pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (13) of this section).

(13) DCYF cannot pay family home child care providers to provide care for children in their care if the provider is:

(a) The child's biological, adoptive or step-parent;

(b) The child's guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-0205, filed 2/3/22, effective 3/6/22; WSR 20-15-161, § 110-15-0205, filed 7/22/20, effective 8/22/20; WSR 20-08-077, § 110-15-0205, filed 3/26/20, effective 4/26/20; WSR 19-12-058, § 110-15-0205, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0205, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-035, § 170-290-0205, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0205, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0205, filed 4/15/16, effective 5/16/16; WSR 14-24-070, § 170-290-0205, filed 11/26/14, effective 1/1/15; WSR 14-20-088, § 170-290-0205, filed 9/29/14, effective 10/30/14; WSR 14-12-050, § 170-290-0205, filed 5/30/14, effective 6/30/14; WSR 13-21-113, § 170-290-0205, filed 10/22/13, effective 11/22/13. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0205, filed 10/5/12, effective 11/5/12. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0205, filed 5/8/12, ef-

fective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0205, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0205, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). WSR 05-20-051, § 388-290-0205, filed 9/30/05, effective 11/1/05. 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, § 388-290-0205, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0205, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0205, filed 12/19/01, effective 1/19/02.]

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

**WAC 110-15-0240 Child care subsidy rates—In-home/relative providers.** (1) **Base rate.** When consumers employ in-home/relative providers, DCYF pays (~~(\$2.65)~~) \$3.85 per hour per child. Beginning July 1, (~~(2022)~~) 2024, the maximum child care subsidy rate is (~~(\$3.00)~~) \$4.00 per hour per child.

(2) DCYF may pay above the maximum hourly rate for children who have special needs pursuant to WAC 110-15-0235.

(3) DCYF makes the WCCC payment directly to consumers' eligible providers.

(4) When applicable, DCYF pays the employer's share of the following:

(a) Social Security and medicare taxes (FICA) up to the wage limit;

(b) Federal Unemployment Taxes (FUTA); and

(c) State unemployment taxes (SUTA).

(5) For in-home/relative providers who receive less than the wage base limit per family in a calendar year, DCYF refunds all withheld taxes to them.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-0240, filed 2/3/22, effective 3/6/22; WSR 19-12-058, § 110-15-0240, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0240, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-035, § 170-290-0240, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0240, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 14-24-070, § 170-290-0240, filed 11/26/14, effective 1/1/15; WSR 14-20-088, § 170-290-0240, filed 9/29/14, effective 10/30/14; WSR 13-21-113, § 170-290-0240, filed 10/22/13, effective 11/22/13. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0240, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0240, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0240, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085.]

WSR 05-22-078, § 388-290-0240, filed 10/31/05, effective 12/1/05.  
Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, §  
388-290-0240, filed 5/31/02, effective 7/1/02. Statutory Authority:  
RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund  
Rules). WSR 02-01-135, § 388-290-0240, filed 12/19/01, effective  
1/19/02.]

**WSR 23-18-042**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**  
[Filed August 30, 2023, 10:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-012.

Title of Rule and Other Identifying Information: WAC 110-15-0023 Homeless grace period (HGP) and 110-15-0024 Categorical eligibility for families receiving child protective, child welfare, or family assessment response services.

Hearing Location(s): On October 10, 2023, telephonic. Make oral comments by calling 360-972-5385 and leaving a voicemail that includes the comment and an email address or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including October 10, 2023, will be considered.

Date of Intended Adoption: October 11, 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 October 10, 2023.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, 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 October 3, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DCYF is amending these rules to extend the HGP and to open the care up to more providers. This rule also removes the 12-month gap requirement between HGPs as funded in ESSB 5187.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: Chapters 43.215 and 43.216 RCW.

Statute Being Implemented: Chapters 43.215 and 43.216 RCW.

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

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Ramynke, 360-688-0911; 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 rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

August 30, 2023  
Brenda Villarreal  
Rules Coordinator

## OTS-4717.1

AMENDATORY SECTION (Amending WSR 20-15-161, filed 7/22/20, effective 8/22/20)

**WAC 110-15-0023 Homeless grace period (HGP).** (1) A homeless grace period (HGP) is established as described in this section.

~~(2) ((DCYF may grant a consumer experiencing homelessness a twelve-month grace period to submit the documentation described in this subsection. The children of the consumer experiencing homelessness may receive WCCC services during the HGP. Within twelve months of the child being authorized in the WCCC program, the consumer must submit to DCYF:~~

~~(i) Documentation verifying participation in an approved activity as described in WAC 110-15-0040, 110-15-0045, or 110-15-0050;~~

~~(ii) Third-party verification of employment; and~~

~~(iii) Verification that any outstanding copayment owed by the consumer has been paid or written verification of a payment plan agreed to by the child care provider who is owed the outstanding copayment.~~

~~(3) A consumer is eligible for HGP if the consumer:~~

~~(a) Is experiencing, and DCYF verifies, homelessness at the time of the consumer's application for benefits;~~

~~(b) Has not been approved for HGP within the previous twelve months; and~~

~~(c) Except for the requirements described in subsection (1) of this section, meets all eligibility requirements described in this chapter.~~

~~(4)) A family experiencing homelessness at the time the consumer applies for child care subsidy is eligible for HGP under this section when:~~

~~(a) They meet all eligibility requirements described in WAC 110-15-0005, except for WAC 110-15-0005 (1) (d) and (f); and~~

~~(b) Their household income is under 85 percent of the state median income (SMI).~~

~~(3) Consumers approved by DCYF for HGP are eligible to receive:~~

~~(a) A ((twelve)) 12-month certification period;~~

~~(b) A copayment waiver; and~~

~~(c) An authorization for full-time care as described in WAC 110-15-0190.~~

~~((5) Authorizations for HGP eligible consumers may only be authorized for licensed care, certified care, or DCYF contracted provider care.~~

~~(6) Consumers authorized care under HGP must provide required verification when reapplying at the end of their certification as described in WAC 110-15-0109.~~

~~(7)) (4) Consumers approved under HGP are not subject to overpayment unless the consumer obtained benefits by failing to report accurate information that resulted in an error in determining the consumer's eligibility for HGP.~~

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 20-15-161, § 110-15-0023, filed 7/22/20, effective 8/22/20. WSR 18-14-078, recodified as § 110-15-0023, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-013, § 170-290-0023, filed 5/26/17, effective 6/26/17.]

AMENDATORY SECTION (Amending WSR 19-12-058, filed 5/31/19, effective 7/1/19)

**WAC 110-15-0024 Categorical eligibility for families receiving child protective, child welfare, or family assessment response services.** (1) Families with children who have received child protective services as defined and used by chapters 26.44 and 74.13 RCW, child welfare services as defined and used by chapter 74.13 RCW, or services through a family assessment response, as defined and used by chapter 26.44 RCW in the six months previous to application or reapplication for working connections child care (WCCC) benefits are eligible for WCCC benefits for a (~~twelve~~) 12-month period if, in addition the:

- (a) Consumer is a Washington state resident;
- (b) Family has been referred for child care as part of the family's case management as defined by RCW 74.13.020; and
- (c) Child or children are residing with a biological parent or guardian.

(2) Families eligible for WCCC under this section will:

- (a) Have no copayment;
- (b) Be authorized for full-time child care regardless of participation in an approved activity; and
- (c) Be eligible to have benefits paid only to a (~~licensed, certified, or contracted child care~~) provider that meets the requirements in WAC 110-15-0125.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0024, filed 5/31/19, effective 7/1/19.]

## WSR 23-18-054

## PROPOSED RULES

## DEPARTMENT OF ECOLOGY

[Order 21-02—Filed August 31, 2023, 1:47 p.m.]

Continuance of WSR 23-15-048.

Preproposal statement of inquiry was filed as WSR 27-17-110.

Title of Rule and Other Identifying Information: The department of ecology (ecology) is proposing an amendment to chapter 173-443 WAC, Hydrofluorocarbons (HFCs) and other fluorinated greenhouse gases (formerly hydrofluorocarbons, HFCs).

For more information on this rule making, visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-443-455>.

Date of Intended Adoption: November 29, 2023.

Submit Written Comments to: Linda Kildahl, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, <https://aq.ecology.commentinput.com/?id=trCUMYBx2G>, by September 10, 2023 (close of comment period).

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, Washington relay service or TTY call 711 or 877-833-6341, email [ecyADACoordinator@ecy.wa.gov](mailto:ecyADACoordinator@ecy.wa.gov), visit <https://ecology.wa.gov/About-us/Accessibility-equity/Accessibility> for more information, by September 10, 2023.

Statutory Authority for Adoption: Chapter 70A.60 RCW.

Statute Being Implemented: Chapter 70A.60 RCW.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Linda Kildahl, Lacey, Washington, 360-706-3038; Implementation: Tamara Dumitrescu, Lacey, Washington, 360-338-2606; and Enforcement: Leonard Machut, Lacey, Washington, 360-890-6391.

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 Linda Kildahl, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-706-3038, Washington relay service or TTY call [711 or] 877-833-6341, email [linda.kildahl@ecy.wa.gov](mailto:linda.kildahl@ecy.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 relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of 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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (RFA), chapter 19.85 RCW, based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The small business economic impact statement (SBEIS) below includes a summary of the baseline for this rule making, and whether or how the proposed rule differs from the baseline.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under RFA based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The SBEIS below includes a summary of the baseline for this rule making, and whether or how the proposed rule differs from the baseline.

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

#### SBEIS

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by RFA as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment; the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

This information is excerpted from ecology's complete set of regulatory analyses for this rule making. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated regulatory analyses document (**Ecology publication no. 23-02-081, July 2023**).

**COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES: 2.2 Baseline:** The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.



For this rule making, the baseline includes:

- The existing rule: Chapter 173-443 WAC, Hydrofluorocarbons (HFCs).
- The authorizing statute: Chapter 70A.60 RCW, Hydrofluorocarbons—Emissions reduction (ES2HB 1112 passed in 2019; ES2HB 1050 passed in 2021).
- The American Innovation and Manufacturing (AIM) Act of 2020, 42 U.S.C. 7675.
- Environmental Protection Agency (EPA) Significant New Alternatives Policy (SNAP) Program, 40 C.F.R. Part 82, Subpart G.
- EPA HFC Allowance Allocation and Reporting Program, 40 C.F.R. Part 84, Subpart A.
- The proposed EPA technology transitions rule: 87 F.R. 76738, Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under Subsection (i) the American Innovation and Manufacturing Act of 2020.

We note that while the EPA rule making is occurring at the same time as this ecology rule making, its authorizing AIM Act indicates the likely baseline will include an EPA rule that phases down the production and consumption of HFCs by 85 percent by 2036. The proposed EPA rule is the best current representation of the specifics of this baseline element, and is likely to be adopted on a similar timeline as our proposed rule.

- The Kigali Amendment (2016) to the Montreal Protocol on Substances that Deplete the Ozone Layer. While they are not elements of baseline regulations in Washington state or at the federal level, we note the following are regulations that may apply to some of the entities impacted by the proposed rule amendments, if they sell products across multiple markets. Entities affected by similar regulations across multiple jurisdictions in which they do business may be able to take advantage of economies of scale, for example mitigating cost increases by streamlining production attributes for products sold across entire regions.

- California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 10 Climate Change, Article 4, Sub article 5. Prohibitions on Use of Certain Hydrofluorocarbons in Stationary Refrigeration, Stationary Air-conditioning, and Other End-Uses.

- California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 10 Climate Change, Article 4, Sub article 5.1 Management of High Global Warming Potential Refrigerants for Stationary Sources.

**2.3 Proposed rule amendments:** 2.3.1 Proposed amendments to manufacturer requirements: Baselines, proposed amendments, and expected impacts described in this section reflect the assumption that compliance behavior would be undertaken by manufacturers. We acknowledge that other participants along supply chains may incur some of the costs discussed in this section if manufacturers decide to pass on their compliance costs to their customers in the form of higher prices, but in the interest of avoiding double-counting of costs or benefits, we made the simplifying assumption that costs would be borne by manufacturers where this information was unavailable or unknown.

2.3.1.1 Adding centrifugal chillers to existing prohibitions: Baseline: Under the baseline, chapter 173-443 WAC lists specific prohibited substances and the prohibition effective dates for various end-uses of new products and equipment.

Proposed: The proposed rule amendments would add the following chillers to baseline prohibitions starting in 2025:

- Centrifugal chillers (heating; heating and cooling), effective 2025.
- Positive displacement chillers (heating; heating and cooling), effective 2025.

The proposed rule would also list automatic commercial ice machines with expanded lists of prohibited refrigerants, rather than applying a maximum global warming potential (GWP) threshold. The list included in our proposed rule matches the list for ice machines with more than 500 grams of refrigerant in the proposed federal technology transitions rule, for:

- Refrigeration:
  - o Automatic commercial ice machines (remote condensing units), effective 2025.
  - o Automatic commercial ice machines (stand alone units), effective 2025.

2.3.1.2 Setting maximum GWP thresholds for new refrigeration equipment: Baseline: Ecology's existing HFC rule does not contain GWP thresholds. The 2021 law established specific GWP thresholds and effective dates for new equipment used in ice rinks. In particular, the 2021 law set the following GWP thresholds for new equipment manufactured after December 31, 2023:

- 150 GWP threshold for new equipment installed in new ice rinks; and
- 750 GWP threshold for new equipment installed in existing ice rinks.

The proposed EPA technology transitions rule would establish GWP thresholds and prohibitions for a set of end uses of new refrigeration equipment effective in 2025. In particular, the proposed EPA technology transition rule would set the following GWP thresholds:

- 300 GWP threshold for new refrigeration equipment with less than 200 lbs. charge capacity;
- 150 GWP threshold for new refrigeration equipment with more than 200 lbs. charge capacity; and
- 700 GWP threshold for chillers used for industrial process refrigeration.

Proposed: The proposed rule amendments would add GWP thresholds for substances consistent with the proposed EPA technology transitions rule, except:

- Our proposed rule would set a 150 GWP threshold for all new refrigeration equipment with charge capacities exceeding 50 lbs.
- Our proposed rule would set a 750 GWP threshold for chillers used for industrial process refrigeration.

Our proposed rule would also incorporate the GWP thresholds and effective dates for ice rinks from the state law.

2.3.1.3 Setting maximum GWP thresholds for new air conditioning equipment: Baseline: RCW 70A.60.020, which was added by the 2021 law, authorizes but does not require ecology to set a 750 GWP threshold for substances used in new stationary air conditioning (excluding chillers) and sets the earliest dates such prohibitions could begin.

The state building code council did not adopt all four safety standards specified in RCW 70A.60.020 (2)(b)(i) by January 1, 2023. The council is expected to complete the required adoption by November 2025. Accordingly, January 1, 2028, is the earliest possible effective date for all stationary air conditioning equipment other than dehumidifiers, room air conditions [conditioners], and systems with variable refrigerant flow or volume.

The proposed EPA technology transitions rule would set a GWP limit of 700 for:

- Air conditioning except variable refrigerant flow systems, beginning in 2025.
- Variable refrigerant flow systems, beginning in 2026.

Proposed: The proposed rule would set a 750 GWP threshold for substances used in new air conditioning equipment as follows:

- Room air conditioners and residential dehumidifiers, effective 2024. This is one year later than the earliest possible effective date for this type of equipment.

• Variable refrigerant flow or volume systems, effective 2026. This is the earliest possible effective date for this type of equipment.

- Other types of air conditioning equipment used in residential and nonresidential applications, effective 2028. This is based on our understanding that the state building code council will adopt the four specified safety standards no later than January 1, 2026.

2.3.1.4 Setting maximum GWP thresholds for small containers and nonessential consumer products: Baseline: RCW 70A.60.080, which was amended by the 2021 law, prohibits the use of substances with greater than 150 GWP in small containers of refrigerant and nonessential consumer products. These statutory prohibitions went into effect on July 25, 2021.

Proposed: The proposed rule amendments would incorporate the new statutory prohibitions without change.

2.3.1.5 Establishing exemptions: Baseline: The 2021 law established acceptable uses (exemptions) for specified substances for certain end use categories.

For refrigeration equipment, the 2021 law also exempts:

- Equipment with 50 lbs. or less of refrigerant.
- Replacement of components in existing facilities as part of normal maintenance.
- Facilities with new equipment with a building permit issued before the effective date of the amended rule.

Under the 2021 law, stationary air conditioning equipment is also exempt for facilities with new equipment with a building permit issued before the effective date.

Proposed: The proposed rule amendments would establish new exemptions consistent with additional prohibitions being proposed (see previous sections). These exemptions include certain applications of centrifugal chillers and positive displacement chillers:

- Using HFC-134a for some military marine vessels.
- Using HFC-134a and R-404A for some human-related spacecraft and support equipment.

Our proposed rule would also incorporate the other statutory exemptions described above.

2.3.1.6 Amending and adding labeling requirements: Baseline: Under the 2019 and 2021 laws, manufacturers of products and equipment using substances that are listed under the existing rule (see previous sections in 2.3.1) must meet labeling requirements, unless their products are exempt.

RCW 70A.60.060 (4)(c), added by the 2021 law, requires ecology to allow for alternative disclosure methods if ecology determines that compliance with the applicable labeling requirement is not feasible for a particular product or equipment.

RCW 70A.60.020(5), added by the 2021 law, authorized ecology to establish labeling requirements for new stationary air conditioning

and refrigeration equipment that is subject to our proposed GWP thresholds.

Proposed: The proposed amendments would also implement the statutory directive to allow for alternative disclosure methods by specifying the required contents and process for requesting approval to use alternative disclosure methods.

The proposed rule amendments would also establish new, separate labeling and disclosure requirements, consistent with the proposed EPA rule, for the following equipment subject to our proposed GWP thresholds:

- New refrigeration equipment.
- New air conditioning equipment.

2.3.1.7 Adding recordkeeping requirements: Baseline: RCW 70A.60.060 requires ecology to establish reporting and recordkeeping requirements. The existing rule includes reporting and recordkeeping requirements for manufacturers of products containing substances that are restricted under the baseline.

The proposed EPA technology transition rule includes reporting requirements and three-year recordkeeping requirements for covered products.

Proposed: The proposed rule amendments would specify that existing reporting requirements would apply to products and equipment using substances that are restricted under amended requirements.

The proposed rule amendments would also establish new, separate recordkeeping requirements, consistent with the proposed EPA rule, for new stationary air conditioning and refrigeration equipment that [is] subject to our proposed GWP thresholds.

The proposed rule would require an additional two years of records retention (five-year retention of records compared to the three years required in the proposed EPA rule).

2.3.1.8 Establishing a variance process and criteria: Baseline: RCW 70A.60.020 (5)(c), added by the 2021 law, gives ecology the authority to grant variances from the proposed GWP thresholds and associated requirements for new stationary air conditioning and refrigeration equipment.

Proposed: The proposed rule amendments would establish three types of variances, with associated eligibility criteria, for which manufacturers can apply by demonstrating that issuance of the requested variance would not increase overall risk to human health or the environment.

2.3.2 Proposed amendments to requirements for facilities:

2.3.2.1 Establishing refrigerant management program (RMP) registration requirements: Baseline: RCW 70A.60.030, added by the 2021 law, directs ecology to adopt rules to implement a refrigerant management program (RMP) applicable to stationary refrigeration and air conditioning systems using high-GWP refrigerants and with a volume of 50 or more lbs., and installation and servicing of these systems.

RCW 70A.60.030(3) establishes annual registration requirements that apply to the owner or operator of a stationary refrigeration or air conditioning system with a charge capacity of 50 lbs. or more.

Under RCW 70A.60.030(7), ecology must adopt rules requiring the following entities to provide an annual report to ecology:

- Facilities with a refrigeration or air conditioning system with a full charge of at least 50 lbs. of high-GWP refrigerant.
- Any person who wholesales, distributes, or reclaims any amount of high-GWP refrigerant.

Under RCW 70A.60.030(8), ecology is also authorized to adopt rules establishing service practices for stationary appliances, which may include reporting requirements for technicians.

The statute also allows ecology to phase in RMP requirements over time based on the relative full charge of refrigeration or air conditioning systems.

Proposed: The proposed rule amendments would incorporate the annual RMP registration requirement from the 2021 law. The proposed rule would also establish reporting requirements.

The proposed rule would phase in a requirement to register and provide information to ecology.

Wholesalers, distributors, and reclaimers of any amount of high-GWP refrigerant would also be required to register with ecology and provide detailed information about the facility with which they interact (including facility information, ownership, operation, and industry).

2.3.2.2 Setting implementation fees and annual fees: Baseline: RCW 70A.60.030(9), added by the 2021 law, gives ecology authority to charge fees to cover the costs of implementing the RMP. Fees must be based on the direct and indirect costs of administering and enforcing the RMP. The statute also allows ecology to phase in RMP requirements over time based on the relative full charge of refrigeration or air conditioning systems.

Proposed: The proposed rule amendments would set an initial implementation fee of \$150 for facilities with refrigeration or air conditioning systems with a full charge of at least 1,500 lbs. of high-GWP refrigerant.

The proposed rule amendments would also set an annual implementation fee for facilities with refrigeration or air conditioning systems with full charge of at least 200 lbs. of high-GWP refrigerant as follows:

- Beginning in 2024: \$370 for facilities whose equipment has a full charge of at least 1,500 lbs.
- Beginning in 2026: \$170 for facilities whose equipment has a full charge of between 200 and 1,499 lbs.

Ongoing fees (beginning in 2025 and 2027, respectively) would be established using a process consistent with the updating process for other air quality fees. This would be specified in a new section of the air quality fee rule, in WAC 173-455-160 (see discussion in Section 2.3.7).

2.3.2.3 Requiring leak inspection and monitoring: Baseline: RCW 70A.60.030, added by the 2021 law, directs ecology to establish requirements for leak detection and monitoring as part of the RMP. At a minimum, RCW 70A.60.030(6) requires the owner or operator of a registered stationary air conditioning or refrigeration system to inspect for leaks each time significant amounts of refrigerant are added to the system.

RCW 70A.60.030(5) authorizes ecology to scale the requirements for periodic leak-detection inspections based on the relative full charge of the refrigeration or air conditioning systems. RCW 70A.60.030(5) also authorizes ecology to exempt systems that use low-GWP substances or that have automatic leak-detection systems from the requirements for periodic inspections.

Proposed: The proposed rule amendments would set leak inspection requirements for facilities with year-round refrigeration and air conditioning systems with a full charge capacity of at least 1,500 lbs., beginning in 2024.

The rule amendments would also set requirements for automatic leak detection for year-round refrigeration systems with a full charge capacity of at least 1,500 lbs., beginning in 2025.

For facilities with refrigeration or air conditioning systems with full charge between over 200 and 1,500 lbs., beginning in 2024 the proposed rule amendments would require inspections.

For facilities with refrigeration or air conditioning systems with full charge between 50 and 200 lbs., beginning in 2024 the proposed rule amendments would require less frequent inspections.

2.3.2.4 Setting leak rate thresholds and establishing notification requirements: Baseline: The EPA has existing leak-related requirements and leak rate thresholds for any person maintaining, servicing, or repairing appliances containing class I, class II, or non-exempt substitute refrigerants, for the following uses, under Section 608 of the Clean Air Act:

- Industrial process refrigeration.
- Commercial refrigeration.
- Comfort cooling.
- Other covered appliances.

RCW 70A.60.030 (7)(f), added by the 2021 law, requires ecology to establish leak rate thresholds that achieve greater emissions reductions than the federal rules adopted by EPA.

Proposed: The proposed rule amendments would set thresholds for leak rates and associated notification requirements.

2.3.2.5 Establishing requirements for leak repair, timing, and verification: Baseline: The EPA has existing leak-related requirements and leak rate thresholds, as listed above.

EPA requirements include timing requirements for corrective action if the applicable EPA leak rate thresholds (triggers) are exceeded.

RCW 70A.60.030 (7)(a), added by the 2021 law, requires ecology to adopt rules that require leaking systems to be repaired within a specified amount of time.

Proposed: The proposed rule amendments would establish timing and other requirements for leak repair, beginning in 2024.

The proposed amendments would require verification tests upon completion of leak repairs, as well as follow-up verification tests within 14 days of reaching normal operating conditions for a system that requires evacuation to conduct a repair.

2.3.2.6 Establishing requirements for retrofit and retirement plans: Baseline: The EPA has existing leak-related requirements and leak rate thresholds, as above.

These leak-related EPA requirements include development of a retrofit or retirement plan within 30 days of detecting a leak in excess of leak thresholds.

Proposed: The proposed rule amendments would require facilities with refrigeration or air conditioning systems with full charge of at least 50 lbs. of high-GWP refrigerant, with leaks that are not capable of [being] repaired within the applicable time frames and are not exempt, to prepare and implement a retrofit or retirement plan.

2.3.2.7 Establishing exemption criteria and process for leak repair, retrofit, and replacement: Baseline: RCW 70A.60.030 (8)(b), added by the 2021 law, authorizes ecology to establish a process for wholesalers, distributors, reclaimers, and equipment operators to apply for an exemption from rule requirements related to leak repair and retrofit or replacement. The statute authorizes ecology to grant such

exemptions on the basis of economic hardship, natural disaster, or based on a calculation of the impact on lifecycle GHG emissions.

Proposed: The proposed rule amendments would add three types of exemptions, with associated eligibility criteria, for which facilities can apply by demonstrating that approval of the requested exemption would not increase overall risk to human health or the environment.

Applicants would also need to demonstrate they made a good faith effort to anticipate, address, and mitigate potential noncompliance.

The proposed rule would establish the application process for an exemption.

2.3.2.8 Establishing reporting requirements: Baseline: RCW 70A.60.030(7), added by the 2021 law, directs ecology to establish annual reporting requirements for facilities.

The statute also directs ecology to require refrigerant wholesalers, distributors, and reclaimers to report annually.

Under RCW 70A.60.030(8), ecology is also authorized to adopt rules establishing service practices for stationary appliances, which may include reporting requirements for technicians.

Proposed: The proposed rule amendments would specify the timing and required contents of annual reports.

The proposed rule amendments would also require refrigerant wholesalers, distributors, and reclaimers to report annually for the previous calendar year, beginning in 2025 for 2024.

2.3.2.9 Establishing recordkeeping requirements: Baseline: The EPA has existing requirements for class I, class II, or non-exempt substitute refrigerants, as above.

EPA requirements include recordkeeping requirements for three years.

RCW 70A.60.030 (7)(e), added by the 2021 law, directs ecology to adopt recordkeeping requirements for facility operators as well as refrigerant wholesalers, distributors, and reclaimers.

Proposed: The proposed rule would require recordkeeping beginning in 2024. Facilities with refrigeration or air conditioning systems with full charge of at least 50 lbs. of high-GWP refrigerant would be required to maintain records on site for at least five years.

The proposed rule would also require refrigerant wholesalers, distributors, and reclaimers to maintain records on site for at least five years.

2.3.4 Proposed amendments to requirements for service technicians: 2.3.4.1 Establishing required service practices: Baseline: RCW 70A.60.030 (8)(a), added by the 2021 law, authorizes ecology to adopt rules establishing required service practices for stationary appliances. The rules may include requirements for service technician certification and prohibitions on practices that are likely to result in releases to the environment.

Service practices are required by the EPA under their phaseout of ozone-depleting substances (ODS) program, for class I and class II controlled substances.

Proposed: The proposed rule amendments would require the same service practices for HFCs as are required under the baseline for other refrigerants that are also ODS. The proposed rule amendments would also require that additional refrigerant charge may not be added to equipment known to have a leak unless the charge is needed to maintain operations while preparing for or conducting repairs.

2.3.6 Making corresponding changes to the air quality fee rule: The proposed rule amendments would add a new section to chapter 173-455 WAC to establish the proposed RMP implementation fees author-

ized by the 2021 law. These proposed rule amendments would facilitate annual updating of the RMP implementation fees.

**COSTS OF COMPLIANCE: EQUIPMENT, SUPPLIES, LABOR, PROFESSIONAL SERVICES, ADMINISTRATIVE COSTS, AND OTHER COSTS:**

Summary	PV Cost (low, fewer businesses)	PV Cost (high, fewer businesses)	PV Cost (low, larger business count)	PV Cost (high, larger business count)
Adding prohibitions	\$79,558	\$385,211	\$79,558	\$385,211
Refrigeration GWP thresholds	(\$25,812,527)	\$292,536,326	(\$62,836,435)	\$123,645,506
AC GWP thresholds	\$11,104,972	\$11,104,972	\$11,104,972	\$11,104,972
RMP registration	\$375,585	\$375,585	\$1,713,345	\$1,713,345
Fees	\$7,443,265	\$7,443,265	\$78,627,164	\$78,627,164
Leak detection	\$40,239,706	\$47,078,609	\$329,633,817	\$363,986,224
Leak rate thresholds	\$2,072,923	\$2,072,923	\$16,691,009	\$16,691,009
Repair timing	Qualitative	Qualitative	Qualitative	Qualitative
Retrofit requirements	Qualitative	Qualitative	Qualitative	Qualitative
Reporting	\$8,472,992	\$8,472,992	\$87,176,863	\$87,176,863
<b>TOTAL</b>	<b>\$43,976,472</b>	<b>\$369,469,882</b>	<b>\$462,190,293</b>	<b>\$683,330,294</b>

**COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES:**

Type of Cost	Small Business Low	Small Business High	Large Business Low	Large Business High
Amending prohibitions on the use of certain substances in specified new products and equipment	\$52.22	\$210.71	\$0.02	\$0.09
Setting GWP thresholds for prohibited substances used in new refrigeration equipment with a refrigerant charge capacity of more than 50 lbs	\$5,414.69	\$5,745.28	\$2.25	\$2.38
Setting GWP thresholds for prohibited substances used in new air conditioning equipment	N/A	N/A	N/A	N/A
Establishing RMP registration requirements	\$2.62	\$2.62	\$0.00	\$0.00
Setting implementation fees and annual fees	\$59.09	\$59.09	\$0.02	\$0.02
Requiring leak detection and monitoring	\$68.05	\$141.49	\$0.03	\$0.06
Setting leak rate thresholds and establishing notification requirements	\$4.56	\$4.56	\$0.00	\$0.00
Establishing requirements for leak repair, timing, and verification	N/A	N/A	N/A	N/A
Establishing requirements for retrofit and retirement plans	N/A	N/A	N/A	N/A
Establishing reporting requirements	\$13.05	\$13.05	\$0.01	\$0.01
<b>TOTAL</b>	<b>\$5,614.28</b>	<b>\$6,176.80</b>	<b>\$2.33</b>	<b>\$2.56</b>

**MITIGATION OF DISPROPORTIONATE IMPACT:** Ecology considered:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or
- (f) Any other mitigation techniques including those suggested by small businesses or small business advocates.

We considered all of the above options, the goals and objectives of the authorizing statutes and included the following:



- Businesses that have refrigeration equipment with a refrigerant charge capacity of less than 50 lbs. are not required to comply with the requirements of the rule.

- Exemptions from requirements of the rule may be granted if an exemption will not increase the overall risk to human health and the environment and the facility is a retail food facility or a small business, compliance with the requirements would result in extreme financial hardship, and the applicant has made a good faith effort to mitigate any potential noncompliance.

**SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION:**

- Met with Washington Food Industry Association and Air Conditioning Contractors Association representatives in June 2021.
- Presented a rule making overview at North American Sustainable Refrigeration Council conference in September 2021 (including a session focused on impacts to small businesses) and September 2022.
- Held seven open stakeholder meetings in 2022 and 2023.
- Met with the Washington chapter of the United Association of the Plumbers and Pipefitters Industry.
- Held a webinar on the legislative leak report to review ecology methods for setting leak thresholds in the RMP.
- Met with the Washington Air Conditioning Contractors Association in December 2022.

**NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE:** NAICS definitions and industry hierarchies are discussed at <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2017>.

NAICS Code	Description
115x	Support Activities for Agriculture and Forestry
221x	Utilities
311x	Food Manufacturing
312x	Beverage and Tobacco Product Manufacturing
313x	Textile Mills
323x	Printing and Related Support Activities
324x	Petroleum and Coal Products Manufacturing
325x	Chemical Manufacturing
326x	Plastics and Rubber Products Manufacturing
327x	Nonmetallic Mineral Product Manufacturing
332x	Fabricated Metal Product Manufacturing
334x	Computer and Electronic Product Manufacturing
335x	Electrical Equipment, Appliance, and Component Manufacturing
336x	Transportation Equipment Manufacturing
339x	Miscellaneous Manufacturing
423x	Merchant Wholesalers, Durable Goods
424x	Merchant Wholesalers, Nondurable Goods
425x	Wholesale Trade Agents and Brokers
441x	Motor Vehicle and Parts Dealers
444x	Building Material and Garden Equipment and Supplies Dealers
445x	Food and Beverage Retailers
488x	Support Activities for Transportation
493x	Warehousing and Storage
512x	Motion Picture and Sound Recording Industries
518x	Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services

NAICS Code	Description
522x	Credit Intermediation and Related Activities
524x	Insurance Carriers and Related Activities
531x	Real Estate
532x	Rental and Leasing Services
541x	Professional, Scientific, and Technical Services
551x	Management of Companies and Enterprises
561x	Administrative and Support Services
611x	Educational Services
621x	Ambulatory Health Care Services
622x	Hospitals
623x	Nursing and Residential Care Facilities
711x	Performing Arts, Spectator Sports, and Related Industries
712x	Museums, Historical Sites, and Similar Institutions
713x	Amusement, Gambling, and Recreation Industries
721x	Accommodation
722x	Food Services and Drinking Places
811x	Repair and Maintenance
812x	Personal and Laundry Services
813x	Religious, Grantmaking, Civic, Professional, and Similar Organizations

The x in the four-digit NAICS codes listed in the table [above] represent subcategories within NAICS codes that [were] described.

**CONSIDERATION OF LOST SALES OR REVENUE, IMPACT ON JOBS: Low-cost modeled impacts to output accounting for social cost of carbon (millions of \$):**

Cost Impact	2025	2033	2043
Dun & Bradstreet	-\$619	-\$7	-\$6
Data Axle	-\$505	-\$120	-\$79

**High-cost modeled impacts to output accounting for social cost of carbon (millions of \$):**

Cost Impact	2025	2033	2043
Dun & Bradstreet	-\$595	\$44	\$66
Data Axle	-\$554	-\$181	-\$122

**Low-cost impacts on jobs (Dun & Bradstreet):**

Industry	2025 Jobs Impact	2043 Jobs Impact
Whole state	-3219	-16
Retail trade	-586	-3
Construction	-584	5
Food services and drinking places	-153	-1
Real estate	-149	-1
Individual and family services	-49	-1

**Low-cost impacts on jobs (Data Axle):**

Industry	2025 Jobs Impact	2043 Jobs Impact
Whole state	-2642	-286
Construction	-500	1
Retail trade	-360	-26

Industry	2025 Jobs Impact	2043 Jobs Impact
State and Local Government	-150	-32
Food services and drinking places	-131	-17
Real estate	-118	-13

A copy of the statement may be obtained by contacting Linda Kildahl, Department of Ecology, P.O. Box 47600, Olympia, WA 98504, phone 360-706-3038, Washington relay service or TTY call [711 or] 877-833-6341, email [linda.kildahl@ecy.wa.gov](mailto:linda.kildahl@ecy.wa.gov).

August 31, 2023  
Heather R. Bartlett  
Deputy Director

## WSR 23-18-058

## PROPOSED RULES

## HIGHLINE COLLEGE

[Filed August 31, 2023, 10:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-15-094.

Title of Rule and Other Identifying Information: Highline College updated its anti-hazing policy for compliance with HB 1751 ("Sam's Law," hazing prevention).

Amend WAC 132I-126-010, 132I-126-050 and 132I-126-100; and introduce new WAC 132I-126-130.

Hearing Location(s): On October 10, 2023, at 1:30 p.m., via Zoom <https://highline.zoom.us/j/89320089321>.

Date of Intended Adoption: October 10, 2023.

Submit Written Comments to: Isabelle Wroblewski, 2400 South 240th [Street], Des Moines, WA 98198-9800, email [iwroblewski@highline.edu](mailto:iwroblewski@highline.edu), fax 206-870-3773, 206-592-3354, by September 20, 2023.

Assistance for Persons with Disabilities: Contact Isabelle Wroblewski, phone 206-592-3354, fax 206-870-3773, email [iwroblewski@highline.edu](mailto:iwroblewski@highline.edu), [dslota@highline.edu](mailto:dslota@highline.edu), by October 3, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Highline College is required by the state of Washington to update our student conduct code to be in compliance with the implementation of HB 1751 ("Sam's Law," hazing prevention). This includes amending the definition of hazing, adding student groups to our jurisdiction, adding the definition of a student group to our definition section, and adding a new section about our hazing specific sanctions.

Reasons Supporting Proposal: HB 1751 ("Sam's Law," hazing prevention) was passed into law March 3, 2022, and became effective June 9, 2022.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

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

Name of Proponent: Highline College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Isabelle Wroblewski, Associate Director of Community Standards and Student Conduct, 2400 South 240th [Street], Des Moines, WA 98198-9800, 206-592-3354.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 and does not apply to college rules.

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

Is exempt under RCW 19.85.025(3) as the rules 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.

September 1, 2023

Isabelle Wroblewski

Associate Director of Community Standards and Student Conduct

OTS-4433.1

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

**WAC 132I-126-010 Statement of jurisdiction.** ((The student conduct code applies to student conduct that occurs on college premises, to conduct that occurs at or in connection with college-sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the date of admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion on a case-by-case basis to determine whether the student conduct code will be applied to conduct that occurs off campus.))

(1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) On college premises;

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

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

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

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

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

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

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-14-003, § 132I-126-010, filed 6/23/21, effective 7/24/21.]

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

**WAC 132I-126-050 Definitions.** The following definitions shall apply for the purpose of this student conduct code:

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

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

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

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

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of (~~ten~~) 10 instructional days or from a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action are reviewed through brief adjudicative proceedings, unless the case is referred to the committee by the student conduct officer or the conduct review officer.

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

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

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

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

(7) "Respondent" is the student against whom disciplinary action is initiated.

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

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

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

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

(9) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been admitted for admission are considered "students."

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

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

(12) "The president" is the president of the college. The president is authorized to delegate any of his or her responsibilities as set forth in this chapter as may be reasonably necessary.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-14-003, § 132I-126-050, filed 6/23/21, effective 7/24/21.]

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

**WAC 132I-126-100 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating: Includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

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

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

(d) Collusion includes assisting another to commit an act of academic dishonesty, such as paying or bribing someone to acquire a test or assignment, or to increase the score on a test or assignment; taking a test or doing an assignment for someone else; allowing someone to do these things for one's own benefit.

(e) Academic misconduct includes intentionally violating college policies, such as altering grades, misrepresenting one's identity failing to report known incident of academic dishonesty or participating in obtaining or distributing any part of the test or any information about a test.

Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus. Further academic consequences may follow consistent with the provisions in any program

handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

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

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

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

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

(3) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders.

(a) Any instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

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

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victims.

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

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

(7) **Failure to comply with directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons violation.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other



weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel, legally authorized military personnel, or approved contractors, while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or designee may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

This policy does not apply to the possession and/or use of disabling and/or self-defense sprays when possessed and/or used for self-defense.

~~(9) **Hazing.** ((Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.))~~

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

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

~~(ii) Any pastime or amusement engaged in with respect to such a student group; or~~

~~(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.~~

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

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

~~(ii) Humiliation by ritual act;~~

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

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

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

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

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

~~(10) **Alcohol, drug, and tobacco violations.**~~

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

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

~~(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41~~

RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

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

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132I-126-505 through 132I-126-585 (supplemental Title IX student conduct procedures).

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

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

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

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

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

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

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

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

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

(iv) Statutory rape. Consensual intercourse between a person who is (~~eighteen~~) 18 years of age or older, and a person who is under the age of (~~sixteen~~) 16.

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

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

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

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

(I) The length of the relationship;

(II) The type of relationship; and

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

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

(d) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including preg-

nancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-14-003, § 132I-126-100, filed 6/23/21, effective 7/24/21.]

NEW SECTION

**WAC 132I-126-130 Hazing prohibited—Sanctions.** (1) Hazing by a student or a student group is prohibited pursuant to WAC 132I-126-100(9).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(d) Student groups found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

[]

## WSR 23-18-065

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed September 1, 2023, 9:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-105.

Title of Rule and Other Identifying Information: WAC 182-550-2590 Agency prior authorization requirements for Level 1 and Level 2 services, 182-550-3381 Payment method for acute PM&R services and administrative day services, and 182-550-4550 Administrative day rate and swing bed day rate.

Hearing Location(s): On October 10, 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\\_fMyM6MV1SmqpIcKuyrlgYQ](https://us02web.zoom.us/webinar/register/WN_fMyM6MV1SmqpIcKuyrlgYQ). 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: October 11, 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 October 10, 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 September 29, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is revising these rules to align with 2SSB 5103, 68th legislature, 2023 regular session. This legislation requires HCA to provide a hospital payment for apple health clients who meet the criteria for discharge from a hospital stay to one of several types of facilities but who cannot be discharged because placement is unavailable. These revisions provide for the payment of medically necessary ancillary services to be billed by and paid to the hospital separately.

HCA's external review draft for this rule making included similar revisions to WAC 182-550-2600. These revisions will subsequently be made as part of the changes identified under WSR 23-17-101.

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.

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: Abby Cole, P.O. Box 45510, Olympia, WA 98504-5510, 360-725-1835.

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

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

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

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

Scope of exemption for rule proposal:

Is fully exempt.

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

September 1, 2023

Wendy Barcus

Rules Coordinator

## OTS-4769.2

AMENDATORY SECTION (Amending WSR 19-18-026, filed 8/28/19, effective 9/28/19)

**WAC 182-550-2590 Agency prior authorization requirements for Level 1 and Level 2 LTAC services.** (1) The medicaid agency requires prior authorization for Level 1 and Level 2 long term acute care (LTAC) inpatient stays. The prior authorization process includes all the following:

(a) For an initial (~~thirty~~) 30-day stay:

(i) The client must:

(A) Be eligible under one of the programs listed in WAC 182-550-2575; and

(B) Require Level 1 or Level 2 LTAC services as defined in WAC 182-550-1050.

(ii) The LTAC provider of services must:

(A) Before admitting the client to the LTAC hospital, submit a request for prior authorization to the agency by fax, electronic mail, or telephone, as published in the agency's LTAC billing instructions;

(B) Include sufficient medical information to justify the requested initial stay;

(C) Obtain prior authorization from the agency's medical director or designee, when accepting the client from the transferring hospital; and

(D) Meet all the requirements in WAC 182-550-2580.

(b) For any extension of stay, the criteria in (a) of this subsection must be met, and the LTAC provider of services must submit a request for the extension of stay to the agency with sufficient medical justification.

(2) The agency authorizes Level 1 or Level 2 LTAC services for initial stays or extensions of stay based on the client's circumstances and the medical justification received.

(3) A client who does not agree with a decision regarding a length of stay has a right to a fair hearing under chapter 182-526 WAC. After receiving a request for a fair hearing, the agency may request additional information from the client and the facility, or both. After the agency reviews the available information, the result may be:

(a) A reversal of the initial agency decision;

(b) Resolution of the client's issue(s); or

(c) A fair hearing conducted according to chapter 182-526 WAC.

(4) The agency may authorize an administrative day rate payment, as well as payment for medically necessary ancillary services as determined by the agency, pharmacy services, and pharmaceuticals, for a client who meets one or more of the following. The client:

(a) Does not meet the requirements for Level 1 or Level 2 LTAC services;

(b) Is waiting for placement in another hospital or other facility; or

(c) If appropriate, is waiting to be discharged to the client's residence.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-18-026, § 182-550-2590, filed 8/28/19, effective 9/28/19; WSR 15-18-065, § 182-550-2590, filed 8/27/15, effective 9/27/15. WSR 11-14-075, recodified as § 182-550-2590, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.09.500. WSR 08-21-039, § 388-550-2590, filed 10/8/08, effective 11/8/08; WSR 07-11-129, § 388-550-2590, filed 5/22/07, effective 8/1/07. Statutory Authority: RCW 74.08.090. WSR 02-14-162, § 388-550-2590, filed 7/3/02, effective 8/3/02.]

AMENDATORY SECTION (Amending WSR 14-12-047, filed 5/29/14, effective 7/1/14)

**WAC 182-550-3381 Payment method for acute PM&R services and administrative day services.** This section describes the agency's payment method for acute physical medicine and rehabilitation (PM&R) services provided by acute PM&R hospitals.

(1) The agency pays an acute PM&R hospital for acute PM&R services based on a rehabilitation per diem rate. See chapter 182-550 WAC and WAC 182-550-3000.

(2) Acute PM&R room and board includes, but is not limited to:

(a) Facility use;

(b) Social services (e.g., discharge planning);

(c) Bed and standard room furnishings; and

(d) Dietary and nursing services.

(3) When the agency authorizes administrative day(s) for a client as described in WAC 182-550-2561(8), the agency pays the facility:

(a) The administrative day rate; ~~((and))~~

(b) For pharmaceuticals prescribed for the client's use during the administrative portion of the client's stay; and

(c) Medically necessary ancillary services as determined by the agency.

(4) The agency pays for transportation services provided to a client receiving acute PM&R services in an acute PM&R hospital according to chapter 182-546 WAC.

[Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-12-047, § 182-550-3381, filed 5/29/14, effective 7/1/14. WSR 11-14-075, recodified as § 182-550-3381, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.09.500. WSR 07-14-055, § 388-550-3381, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.08.090, 74.09.520 and 42 C.F.R. 482.56. WSR 03-06-047, § 388-550-3381, filed 2/28/03, effective 3/31/03. Statutory



Authority: RCW 74.08.090 and 74.09.520. WSR 99-17-111, § 388-550-3381, filed 8/18/99, effective 9/18/99.]

AMENDATORY SECTION (Amending WSR 22-13-044, filed 6/7/22, effective 10/1/22)

**WAC 182-550-4550 Administrative day rate and swing bed day rate.**

**(1) Administrative day rate.**

(a) The medicaid agency allows hospitals an administrative day rate for those days of hospital stay in which a client does not meet criteria for acute inpatient level of care, but is not discharged because:

(i) An appropriate placement outside the hospital is not available (no placement administrative day); or

(ii) The postpartum parent's newborn remains on an inpatient claim for monitoring post-in utero exposure to substances that may lead to physiologic dependence and continuous care by the postpartum parent is the appropriate first-line treatment (newborn administrative day). "Postpartum parent" means the client who delivered the baby(ies).

(b) The agency uses the annual statewide weighted average nursing facility medicaid payment rate to update the all-inclusive administrative day rate on November 1st of each year.

(c) The agency (~~does not~~) pays for (~~ancillary services, except for~~) pharmacy services (~~and~~), pharmaceuticals (~~(r)~~) and medically necessary ancillary services, as determined by the agency, when these services are provided during administrative days.

(d) The agency identifies administrative days during the length of stay review process after the client's discharge from the hospital.

(e) The agency pays for up to five newborn administrative days. The agency pays for additional days with expedited prior authorization (EPA). For EPA, a hospital must establish that the clinically appropriate EPA criteria outlined in the agency's published billing guides have been met. The hospital must use the appropriate EPA number when billing the agency.

(f) The agency pays the hospital the administrative day rate starting with the date of hospital admission if the admission is solely for a no placement administrative day stay.

(g) The agency pays the hospital the newborn administrative day rate only if:

(i) The postpartum parent rooms in with their newborn and provides parental support/care; and

(ii) The hospital provides all prescribed medications to the postpartum parent for the duration of the stay, including medications prescribed to treat substance use disorder.

**(2) Swing bed day rate.** The agency allows hospitals a swing bed day rate for those days when a client is receiving agency-approved nursing service level of care in a swing bed. The agency's aging and disability services administration (ADSA) determines the swing bed day rate.

(a) The agency does not pay a hospital the rate applicable to the acute inpatient level of care for those days of a hospital stay when a client is receiving agency-approved nursing service level of care in a swing bed.

(b) The agency's allowed amount for those ancillary services not covered under the swing bed day rate is based on the payment methods provided in WAC 182-550-6000 and 182-550-7200. These ancillary services may be billed by the hospital on an outpatient hospital claim, except for pharmacy services and pharmaceuticals.

(c) The agency allows pharmacy services and pharmaceuticals not covered under the swing bed day rate, that are provided to a client receiving agency-approved nursing service level of care, to be billed directly by a pharmacy through the point of sale system. The agency does not allow those pharmacy services and pharmaceuticals to be paid to the hospital through submission of a hospital outpatient claim.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-13-044, § 182-550-4550, filed 6/7/22, effective 10/1/22; WSR 19-18-026, § 182-550-4550, filed 8/28/19, effective 9/28/19; WSR 15-18-065, § 182-550-4550, filed 8/27/15, effective 9/27/15. WSR 11-14-075, recodified as § 182-550-4550, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 2009-11 Omnibus Operating Budget (ESHB 1244). WSR 09-12-062, § 388-550-4550, filed 5/28/09, effective 7/1/09.]

**WSR 23-18-069**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed September 1, 2023, 10:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-075.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-71-0876 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training?, 388-71-0992 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic?, 388-112A-0081 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training?, and 388-112A-0613 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic? The amendments will finalize training, certification, and continuing education pandemic extensions and deadlines, and set a date for repeal of those sections as required by RCW 74.39A.074 and 74.39A.341.

Hearing Location(s): On October 10, 2023, at 10:00 a.m., virtual via [Microsoft] Teams or call in. Hearings are held virtually, see the DSHS website <https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules> for the most up-to-date information.

Date of Intended Adoption: Not earlier than October 11, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRulesCoordinator@dshs.wa.gov](mailto:DSHSRulesCoordinator@dshs.wa.gov), fax 360-664-6185, by October 10, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact 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 September 28, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal amends current rules and will finalize training, certification, and continuing education extensions put in place during the COVID-19 public health emergency and will set a date for repeal of those sections as required by statute.

Reasons Supporting Proposal: RCW 74.39A.074 (4) (a) and 74.39A.341 (6) (a) stipulate that "If a pandemic, natural disaster, or other declared state of emergency impacts the ability of long-term care workers to complete training as required by this section, the department may adopt rules to allow long-term care workers additional time to complete the training requirements." Additionally, the same statutes [statutes] require that "Once the department determines a rule adopted under this subsection is no longer necessary, it must repeal the rule under RCW 34.05.353." In 2021, DSHS added two new sections in chapter 388-71 and 388-112A WAC in response to the backlog of long-term care workers needing training or testing for certification or both caused by the COVID-19 pandemic. The rules allowed additional time for long-term care workers to be certified by requiring them to complete training and continuing education requirements by certain dates to reduce the impact of clients accessing qualified long-term care workers to

provide personal care services. Availability of training and certification for long-term care workers continues to require extension to deadlines due to the COVID-19 pandemic. The extensions are critical for ensuring the ability of long-term care workers to access training, certification, and continuing education. DSHS intends to put current emergency rule deadlines for training, certification, and continuing education into permanent rule to cover those long-term care workers still affected by training, certification, and continuing education backlogs, and to clarify a final repeal date for all COVID-19 related training rules when they are no longer required as directed by statute.

Statutory Authority for Adoption: RCW 74.08.090, 74.39A.070, 74.39A.074, and 74.39A.341.

Statute Being Implemented: RCW 74.39A.074 and 74.39A.341.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Chappell, P.O. Box 45600, Lacey [Olympia], WA 98504-5600, 360-725-2516.

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 David Chappell, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-2516, email david.chappell@dshs.wa.gov.

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

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

Explanation of exemptions: RCW 18.88B.021(3) and 74.39A.341(6).

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: RCW 74.39A.074 (4)(a) and 74.39A.341 (6)(a) stipulate that "If a pandemic, natural disaster, or other declared state of emergency impacts the ability of long-term care workers to complete training as required by this section, the department may adopt rules to allow long-term care workers additional time to complete the training requirements." Additionally, the same statutes [statutes] require that "Once the department determines a rule adopted under this subsection is no longer necessary, it must repeal the rule under RCW 34.05.353."

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. [No information supplied by agency]

August 30, 2023  
Katherine I. Vasquez  
Rules Coordinator

**SHS-4989.2**

AMENDATORY SECTION (Amending WSR 22-12-081, filed 5/31/22, effective 7/1/22)

**WAC 388-71-0876 When must long-term care workers who were working or hired during or immediately after the COVID-19 public health emergency complete training, including required specialty training?**

(1) Unless exempt from training as described in WAC 388-71-0839 or WAC 388-112A-0090, a long-term care worker affected by the COVID-19 public health emergency must complete training, including required specialty training, as follows:

<b>Worker hired or rehired during the time frame of:</b>	<b>Must complete basic training no later than:</b>
8/17/2019 to 9/30/2020	<del>((10/31/2022))</del> <u>1/31/2023</u>
10/1/2020 to 4/30/2021	<del>((1/31/2023))</del> <u>4/30/2023</u>
5/1/2021 to 3/31/2022	<del>((4/30/2023))</del> <u>7/31/2023</u>
4/1/2022 to 9/30/2022	<del>((8/31/2023))</del> <u>10/31/2023</u>
10/1/2022 - <del>((12/31/2022</del> or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) <u>6/30/2023</u>	<del>((9/30/2023</del> or within 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) <u>11/30/2023</u>
<del>((After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later))</del> <u>Beginning 7/1/2023</u>	Standard training requirements-120 days from hire date

(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency who is required to be certified as a home care aide must obtain certification (~~as follows:~~) according to WAC 246-980-011.

<b><del>(Worker hired or rehired during the time frame of:</del></b>	<b>Must be certified as a home care aide no later than:</b>
<del>8/17/2019 to 9/30/2020</del>	<u>1/19/2023</u>
<del>10/1/2020 to 4/30/2021</del>	<u>4/21/2023</u>
<del>5/1/2021 to 3/31/2022</del>	<u>7/19/2023</u>
<del>4/1/2022 to 9/30/2022</del>	<u>11/19/2023</u>
<del>10/1/2022 - 12/31/2022</del> or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	<u>12/19/2023</u> or within 200 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
<del>After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later</del>	Standard training))

(3) "Hired" and "rehired" as used in this section mean the date of hire as defined in chapter 246-980 WAC. A long-term care worker is

considered rehired if they held previous employment as a long-term care worker and did not have an active home care aide credential when hired during the time frames outlined in section (1) of this section.

(4) If a long-term care worker is limited-English proficient, the worker may request an additional 60 days to obtain certification.

(5) Nothing in this section prevents a long-term care worker hired between ((8/17/2019)) August 17, 2019, and ((9/30/2022)) September 30, 2022, from completing training or obtaining certification in advance of the deadlines stipulated in subsections (1) or (2) of this section.

(6) This section expires on August 1, 2024.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 22-12-081, § 388-71-0876, filed 5/31/22, effective 7/1/22.]

AMENDATORY SECTION (Amending WSR 22-12-081, filed 5/31/22, effective 7/1/22)

**WAC 388-71-0992 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic?**

(1) The department finds that long-term care workers employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training. Long-term care workers received critical, ongoing training in such topics as:

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

(2) This on-the-job training was required of all workers in all long-term care environments in Washington state. Instruction was provided in assisted living facilities, adult family homes, home care agencies, enhanced services facilities, certified community residential services, and to individual providers by the SEIU775 benefits group and DSHS to discuss infection control and the availability and distribution of personal protective equipment. Recognition of this training as a valid learning experience, in its various forms, was agreed upon with input from consumer and worker representatives, as the content was based on guidelines established by the Centers for Disease Control (CDC) and other federal, state, and local health care authorities.

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

that this training is not considered to be repeated training as described in WAC (~~(388-112A-0600(2))~~) 388-71-0985.

(4) All long-term care workers employed during the dates in section (3) of this section are granted 12 hours of DSHS-approved continuing education credit for the training entitled "COVID-19 On-The-Job Training Protocols," bearing the DSHS approval code CE2135218. No physical certificate for this training will be issued or required. The COVID-19 continuing education hours may be applied to renewal periods ending no earlier than March 1, 2020, and no later than December 31, 2021.

(5) The department recognizes that long-term care workers may not have completed training hours in excess of the 12 hours of ((CE)) continuing education granted in section (4) of this section due to the COVID-19 public health emergency. All long-term care workers (~~(shall have until December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later, to complete any additional CE that may have become due while training waivers were in place in excess of the 12 hours of CE granted in subsection (4) of this section. If a worker's next birthday allows fewer than 120 days after the waivers are lifted to complete required CE for their current renewal cycle, the worker will have 120 days from the end of training waivers to complete the required CE.)~~) must complete all other continuing education requirements that came due while training waivers were in place in excess of the 12 hours of continuing education granted in section (4) of this section no later than August 31, 2023. Continuing education hours due for renewal cycles occurring between October 28, 2022, and August 31, 2023, must be completed no later than August 31, 2023.

(6) This section expires on January 1, 2024.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 22-12-081, § 388-71-0992, filed 5/31/22, effective 7/1/22.]

AMENDATORY SECTION (Amending WSR 22-12-081, filed 5/31/22, effective 7/1/22)

**WAC 388-112A-0081 When must long-term care workers who were working or hired during or immediately after the COVID-19 public health emergency complete training, including required specialty training?** (1) Unless exempt from training as described in WAC 388-71-0839 or WAC 388-112A-0090, a long-term care worker affected by the COVID-19 public health emergency must complete training, including required specialty training, as follows:

<b>Worker hired or rehired during the time frame of:</b>	<b>Must complete basic training no later than:</b>
8/17/2019 to 9/30/2020	<del>((10/31/2022))</del> <u>1/31/2023</u>
10/1/2020 to 4/30/2021	<del>((1/31/2023))</del> <u>4/30/2023</u>
5/1/2021 to 3/31/2022	<del>((4/30/2023))</del> <u>7/31/2023</u>
4/1/2022 to 9/30/2022	<del>((8/31/2023))</del> <u>10/31/2023</u>

10/1/2022 - ((12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) 6/30/2023	((9/30/2023 or within 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) <u>11/30/2023</u>
((After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later)) Beginning 7/1/2023	Standard training requirements- <u>120 days from hire date</u>

(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency who is required to be certified as a home care aide must obtain certification ((as follows:)) according to WAC 246-980-011.

<b>((Worker hired or rehired during the time frame of:</b>	<b>Must be certified as a home care aide no later than:</b>
8/17/2019 to 9/30/2020	1/19/2023
10/1/2020 to 4/30/2021	4/21/2023
5/1/2021 to 3/31/2022	7/19/2023
4/1/2022 to 9/30/2022	11/19/2023
10/1/2022 - 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	12/19/2023 or within 200 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	Standard training))

(3) "Hired" and "rehired" as used in this section mean the date of hire as defined in chapter 246-980 WAC. A long-term care worker is considered rehired if they held previous employment as a long-term care worker and did not have an active home care aide credential when hired during the time frames outlined in section (1) of this section.

(4) If a long-term care worker is limited-English proficient, the worker may request an additional 60 days to obtain certification.

(5) Nothing in this section prevents a long-term care worker hired between ((8/17/2019)) August 17, 2019, and ((9/30/2022)) September 30, 2022, from completing training or obtaining certification in advance of the deadlines stipulated in subsections (1) or (2) of this section.

(6) This section expires on August 1, 2024.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 22-12-081, § 388-112A-0081, filed 5/31/22, effective 7/1/22.]



AMENDATORY SECTION (Amending WSR 22-12-081, filed 5/31/22, effective 7/1/22)

**WAC 388-112A-0613 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic?**

(1) The department finds that long-term care workers employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training. Long-term care workers received critical, ongoing training in such topics as:

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

(2) This on-the-job training was required of all workers in all long-term care environments in Washington state. Instruction was provided in assisted living facilities, adult family homes, homecare agencies, enhanced services facilities, certified community residential services, and to individual providers by the SEIU775 benefits group and DSHS to discuss infection control and the availability and distribution of personal protective equipment. Recognition of this training as a valid learning experience, in its various forms, was agreed upon with input from consumer and worker representatives, as the content was based on guidelines established by the Centers for Disease Control (CDC) and other federal, state, and local health care authorities.

(3) During this time, long-term care workers required ongoing critical training because guidance from the CDC, department of labor and industries, and other health authorities changed as more was learned about the SARS-CoV-2 virus. The department finds that this unprecedented on-the-job training constituted at least 12 hours of continuing education between March 1, 2020, and February 28, 2021, and that this training is not considered to be repeated training as described in WAC 388-112A-0600(2).

(4) All long-term care workers employed during the dates in section (3) of this section are granted 12 hours of DSHS-approved continuing education credit for the training entitled "COVID-19 On-The-Job Training Protocols," bearing the DSHS approval code CE2135218. No physical certificate for this training will be issued or required. The COVID-19 continuing education hours may be applied to renewal periods ending no earlier than March 1, 2020, and no later than December 31, 2021.

(5) The department recognizes that long-term care workers may not have completed training hours in excess of the 12 hours of ((CE)) continuing education granted in section (4) of this section due to the COVID-19 public health emergency. All long-term care workers ((shall have until December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later, to complete any additional CE that may have become due while training waivers were in place in excess of the 12 hours of CE granted

~~in subsection (4) of this section. If a worker's next birthday allows fewer than 120 days after the waivers are lifted to complete required CE for their current renewal cycle, the worker will have 120 days from the end of training waivers to complete the required CE.)~~ must complete all other continuing education requirements that came due while training waivers were in place in excess of the 12 hours of continuing education granted in section (4) of this section no later than August 31, 2023. Continuing education hours due for renewal cycles occurring between October 28, 2022, and August 31, 2023, must be completed no later than August 31, 2023.

(6) This section expires on January 1, 2024.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 22-12-081, § 388-112A-0613, filed 5/31/22, effective 7/1/22.]

**WSR 23-18-075**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed September 5, 2023, 8:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-15-090.

Title of Rule and Other Identifying Information: Presumptive coverage of posttraumatic stress disorder (PTSD) as an occupational disease for direct care registered nurses; WAC 296-14-300 Mental condition/mental disabilities.

Hearing Location(s): On October 17, 2023, at 10:00 a.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501; or join electronically <https://lni-wa.gov.zoom.us/j/9361655337>, Meeting ID 936 165 5337; or join by phone 253-215-8782 US (Tacoma). Find your local number <https://lni-wa.gov.zoom.us/j/9361655337>. The in-person and virtual/telephonic meeting starts at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: December 19, 2023.

Submit Written Comments to: Jordan Ely, L&I, Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, email [Jordan.Ely@lni.wa.gov](mailto:Jordan.Ely@lni.wa.gov), fax 360-902-5029, by October 17, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Cristina Gaffoglio, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email [Cristina.Gaffoglio@lni.wa.gov](mailto:Cristina.Gaffoglio@lni.wa.gov), by October 10, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Based on legislation passed in 2023, this rule making proposes to amend WAC 296-14-300 Mental condition/mental disabilities, to add direct care registered nurses to the presumption that PTSD is an occupational disease as provided by 2SSB 5454, chapter 370, Laws of 2023.

Reasons Supporting Proposal: 2SSB 5454, chapter 370, Laws of 2023, resulted in updates to RCW 51.08.142 and added a new section to chapter 51.32 RCW. This rule making proposes to amend an existing rule to conform to the updated law regarding PTSD under workers' compensation. The bill provides a *prima facie* presumption for direct care registered nurses covered under workers' compensation that occupational PTSD is caused by their work.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, and 51.08.142.

Statute Being Implemented: 2SSB 5454, chapter 370, Laws of 2023.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jordan Ely, Tumwater, Washington, 360-902-4616; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt under RCW 34.05.328 (5)(b)(iii) because the rule is adopting, without material change, language from 2SSB 5454, chapter 370, Laws of 2023.

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

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

Explanation of exemptions: The rule making is fully exempt under RCW 34.05.310 (4) (c) because the rule proposes to adopt, without material change, language from 2SSB 5454, chapter 370, Laws of 2023.

Scope of exemption for rule proposal:

Is fully exempt.

September 5, 2023  
Joel Sacks  
Director

## OTS-4758.1

AMENDATORY SECTION (Amending WSR 23-08-063, filed 4/4/23, effective 5/5/23)

**WAC 296-14-300 Mental condition/mental disabilities.** (1) Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of an occupational disease.

Examples of mental conditions or mental disabilities caused by stress that do not fall within occupational disease shall include, but are not limited to, those conditions and disabilities resulting from:

- (a) Change of employment duties;
- (b) Conflicts with a supervisor;
- (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- (d) Relationships with supervisors, coworkers, or the public;
- (e) Specific or general job dissatisfaction;
- (f) Work load pressures;
- (g) Subjective perceptions of employment conditions or environment;
- (h) Loss of job or demotion for whatever reason;
- (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- (j) Objective or subjective stresses of employment;
- (k) Personnel decisions;
- (l) Actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers.

(2) (a) Stress resulting from exposure to a single traumatic event will be adjudicated as an industrial injury. See RCW 51.08.100.

(b) Examples of single traumatic events include: Actual or threatened death, actual or threatened physical assault, actual or threatened sexual assault, and life-threatening traumatic injury.

(c) These exposures must occur in one of the following ways:

(i) Directly experiencing the traumatic event;

(ii) Witnessing, in person, the event as it occurred to others;

or

(iii) Extreme exposure to aversive details of the traumatic event.

(d) Repeated exposure to traumatic events, none of which are a single traumatic event as defined in subsection (2)(b) and (c) of this section, is not an industrial injury (see RCW 51.08.100) or an occupational disease (see RCW 51.08.142). A single traumatic event as defined in subsection (2)(b) and (c) of this section that occurs within a series of exposures will be adjudicated as an industrial injury (see RCW 51.08.100).

(3) For certain firefighters (~~and~~), law enforcement officers, and direct care registered nurses there is a presumption that post-traumatic stress disorder (PTSD) is an occupational disease as provided by RCW 51.08.142 (~~and~~), 51.32.185, and RCW 51.32.--- (section 2, chapter 370, Laws of 2023).

(4) For public safety telecommunicators, PTSD may be considered an occupational disease as provided by RCW 51.08.142.

(5) Mental conditions or mental disabilities that specify pain primarily as a psychiatric symptom (e.g., somatic symptom disorder, with predominant pain), or that are characterized by excessive or abnormal thoughts, feelings, behaviors or neurological symptoms (e.g., conversion disorder, factitious disorder) are not clinically related to occupational exposure.

[Statutory Authority: RCW 51.04.020, 51.08.142, and 51.32.185. WSR 23-08-063, § 296-14-300, filed 4/4/23, effective 5/5/23. Statutory Authority: RCW 51.04.020, 51.04.030, and 51.08.142. WSR 15-19-139, § 296-14-300, filed 9/22/15, effective 10/23/15. Statutory Authority: Chapters 51.08 and 51.32 RCW. WSR 88-14-011 (Order 88-13), § 296-14-300, filed 6/24/88.]

## WSR 23-18-078

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed September 5, 2023, 9:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-15-062.

Title of Rule and Other Identifying Information: WAC 182-533-0390  
Childbirth education (CBE) classes.

Hearing Location(s): On October 10, 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\\_fMyM6MV1SmqpIcKuyrlgYQ](https://us02web.zoom.us/webinar/register/WN_fMyM6MV1SmqpIcKuyrlgYQ). 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: October 11, 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 October 10, 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 September 29, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending this rule to include criteria to allow HCA-approved online classes with a one-on-one check-in with the client and qualified CBE provider during or after the online classes [that] have been completed by the client.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Heather Weiher, P.O. Box 45530, Olympia, WA 98504-5530, 360-725-1293.

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. HCA is amending these rules to provide more precise language to define the program parameters and ensure consistency. This change does not impose a more-than-minor cost.

September 5, 2023

Wendy Barcus  
Rules Coordinator

## OTS-4863.1

AMENDATORY SECTION (Amending WSR 19-06-026, filed 2/28/19, effective 4/1/19)

- WAC 182-533-0390 Childbirth education (CBE) classes.** (1) Purpose. The purpose of childbirth education (CBE) classes is to help prepare the client and the client's support person(s):
- (a) For the physiological, emotional, and psychological changes experienced during and after pregnancy;
  - (b) To develop self-advocacy skills;
  - (c) To increase knowledge about and access to local community resources;
  - (d) To improve parenting skills; and
  - (e) To improve the likelihood of positive birth outcomes.
- (2) Definitions. The definitions in chapter 182-500 WAC, medical assistance definitions, and WAC 182-533-0315, maternity support services definitions, also apply to this section.
- (3) Client eligibility. To be eligible for CBE classes, a client must be:
- (a) Pregnant; and
  - (b) Covered under one of the medical assistance programs described in WAC 182-533-0320 (1)(a)(i) and (iv).
- (4) Provider requirements. To be paid for providing CBE classes to eligible clients, an approved instructor must:
- (a) Have a core provider agreement on file with the (~~health care authority (the)~~) agency(~~(+)~~);
  - (b) Ensure that individuals providing CBE classes or following up during or after the completion of online classes have credentials and/or certification as outlined in the agency's current published billing instructions;
  - (c) Deliver CBE classes:
    - (i) In a series of group sessions; ((and)) or
    - (ii) Through online classes approved by the agency; and
  - (d) Provide curriculum containing topics outlined in the agency's CBE curriculum checklist found in the agency's current published billing instructions. Topics include, but are not limited to:
    - (i) Pregnancy;
    - (ii) Labor and birth;
    - (iii) Newborns; and
    - (iv) Family adjustment.
- (5) Documentation. Providers must:
- (a) Follow the health care record requirements found in WAC 182-502-0020; and
  - (b) Maintain the following additional documentation:
    - (i) An original or electronically signed copy of each client's Freedom of (~~Choice/Consent~~) Choice form and Consent for Services form;
    - (ii) A client sign-in sheet or log-in verification for each class; and
    - (iii) Names and ProviderOne Client ID numbers of eligible clients attending CBE classes and the date(s) they participated in each CBE class.
  - (6) Coverage.
    - (a) The agency covers one CBE class series per client, per pregnancy. In order for the provider to be reimbursed:

(i) The client must attend at least one CBE session ((for the provider to be paid) or agency-approved online CBE class; and

(ii) The provider must follow up with clients participating in online classes through a telemedicine, including audio-only, visit or an in-person visit. If the client does not appear for the follow up visit, the provider must attempt to connect with the client one more time before billing the agency.

(b) CBE classes must include a minimum of six hours of instruction and are subject to the restrictions and limitations in this section and other applicable WAC.

(7) Payment. The agency pays for the CBE classes described in subsection (6) of this section on a fee-for-service basis subject to the following:

(a) CBE must:

(i) Include all classes, core materials, publications, and educational materials provided throughout the class series. Clients must receive the same materials as are offered to other attendees; and

(ii) Be billed according to the agency's current published billing instructions.

(b) The provider must accept the agency's fee as payment in full for classes provided to a client in accordance with 42 C.F.R. § 447.15.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-06-026, § 182-533-0390, filed 2/28/19, effective 4/1/19. Statutory Authority: RCW 41.05.021 and 2011 c 5. WSR 12-01-097, § 182-533-0390, filed 12/20/11, effective 1/20/12. WSR 11-14-075, recodified as § 182-533-0390, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.760 through 74.09.910. WSR 04-13-049, § 388-533-0390, filed 6/10/04, effective 7/11/04.]



## WSR 23-18-082

## PROPOSED RULES

## DEPARTMENT OF TRANSPORTATION

[Filed September 5, 2023, 12:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-20-089.

Title of Rule and Other Identifying Information: Chapter 468-16 WAC, Prequalification of contractors, electronic transmittal of contractor performance reports and performance report form updates.

Hearing Location(s): On October 26, 2023, at 1:00 p.m., at the Nisqually Conference Room, 310 Maple Park Avenue S.E., 1st Floor Room 1D02, Olympia, WA 98501.

Date of Intended Adoption: October 26, 2023.

Submit Written Comments to: Jenna Kemp, P.O. Box 47360, Olympia, WA 98504-7360, email kempj@wsdot.wa.gov, fax 360-705-6810, by October 7, 2023.

Assistance for Persons with Disabilities: Contact Jenna Kemp, P.O. Box 47360, Olympia, WA 98504-7360, phone 360-705-7017, fax 360-705-6810, TTY 711, email kempj@wsdot.wa.gov, by October 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 47.28.070 authorizes the Washington state department of transportation (WSDOT) to receive a questionnaire and financial statement prior to authorizing a proposal to a bidder. This process of obtaining information to determine that the bidder is qualified is referred to as "prequalification" and follows the process outlined in chapter 468-16 WAC. Due to process changes associated with working from home, WAC needs to be revised to allow for electronic transmittal of performance reports. Also, changes in the law related to small and veteran business utilization have created revisions to prime contractor performance report which are shown in WAC and need to be added to contractor suspension criteria based on sections of the prime contractor performance report.

Reasons Supporting Proposal: WSDOT supports work from home, as well as implements recent law changes related to small and veteran-owned business utilization.

Statutory Authority for Adoption: RCW 47.28.070.

Statute Being Implemented: Chapter 468-16 WAC.

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

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jenna Kemp, 310 Maple Park Avenue S.E., Room 2D20, Olympia WA 98501, 360-705-7017.

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 Jenna Kemp, P.O. Box 47360, Olympia, WA 98504-7360, phone 360-705-7017, fax 360-705-6810, TTY 711, email kempj@wsdot.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 34.05.328.

Explanation of exemptions: An agency is not required to prepare a separate small business economic impact statement (SBEIS) under RCW 19.85.040 if it prepared an analysis under RCW that meets the require-

ments of an SBEIS, and if the agency reduced the costs imposed by the rule on small business.

Scope of exemption for rule proposal:

Is fully exempt.

September 5, 2023

Jenna M. Kemp

Contract Ad and Award Manager

## OTS-4466.1

AMENDATORY SECTION (Amending WSR 15-01-170, filed 12/23/14, effective 1/23/15)

**WAC 468-16-090 Standard questionnaire.** The standard questionnaire and financial statement shall be prepared and transmitted to the secretary, Attn: Contract advertisement and award office. The questionnaire shall include the following information:

(1) The contractor's name, address, phone number, facsimile number, email address, and type of organization (corporation, partnership, sole proprietorship, etc.).

(2) A list of the classes of work for which the contractor seeks qualification.

(3) A statement of the ownership of the firm and, if a corporation, the name of the parent corporation, if any, and the names of any affiliated or subsidiary companies.

(4) A certificate of authority from the office of the secretary of state to do business in Washington state if the applicant is an out-of-state corporation.

(5) A list of officials within the applicant firm who are also affiliated with other firms involved in construction work as a contractor, subcontractor, supplier, or consultant; including the name of the firm and their relationship with the affiliate firm.

(6) A complete list of the highest valued contracts or subcontracts performed in whole or in part within the immediate three years preceding application. The contract amount, contract number, date of completion, class of work; and the name, mailing address, email address, and phone number of the project owner or agency representative must be provided for those projects listed. Only that work completed by the contractor's own organization under its own supervision will be considered for prequalification purposes. A minimum of five completed projects must be listed.

(7) Personnel requirements.

(a) A listing of the principal officers and key employees indicating their years of experience in the classes of work for which prequalification is sought. For qualification in a class of work based on newly acquired personnel rather than the firm's past contract experience, the newly acquired personnel must be available for future employment for the full year for which qualification is sought unless replacement personnel have been approved. The loss of such personnel during the year of qualification, will result in revocation of qualification for the class of work granted pursuant to their acquisition. The department may require resumes of such personnel as deemed proper

for making its determination. The firm's performance on department contracts must be currently rated standard or better to be used for qualification purposes.

(b) A firm must have, within its own organization, qualified permanent, full time personnel having the skills and experience including, if applicable, technical or specialty licenses, for each work class for which prequalification is sought. Those firms seeking qualification for electrical work (classes 9 and 16) must provide photocopies of current Washington state electrical licenses. The skills and experience must be substantiated by education and practical experience on completed construction projects.

(c) "Its own organization" shall be construed to include only the contractor's permanent, full time employed office and site supervisory personnel as shown on the most recently submitted or amended prequalification questionnaire. Workers of the organization shall be employed and paid directly by the prime contractor. The term "its own organization," shall also include the equipment owned or rented by the contractor with or without equipment operators. Such term does not include employees or equipment of another contractor, subcontractor, assignee, or agent of the applicant contractor although they are placed on the applicant contractor's payroll.

(8) A financial statement.

For a firm showing a net worth in excess of (~~one hundred thousand dollars~~) \$100,000, the applicant must provide, with the questionnaire, a copy of its financial statement as audited or reviewed for its last fiscal year, prepared in accordance with the standards of the American Institute of Certified Public Accountants. The statement must be prepared by an independent certified public accountant registered and licensed under the laws of any state. Balance sheets, income statements, a statement of retained earnings, supporting schedules and notes, and the opinion of the independent auditor must accompany the financial statement.

(9) A wholly owned subsidiary firm may file the latest consolidated financial statement of its parent corporation in lieu of a financial statement prepared solely for the subsidiary. When a consolidated financial statement is submitted, the requirements of subsection (8) of this section and WAC 468-16-140 (2)(b) must be fulfilled.

(10) The applicant shall list the following occurrences within the previous three years:

(a) Instances of having been denied qualification, or a license, or instances of having been deemed other than responsible by any public agency.

(b) Convictions for felonies listed in WAC 468-16-050.

(c) Failure to complete a contract.

(11) The standard questionnaire shall be processed as follows:

(a) The application for qualification shall be prepared on a standard questionnaire provided by the department and sworn to before a notary public or other person authorized to take oaths.

(b) A standard questionnaire will be reviewed and a written notice provided to the applicant, within (~~thirty~~) 30 days of its receipt, stating whether the applicant has been prequalified or qualification has been denied. The applicant will be advised of lack of receipt of data corroborating project completion and errors or omissions in the questionnaire and a request made for additional information necessary to complete evaluation of the applicant. If the information is not provided within (~~twenty~~) 20 calendar days of the request, the application will be processed, if possible, with the information

available or it will be returned to the applicant without further action.

(c) When qualification is denied, the applicant shall be advised in writing by (~~certified mail (return)~~) email (read receipt requested) of the reasons for the denial and of the right to a hearing upon written request.

(d) Applicants not satisfied with the qualification granted may request in writing, a review of their questionnaire and qualification ratings. The request must be filed within (~~thirty~~) 30 calendar days of the date of receipt of the notice of qualification and must specifically state the basis for the request.

(e) The secretary or designee shall advise the applicant of his or her decision on the reconsideration within (~~thirty~~) 30 calendar days of receipt of the request.

(12) Criteria for initial qualification, renewal, and submission of supplemental data:

(a) Qualification may be established in any calendar quarter and must be renewed annually. Information submitted in the questionnaire will be used as a basis for the contractor's initial prequalification, work class ratings, and maximum capacity ratings. Qualification will be valid for the remainder of the applicant's fiscal year plus two calendar quarters as established by the date of the year-end financial statement. Prequalification will be renewed annually thereafter or at other times as designated by the department.

(b) A standard questionnaire from a contractor, not previously qualified under this chapter, must have been received no less than (~~fifteen~~) 15 calendar days and prequalification must be granted by the department prior to the scheduled bid opening to receive consideration for issuance of a bidding proposal for that bid opening unless the contract is under (~~one hundred thousand dollars~~) \$100,000, in which case the department may waive the (~~fifteen~~) 15-day requirement.

(c) The department may, during the period for which the contractor has been prequalified, require the submission of a new standard questionnaire. If the questionnaire is not provided within (~~thirty~~) 30 calendar days of the date of request, the notice of qualification held by the contractor will be declared invalid and the contractor will not be permitted to bid with the department until the contractor is again prequalified.

(d) A supplemental questionnaire shall be submitted when a significant change in the structure of the firm occurs, e.g., incorporation, officers, ownership, etc., or when required by the department.

(e) If prequalification has lapsed for more than six months, the applicant will again be required to submit a fully executed standard questionnaire and financial statement.

(f) The applicant shall authorize the department to request and receive such additional information from any sources deemed necessary for the completion of the qualification process.

(g) Inquiries will be made and investigations, if necessary, will be conducted to verify the applicant's statements and to determine eligibility for qualification.

(h) The department may, upon request, require a list of all major items of equipment used to perform those classes of work for which prequalification is sought. The description, quantity, condition, present location, and age of such equipment must be shown. The schedule must show whether the equipment is owned, leased, or rented.

(i) The department may require a personal interview with a principal or principals of the contracting firm when considering its qualification.

(j) Qualified contractors in good standing shall be notified of impending expiration of their qualification and will be provided the necessary questionnaire forms for renewal at least (~~forty-five~~) 45 days before the expiration date.

(13) Financial information supplied by, or on behalf of, a contractor for the purpose of qualification under RCW 47.28.070 shall not be made available for public inspection and copying, pursuant to RCW 42.56.270. The foregoing restriction shall not prohibit the department's providing such information in evidence or in pretrial discovery in any court action or administrative hearing involving the department and a contractor. Insofar as permitted by public disclosure statutes, qualification ratings shall be treated as confidential information.

(14) Qualified contractors will be provided with notices which list projects currently being advertised.

[Statutory Authority: RCW 47.01.101, 47.28.030, and 47.28.070. WSR 15-01-170, § 468-16-090, filed 12/23/14, effective 1/23/15; WSR 97-09-045 (Order 168), § 468-16-090, filed 4/15/97, effective 5/16/97; WSR 94-05-004, § 468-16-090, filed 2/2/94, effective 3/5/94; WSR 93-03-020 (Order 134), § 468-16-090, filed 1/12/93, effective 2/12/93; WSR 91-04-014 (Order 128), § 468-16-090, filed 1/28/91, effective 2/28/91.]

AMENDATORY SECTION (Amending WSR 15-01-170, filed 12/23/14, effective 1/23/15)

**WAC 468-16-150 Prime contractor performance reports.** (1) Performance reports described in this section, substantially in the format as that appearing at WAC 468-16-210, will be completed for prime contractors only for projects valued at (~~one hundred thousand dollars~~) \$100,000 or more. Each prime contractor's performance report will be classified as to the primary work class being rated. This shall be stated in Section I of the report by listing the major classes of work performed by the contractor e.g., clearing, grading, surfacing, etc.

(2) Performance will be rated under the following headings: Administration, management, and supervision; quality of work; progress of work; and compliance with laws and contract requirements.

(3) The following adjectival ratings are established for performance reports:

(a) Superior	131-150
(b) Above standard	101-130
(c) Standard	100
(d) Below standard	70-99
(e) Inadequate	50-69

(4) The performance report shall be used in evaluating a contractor's prequalification status.

(5) The report shall contain a narrative section which verbally provides the details substantiating the numerical rating. The narrative section shall be based upon documentation prepared during the

life of the project, such as the project engineer's diary, the inspector's daily report and other pertinent documents. This documentation shall constitute the major portion of the administrative record to be used for any hearings or litigation that may arise from the rating process.

(6) The performance report will be prepared and discussion held with the contractor by the project engineer. The report will include a numerical rating substantiated by a narrative report which describes the contractor's typical performance. The narrative will reference such documents as will substantiate the given numerical rating.

(7) The report will be endorsed by the region operations engineer or designated assistant who will provide a copy to the contractor.

(8) The contractor may appeal the rating to the region administrator in writing within (~~twenty~~) 20 calendar days of the date the report is received by the contractor. If the report is not delivered to the contractor in person, it shall be forwarded by (~~certified mail~~) email with a (~~return~~) delivery receipt and read receipt requested to the contractor's representative who signed the contract. The appeal must set forth the specific basis upon which it has been made.

(9) The region administrator or designated assistant will review all contractor performance reports after they have been endorsed and may modify the numerical or narrative rating if such is deemed appropriate. The contractor will be advised of any changes made. The region administrator will be required to make comments thereon only when the contractor's overall performance rating has been rated inadequate, below standard, or superior.

(10) Performance reports, when completed at region level, will be submitted to the secretary, Attn: Manager, contractor prequalification office, not later than (~~forty-five~~) 45 calendar days following final completion of the project.

(11) The region administrator or designated assistant shall review the appeal and provide a written response to the contractor by (~~certified mail-return~~) email (read receipt requested) within (~~twenty~~) 20 calendar days of its receipt. A copy of the appeal and the response thereto will be forwarded to the secretary, Attn: Contract advertisements and award office.

(12) The contractor may further appeal to the secretary in writing setting forth the specific basis for the appeal. The contractor's appeal shall be made within (~~ten~~) 10 calendar days of the date of receipt of the region administrator's response. When making an appeal, the contractor may also present information in person. The secretary will consider the appeal and respond to it by (~~certified mail~~) email (read receipt requested) within (~~sixty~~) 60 calendar days of its receipt. This determination shall be the final administrative act of the department.

(13) All prime contractor performance reports shall be reviewed by the office of the secretary for completeness, objectivity, and substantiation of numerical ratings. The secretary may modify the report as deemed appropriate as a result of the review. The rated contractor and region administrator shall be given a copy of the modified report. The contractor may appeal the modified report in the manner and within the time allotted in subsection (12) of this section to which the secretary shall respond as cited therein.

(14) A prime contractor performance report shall be considered a preliminary paper until all reviews and appeals have been accomplished

and it shall have been stamped and initialed as having been "filed in the office of the secretary."

(15) DOT Form 421-010 is authorized.

[Statutory Authority: RCW 47.01.101, 47.28.030, and 47.28.070. WSR 15-01-170, § 468-16-150, filed 12/23/14, effective 1/23/15; WSR 00-14-055, § 468-16-150, filed 7/3/00, effective 8/3/00; WSR 97-09-045 (Order 168), § 468-16-150, filed 4/15/97, effective 5/16/97; WSR 94-05-004, § 468-16-150, filed 2/2/94, effective 3/5/94; WSR 93-03-020 (Order 134), § 468-16-150, filed 1/12/93, effective 2/12/93; WSR 91-04-014 (Order 128), § 468-16-150, filed 1/28/91, effective 2/28/91.]

AMENDATORY SECTION (Amending WSR 15-01-170, filed 12/23/14, effective 1/23/15)

**WAC 468-16-180 Suspension of qualification.** (1) A suspension may be ordered for cause or for a period pending the completion of investigation and any ensuing legal action for revocation of qualification.

(2) The secretary may, upon determination from reports, other documents, or through investigation that cause exists to suspend the qualification of a contractor, impose suspension upon a contractor.

(3) The secretary may suspend qualification for:

(a) Incompetency found detrimental to timely project completion or to the safety of the public or employees.

(b) Inadequate performance on one or more projects.

(c) Infractions of rules, regulations, specifications, and instructions which may adversely affect public health, welfare, and safety.

(d) Uncompleted work which might prevent the prompt completion of other work.

(e) A finding of noncompliance and refusal to agree to take corrective action, and/or failure to implement agreed upon corrective action to comply with equal employment opportunity, small, women's, minority ((and)), disadvantaged business enterprise, and veteran-owned business requirements or state apprentice utilization requirements.

(f) Repeated findings of noncompliance (two or more) with equal employment opportunity, small, women's, minority, ((and)) disadvantaged business enterprise, and veteran-owned business requirements or state apprentice utilization requirements.

(g) Debarment or suspension from participation in federal or state projects.

(h) Pending completion of debarment proceedings in federal or state projects.

(4) The minimum periods of suspension for acts or deficiencies enumerated above are as follows:

(a) For subsection (3)(a) and (e) of this section - Three months.

(b) For subsection (3)(b), (c), (d), and (f) of this section - Six months.

(c) For subsection (3)(g) of this section - For duration of debarment or suspension by the federal or other state agency.

(d) For subsection (3)(h) of this section - Until a determination is made by the federal or other state agency.

(5) The secretary may reduce the period of suspension upon the contractor's supported request for reasons including, but not limited to:

- (a) Newly discovered evidence;
- (b) Elimination of causes for which the suspension was imposed.

[Statutory Authority: RCW 47.01.101, 47.28.030, and 47.28.070. WSR 15-01-170, § 468-16-180, filed 12/23/14, effective 1/23/15; WSR 97-09-045 (Order 168), § 468-16-180, filed 4/15/97, effective 5/16/97; WSR 94-05-004, § 468-16-180, filed 2/2/94, effective 3/5/94; WSR 93-03-020 (Order 134), § 468-16-180, filed 1/12/93, effective 2/12/93; WSR 91-04-014 (Order 128), § 468-16-180, filed 1/28/91, effective 2/28/91.]

AMENDATORY SECTION (Amending WSR 93-03-020, filed 1/12/93, effective 2/12/93)

**WAC 468-16-190 Revocation of qualification.** (1) The secretary, upon determination from reports, other documents, or investigation that cause exists to revoke the qualification of a contractor, may revoke the contractor's qualifications for a maximum period of two years.

(2) The secretary may revoke the qualification of a contractor upon a plea by the firm of nolo contendere, conviction, judgment, or admission for any of the following causes:

(a) Existence of any condition cited in WAC 468-16-050.

(b) Intentional falsification with intent to defraud or unauthorized destruction of project related records.

(3) Revocation of qualification may also be imposed for the following reasons:

(a) Default on a contract within three years prior to the date of application for qualification.

(b) Bankruptcy or insolvency.

(c) Breach of contract.

(d) Having been suspended two or more times within a two-year period.

(4) When qualification has been revoked, a contractor shall be required to reapply for qualification upon again reaching eligibility status.

(5) Revocation of qualification shall be final after ~~((twenty))~~ 20 calendar days following the read receipt of the email notification ~~((thereof by certified mail))~~, unless a hearing has been requested.

(6) The secretary may reverse the decision to revoke qualifications upon the contractor's supported request for reasons including, but not limited to:

(a) Newly discovered evidence;

(b) Reversal of the conviction or judgment upon which the revocation was based; and

(c) Elimination of causes for which the revocation was imposed.

[Statutory Authority: RCW 47.01.101, 47.28.030 and 47.28.070. WSR 93-03-020 (Order 134), § 468-16-190, filed 1/12/93, effective 2/12/93; WSR 91-04-014 (Order 128), § 468-16-190, filed 1/28/91, effective 2/28/91.]



AMENDATORY SECTION (Amending WSR 15-01-170, filed 12/23/14, effective 1/23/15)

**WAC 468-16-200 Hearings procedure.** (1) A contracting firm which has been notified by the secretary that the department is contemplating suspending or revoking its qualification, may request in writing within ~~((twenty))~~ 20 calendar days of the date of notification by ~~((certified mail))~~ email, that a hearing be conducted. Unless the department is otherwise prohibited from contracting with the contractor, the suspension or revocation shall not become effective until the final decision of the secretary has been rendered. The hearing shall be conducted in accordance with the procedure set forth in this section.

(2) The secretary shall designate a hearing official to conduct any hearing held under this chapter. The hearing official shall furnish written notice by ~~((certified mail))~~ email with a read receipt of a hearing to the contractor and any named affiliates at least ~~((twenty))~~ 20 calendar days before the effective date of suspension or revocation of qualifications. The notice shall state:

(a) That suspension or revocation of qualification is being considered.

(b) The effective date of the proposed action.

(c) The facts giving cause for the proposed action.

(d) The cause or causes relied upon for proposing the action, i.e., fraud, statutory violations, etc.

(e) If suspension is proposed, the duration of the suspension.

(f) That the contractor may, within ~~((twenty))~~ 20 calendar days of receipt of the notice, submit to the hearing official by ~~((certified mail, return))~~ email, read receipt requested, information and argument in opposition to or in clarification of the proposed action.

(g) When the action is based on a conviction, judgment, or admission, fact-finding shall be conducted if the hearing official determines that the contractor's submission raises a genuine dispute over material facts upon which the suspension or revocation is based or whether the causes relied upon for proposing suspension or revocation exist.

(h) The time, place, and date of the hearing.

(i) The name and ~~((mailing))~~ email address of the hearing official.

(j) That proposals shall not be issued nor contracts awarded to the contractor subsequent to the dispatch of the notice of hearing pending the final decision of the secretary.

(3) The hearing official may extend the date of any hearing upon request of the contractor, but the hearing shall not be extended beyond ~~((forty-five))~~ 45 calendar days from the date of the notice of the hearing. The hearing official shall schedule and conduct the hearing within ~~((thirty))~~ 30 calendar days of the date of the notice, except when an extension is granted as provided in this subsection.

(4) In the course of the hearing, the hearing official shall:

(a) Regulate the course and scheduling of the hearings;

(b) Rule on offers of proof, receipt of relevant evidence, and acceptance of proof and evidence as part of the record;

(c) Take action necessary to insure an orderly hearing; and

(d) At the conclusion of the hearing, issue written findings of fact and recommended administrative action to the secretary. The hearing officer shall deliver the entire record to the secretary.

(5) The contractor shall have the opportunity to be present and appear with counsel, submit evidence, present witnesses, and cross-ex-

amine all witnesses. A transcribed or taped record shall be made of the hearing unless the secretary and the contractor waive the transcript or taping requirement. The transcript or tape shall be made available, at cost, to the contractor and all named affiliates upon request.

In actions where it has been established by conviction, judgment or admission, or where it has been established by findings made in accordance with this chapter, that the named contractor has engaged in conduct described in WAC 468-16-050 and the sole issue before the hearing official is the appropriateness of revocation of qualification or the length of suspension of qualification to be recommended to the secretary, prior judicial or administrative decision or findings shall not be subject to collateral attack.

The secretary, after receiving the record, findings of fact, and recommendations of the hearing official shall determine the administrative action to be taken. The secretary shall notify the contractor of his determination in writing.

Upon denial, suspension or revocation of prequalification, the respondent may appeal therefrom to the superior court of Thurston County pursuant to RCW 47.28.070. If the appeal is not made within the time prescribed in that statute, the department's action shall be conclusive.

[Statutory Authority: RCW 47.01.101, 47.28.030, and 47.28.070. WSR 15-01-170, § 468-16-200, filed 12/23/14, effective 1/23/15; WSR 93-03-020 (Order 134), § 468-16-200, filed 1/12/93, effective 2/12/93; WSR 91-04-014 (Order 128), § 468-16-200, filed 1/28/91, effective 2/28/91.]

AMENDATORY SECTION (Amending WSR 15-01-170, filed 12/23/14, effective 1/23/15)

**WAC 468-16-210 Prime contractor performance report.** (1) The evaluation of contractor performance shall be made on a form substantially in the format as illustrated herein.

(2) A *Prime Contractor Performance Report Manual* provides detailed instructions for preparation of the prime contractor performance report.

## Prime Contractor Performance Report Instructions

The Prime Contractor Performance Report, DOT Form 421-010, consists of two parts — page 1 and page 2. Page 1 consists of Sections I, II, and III. Page 2 consists of Sections IV and V.

### Section I CONTRACTOR DATA

This section denotes the type report being submitted and provides data relating to the contracting firm, its status and supervisors. Interim reports must be submitted annually on the anniversary of the project start date for all projects exceeding a duration of one year.

### Section II PROJECT DATA

This section provides basic project data to assist those reviewing or otherwise using the report to place this evaluation in proper perspective with regard to project size, costs, complexity, and completion time. Under Work Class Performed by Contractor, list that work using the general headings in the description of project documents (e.g., preparation, grading, structure, asphalt concrete paving, etc.)

### Section III NUMERICAL RATING

This section contains the four weighted rating areas of (A) Administration/Management and Supervision, (Q) Quality of Work, (P) Progress of Work, and (C) Compliance with Laws and Contract Requirements. Each area contains statements which are weighted as to their importance within the rating area. The rater must consult the Prime Contractor Performance Report Manual (M 41-40) for criteria used for rating contractor performance. There is only one value for the rating of standard. If more space is needed, use additional blank sheets.

\* Shaded areas indicate the range of Inadequate and Superior ratings. Unshaded areas indicate Below Standard and Above Standard ranges, which are separated by a line representing a standard rating.

### Section IV NARRATIVE RATING

This section is divided into three parts.

- A General Elements — Make any general statements pertinent to reporting the contractor's work activity, e.g., innovativeness in performing the work and any other noteworthy contractor activities.
- B Below Standard Elements — List any actions or activities which substantiate a numerical rating for each statement falling within the range of inadequate or below standard. Each comment must be correlated to identify the rating area and statement number. Each comment must be related to substantiating data reported during the life of the project in the Inspector's Daily Report, Project Engineer's Diary, correspondence, or other pertinent records. This data must be available as a part of the administrative record in the event of hearings or litigation.
- C Superior Elements — Make supportive comments for superior ratings. Substantiation by recorded data should be available in the form of reports, letters, and other documents if not included in diaries and journals.

Comments made in response to B and C above should make reference to documented activities that describe the typical performance of the contractor.

### Section V REVIEW AND AUTHENTICATION

This section provides for the recording of the review and authentication of the report by the rater, endorser, and reviewer. Its purpose is to verify that the contractor has been given a copy of the report and that the contractor is aware of his right to appeal. It also serves the purpose of verifying that the report has been reviewed for the purposes of assuring objectivity in its preparation and for the elimination of the influences of personalities. The report will be reviewed by the Region Administrator. The Region Administrator will enter narrative comments thereon only when the contractor's overall performance has been rated below standard, inadequate, or superior. The completed report is to be forwarded to the Secretary (Attn: Prequalification Branch) to arrive not later than 45 calendar days after project completion.

DOT Form 421-010 EF Instructions  
Revised 06/2014

**Prime Contractor Performance Report Instructions**

The Prime Contractor Performance Report, DOT Form 421-010, consists of two parts — page 1 and page 2. Page 1 consists of Sections I, II, and III. Page 2 consists of Sections IV and V. The electronic form is optimized for use with Adobe Acrobat. Do not use AdobeSign to complete or route the form for signature.

1. PE completes Sections I – IV in strict conformance with the Prime Contractor Performance Report Manual (M41-40)
2. PE Send to Contractor and discuss.
3. PE sign electronically and transmit to Region. It is recommended to use Adobe Acrobat for signing. Do not lock the form when signing.
4. Region Operations Engineer review, sign electronically. Do not lock the form when signing. Print and mail to Contractor via Certified Mail. Retain electronic copy for further processing.
5. Wait 20 days. Respond to protests, as necessary. Make adjustments.
  - a. Adjustments made with strikethrough, adding new text and initials of individual making change.
6. Regional Administrator Sign electronically. Do not lock the form when signing. The form must be unlocked for headquarters use.
7. Transmit to Contract Ad and Award electronically. Distribute copies to PE, RA, and Contractor.

DOT Form 421-010 Distribution: Original - Prequalification Branch Copy - Region Administrator Copy - Project Engineer Copy – Contractor  
Revised 07/2022

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# Prime Contractor Performance Report

Section I Contractor Data		Section II Project Data			
Report Type <input type="checkbox"/> Interim <input type="checkbox"/> Final <input type="checkbox"/> Special	Contractor No. (HQ Use Only)	Region	Contract No. Federal-Aid No.	County	SR
Company Name		Project Title			
Address	Phone No.	Auth. Working Days	Working Days Charged	Work Starting Date	Completion Date
Superintendent	Foreman	Contract Award Amount		Contract Completion Amount	
Work Class Performed by Contractor:					
Description of Work:					

Section III Numerical Rating						
	* Inadequate	* Below Std	Standard	Above Std	* Superior	Rating
<b>A Administration / Management / Supervision</b>						
A1. Supervision/Decision Making/Coordination with Subcontractors and suppliers	3	4	6	8	10	
A2. Submission of Documents and Reports	3	4	6	8	10	
A3. Coordination and Cooperation with Department Personnel on Project Matters	3	4	6	8	10	
A4. Relations with General Public, Other Agencies and Adjacent Contractors	2	4	5	6	7	
A5. Maintenance of Employee Safety Standards	1	1.5	2	2.5	3	
<b>Section A Total</b>	12	17.5	25	32.5	40	
<b>Q Quality of Work</b>						
Q1. Adherence to Plans and Specifications	9	12.5	15	18	21	
Q2. Standards of Workmanship	6	8	10	12.5	15	
Q3. Public Safety and Traffic Control	2	3	4	5	6	
Q4. Environmental Compliance	4	5	6	7	8	
<b>Section Q Total</b>	21	28.5	35	42.5	50	
<b>P Progress of Work</b>						
P1. Completion of project within allotted time	6	8	10	12	14	
P2. Baseline scheduling	2.5	3.5	5	7	8.5	
P3. Weekly look ahead schedule & schedule update	1.5	2.5	4	5.5	7.5	
P4. Number of days from Physical Completion Until contract completion	3	4.5	6	8	10	
<b>Section P Total</b>	13	18.5	25	32.5	40	
<b>C Compliance with Laws and Contract Requirements</b>						
C1. Compliance with EEO, On-the-Job Training and D/M/W/SBE Requirements	1.3	3.5	5	6.5	8	
C2. Compliance with Apprenticeship Requirements	1.3	3.5	5	6	7	
C3. Compliance with Laws, Ordinances and Regulations	1.4	3.5	5	5	5	
<b>Section C Total</b>	4	10.5	15	17.5	20	
<b>Project Total</b>	50	75	100	125	150	

\* Explain any Inadequate, Below Standard, and Superior ratings in Narrative Section (IV) Performance Score HQ Use Only

NOTE: An inadequate or below standard rating in any section shall limit the section total to a standard rating.

DOT Form 421-010 EF Revised 01/2014 Distribution: Original - Prequalification Branch Copy - Region Administrator Copy - Project Engineer Copy - Contractor Page 1 of 2

FILED IN THE OFFICE OF THE SECRETARY (HQ USE)  
 DATE: INITIALS:



**Prime Contractor Performance Report**

Section I Contractor Data			Section II Project Data			
Report Type <input type="checkbox"/> Interim <input type="checkbox"/> Final <input type="checkbox"/> Special	Contractor No. (HQ Use Only)		Region	Contract No. Federal-Aid No.	County	SR
Company Name			Project Title			
Address		Phone No.	Auth. Working Days	Working Days Charged	Work Starting Date	Contract Completion Date
Superintendent		Foreman	Contract Award Amount		Contract Completion Amount	
Work Class Performed by Contractor:						
Description of Work:						

Section III Numerical Rating						
	* Inadequate	* Below Std	Standard	Above Std	* Superior	Rating
<b>A Administration / Management / Supervision</b>						
A1. Supervision/Decision Making/Coordination with Subcontractors and suppliers	3	4	6	8	10	
A2. Submission of Documents and Reports	3	4	6	8	10	
A3. Coordination and Cooperation with Department Personnel on Project Matters	3	4	6	8	10	
A4. Relations with General Public, Other Agencies and Adjacent Contractors	2	4	5	6	7	
A5. Maintenance of Employee Safety Standards	1	1.5	2	2.5	3	
<b>Section A Total</b>	<b>12</b>	<b>17.5</b>	<b>25</b>	<b>32.5</b>	<b>40</b>	
<b>Q Quality of Work</b>						
Q1. Adherence to Plans and Specifications	9	12.5	15	18	21	
Q2. Standards of Workmanship	6	8	10	12.5	15	
Q3. Public Safety and Traffic Control	2	3	4	5	6	
Q4. Environmental Compliance	4	5	6	7	8	
<b>Section Q Total</b>	<b>21</b>	<b>28.5</b>	<b>35</b>	<b>42.5</b>	<b>50</b>	
<b>P Progress of Work</b>						
P1. Completion of project within allotted time	6	8	10	12	14	
P2. Baseline scheduling	2.5	3.5	5	7	8.5	
P3. Weekly look ahead schedule & schedule update	1.5	2.5	4	5.5	7.5	
P4. Number of days from Physical Completion Until contract completion	3	4.5	6	8	10	
<b>Section P Total</b>	<b>13</b>	<b>18.5</b>	<b>25</b>	<b>32.5</b>	<b>40</b>	
<b>C Compliance with Laws and Contract Requirements</b>						
C1. Compliance with Business Utilization Requirements	1.3	3.5	5	6.5	8	
C2. Compliance with Apprentice and On-the-Job Training Requirements	1.3	3.5	5	6	7	
C3. Compliance with Laws, Ordinances and Regulations	1.4	3.5	5	5	5	
<b>Section C Total</b>	<b>4</b>	<b>10.5</b>	<b>15</b>	<b>17.5</b>	<b>20</b>	
<b>Project Total</b>	<b>50</b>	<b>75</b>	<b>100</b>	<b>125</b>	<b>150</b>	<b>0.00</b>

\* Explain any Inadequate, Below Standard, and Superior ratings in Narrative Section (IV) Performance Score HQ Use Only  
 NOTE: An inadequate or below standard rating in any section shall limit the section total to a standard rating.  
 DOT Form 421-010 Revised 07/2022 Distribution: Original - Prequalification Branch Copy - Region Administrator Copy - Project Engineer Copy - Contractor Page 1 of 2

Contract No. \_\_\_\_\_

**Section IV Narrative Rating**

**A General Elements** Enter comments that describe the contractor's overall performance and provide background data on the project.

**B Below Standard Elements** Enter comments here to substantiate below standard ratings. (See Instructions)

**C Superior Elements** Enter comments here to substantiate superior ratings. (See Instructions)

**Section V Authentication and Review**

I certify that I have objectively prepared this report basing it upon data contained in available project records and discussed the report with the contractor.

\_\_\_\_\_  
Project Engineer's Name (Print)      Project Engineer's Signature      Date

I have reviewed this report for objectivity and accuracy. I have given a copy of this report to the rated contractor and I have advised the contractor that any appeal must be made within twenty (20) calendar days.

\_\_\_\_\_  
Date Copy Given / Mailed to Contractor

\_\_\_\_\_  
Operations Engineer or Designee's Name (Print)      Operations Engineer or Designee's Signature      Date

I have reviewed this Contractor Performance Report and make the following comments and changes as cited herein or on attached sheets.

\_\_\_\_\_  
Region Administrator's Name (Print)      Region Administrator's Signature      Date

Contract No. \_\_\_\_\_

<b>Section IV Narrative Rating</b>		
<b>A General Elements</b> Enter comments that describe the contractor's overall performance and provide background data on the project.		
<b>B Below Standard Elements</b> Enter comments here to substantiate below standard ratings. (See Instructions)		
<b>C Superior Elements</b> Enter comments here to substantiate superior ratings. (See Instructions)		

<b>Section V Authentication and Review</b>		
I certify that I have objectively prepared this report basing it upon data contained in available project records and discussed the report with the contractor.		
_____	_____	_____
Project Engineer's Name (Print)	Project Engineer's Signature	Date
I have reviewed this report for objectivity and accuracy. I have given a copy of this report to the rated contractor and I have advised the contractor that any appeal must be made within twenty (20) calendar days.		
_____		
Date Copy Given / Mailed to Contractor		
_____	_____	_____
Operations Engineer or Designee's Name (Print)	Operations Engineer or Designee's Signature	Date
I have reviewed this Contractor Performance Report and make the following comments and changes as cited herein or on attached sheets.		
_____	_____	_____
Region Administrator's Name (Print)	Region Administrator's Signature	Date

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[Statutory Authority: RCW 47.01.101, 47.28.030, and 47.28.070. WSR 15-01-170, § 468-16-210, filed 12/23/14, effective 1/23/15; WSR 94-05-004, § 468-16-210, filed 2/2/94, effective 3/5/94; WSR 91-04-014 (Order 128), § 468-16-210, filed 1/28/91, effective 2/28/91.]



WSR 23-18-083  
PROPOSED RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 23-01—Filed September 5, 2023, 2:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-03-067 on January 12, 2023.

Title of Rule and Other Identifying Information: Mobile licensing and electronic harvest reporting.

Hearing Location(s): On October 24, 2023, at 1:00 - 2:30 p.m., via webinar. Please click the link below to join the webinar <https://us06web.zoom.us/j/87095555870>; join by phone +12532050468 US, Webinar ID 870 9555 5870. The public can provide comment during webinars by phone or electronic device. Attendees that provide verbal comment are audio only. In order to testify, you must **register by 8 a.m.** the day of the hearing. At the appropriate time to speak, you will be recognized by your partial phone number or your Zoom user name and staff will unmute your connection. You will be asked to state your name and residence for the record, just as if you were attending the meeting in-person. Please also state whether you are representing yourself or a group or organization.

Date of Intended Adoption: On or after November 2, 2023.

Submit Written Comments to: Rules Coordinator, P.O. Box 43200, Olympia, WA 98504, email [mobile-licensing-102@PublicInput.com](mailto:mobile-licensing-102@PublicInput.com), fax 360-902-2162, <https://publicinput.com/mobile-licensing-102>, voicemail comments 855-925-2801, project code 1366, by October 24, 2023.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email [Title6@dfw.wa.gov](mailto:Title6@dfw.wa.gov), <http://wdfw.wa.gov/accessibility/requests-accommodation>, by October 22, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington department of fish and wildlife (WDFW) is proposing rule amendments to implement RCW 77.32.090, which authorizes WDFW to adopt rules for the issuance of electronic licenses, permits, tags, stamps, and catch record cards.

The purpose of the proposal is to amend rules to allow for the use of electronic recreational hunting and fishing licenses through WDFW's authorized mobile application and introduce electronic harvest reporting for recreational fishers. Currently, individuals can purchase their hunting and fishing licenses at dealer locations, over the phone, and online, including by using their mobile devices. At this time, online reporting is only available for hunter harvest reports and crab catch records. With the proposed rule changes, individuals will now be able to store and display their selected recreational licenses on their mobile devices in WDFW's authorized mobile application. In addition, the proposed changes to the rules will allow individuals to record and report their fish, shellfish, and game harvests through WDFW's authorized mobile application from their mobile devices.

Reasons Supporting Proposal: Revisions to existing rules are necessary to implement the process for possession and compliance with licensing and harvest reporting requirements using paper or electronic documentation. WDFW seeks to create more convenience and ease of use for individuals who wish to use their mobile devices to be able to display their fishing or hunting license as well as report their indi-

vidual harvest. Furthermore, the new harvest reporting features will allow for the prompt recording and transmission of harvest data to WDFW.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.32.090.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.047, and 77.32.090.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Matt Oram, 1111 Washington Street S.E., Olympia, WA 98501, 360-485-1036; Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-338-2895.

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

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328(5), a cost-benefit analysis is not required as WDFW is not implementing chapter 77.55 RCW.

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.

September 5, 2023

Scott Bird

Rules Coordinator

## OTS-4911.1

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-220-010 Definitions.** Unless otherwise provided, the following definitions apply to this chapter:

(1) "Blind" means no vision or vision with corrective lenses so defective as to prevent the performance of ordinary activities for which eyesight is essential.

(2) "License year" is defined as April 1st through the following March 31st.

(3) (~~"Personal use license" and "recreational license" have the same meaning, and refer to all licenses issued under RCW 77.32.450 through 77.32.490.~~

~~(4))~~ "Veteran" means a veteran of the United States Armed Forces.

~~((5) "Display" of a fish and wildlife lands vehicle use permit means either:~~

~~(a) Nontransferable: Affixing the permit to the rear window of the vehicle, in which case the vehicle license number need not be entered on the permit; or~~

~~(b) Transferable: Writing, in ink, in the provided space on the permit the license number of the two vehicles between which the permit~~

is to be transferred, and placing the permit in either vehicle in such a place that the permit can be observed and the license number read from outside the vehicle. Placing the permit on the dashboard or hanging it from the rear view mirror complies with the display requirement for a transferrable vehicle use permit.) (4) "Department-authorized internet hunter reporting system" is the department's electronic platform for hunting license verification or reporting.

(5) "Department-authorized mobile application" is a department electronic utility for mobile communications including data transfer with the department.

(6) "Display" of a fish and wildlife lands vehicle use permit means the permit is visible from the outside of the vehicle.

(7) "Electronic catch record card" is an electronic representation of an individual's catch record card and part of a harvest reporting system for fishing and accessible through an individual's mobile device located on a department-authorized mobile application.

(8) "Electronic harvest record card" is an electronic representation of an individual's harvest record card and part of a harvest reporting system for hunting and accessible through an individual's mobile device located on a department-authorized mobile application.

(9) "Electronic license" is an electronic representation of an individual's hunting or fishing license accessible through an individual's mobile device located on a department-authorized mobile application.

(10) "Paper catch record card" is a physical document that represents an individual's catch record card and part of a harvest reporting system for recreational fishing.

(11) "Paper harvest record card" is a physical document issued by the department that represents an individual's harvest record card and part of a harvest reporting system for recreational hunting.

(12) "Paper license" is a physical document that represents an individual's hunting or fishing license.

(13) "Personal use license" and "recreational license" have the same meaning, and refer to all licenses issued under RCW 77.32.450 through 77.32.520.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-220-010, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047. WSR 02-16-070 (Order 02-182), § 220-55-001, filed 8/6/02, effective 9/6/02. Statutory Authority: 1998 c 191 and RCW 75.08.080. WSR 99-03-029 (Order 99-02), § 220-55-001, filed 1/13/99, effective 2/13/99.]

AMENDATORY SECTION (Amending WSR 18-21-059, filed 10/9/18, effective 11/9/18)

**WAC 220-220-020 Recreational license.** A recreational license is a valid internet (~~or telephone~~) transaction number, a valid electronic license, or a valid paper license issued by the department (~~or a valid license~~) under chapter 77.32 RCW.

With the exception of razor clam licenses and one-day charter boat or guide operator stamp licenses, to be valid, a recreational license must be physically signed or digitally attested to by the licensee through the department-authorized mobile application, must contain

the licensee's personal identification information, and, if a catch record card is required, must be accompanied by a valid catch record card.

To be valid, a razor clam license must be physically signed or digitally attested to by the licensee through the department-authorized mobile application.

When a catch record card is not required for use with a one-day charter boat or guide operator stamp license, the stamp license is valid only if the issue date is written in ink on the stamp and the stamp is signed by the licensee. When a catch record card is required for use with a one-day charter boat or guide operator stamp license, the license is valid only if the issue date is written in ink on the stamp, the stamp is affixed to the catch record card, the catch record card is signed by the licensee, and the catch record card contains the licensee's completed personal identification information.

[Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047. WSR 18-21-059 (Order 18-285), § 220-220-020, filed 10/9/18, effective 11/9/18. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-220-020, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.32.050. WSR 00-11-178 (Order 00-80), § 220-55-005, filed 5/24/00, effective 6/24/00. Statutory Authority: 1998 c 191 and RCW 75.08.080. WSR 99-03-029 (Order 99-02), § 220-55-005, filed 1/13/99, effective 2/13/99. Statutory Authority: RCW 75.08.080. WSR 96-05-004 (Order 96-13), § 220-55-005, filed 2/9/96, effective 3/11/96; WSR 94-01-001, § 220-55-005, filed 12/1/93, effective 1/1/94.]

#### OTS-4912.1

AMENDATORY SECTION (Amending WSR 18-21-059, filed 10/9/18, effective 11/9/18)

**WAC 220-310-010 Description of catch record cards and required information.** (1) The department shall ~~((prepare and distribute a))~~ issue a paper catch record card or provide access to an electronic catch record card for the following species:

- (a) Anadromous salmon (salmon);
- (b) Dungeness crab taken from Catch Record Card Area 4 east of the Bonilla-Tatoosh line and Catch Record Card Areas 5-13;
- (c) Halibut;
- (d) Steelhead; and
- (e) Sturgeon.

(2) Each paper catch record card shall contain ~~((space for))~~ the following identifying information:

- (a) Name of fisher;
- (b) Home address ~~((,))~~ or mailing address ~~((for a catch record card issued with a one-day charter boat or guide operator stamp license))~~;
- (c) City, state, and zip code;
- (d) Date of issuance;

(e) When the paper catch record card is issued with a one-day charter boat or guide operator stamp license, the catch record card shall contain space for that stamp.

(3) Each paper or electronic catch record card shall contain ~~((space))~~ fields for the following information:

- (a) Month of catch;
- (b) Day of catch;
- (c) Location of catch by Marine Area, River, or Lake Code;
- (d) A species code for salmon and sturgeon and a marked or unmarked space for salmon;
- (e) A space for designating the type of vessel from which halibut was taken, either charter ("c") or private ("p");
- (f) ~~((A space for))~~ The length of sturgeon;
- (g) ~~((For))~~ A tally or count of Dungeness crab ~~((÷~~
- ~~(i) The type of crab fishery as described on the Dungeness crab catch record card;~~
- ~~(ii) The total crab retained by fishery type;~~
- ~~(iii) A tally mark for each crab))~~ retained.

[Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047. WSR 18-21-059 (Order 18-285), § 220-310-010, filed 10/9/18, effective 11/9/18. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-310-010, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047. WSR 06-21-031 (Order 06-262), § 220-69-236, filed 10/9/06, effective 11/9/06; WSR 05-05-035 (Order 05-15), § 220-69-236, filed 2/10/05, effective 5/1/05; WSR 04-17-096 (Order 04-210), § 220-69-236, filed 8/17/04, effective 9/17/04. Statutory Authority: RCW 77.32.050. WSR 00-11-178 (Order 00-80), § 220-69-236, filed 5/24/00, effective 6/24/00. Statutory Authority: RCW 75.08.080 and 77.12.040. WSR 99-17-066 (Order 99-125), § 220-69-236, filed 8/13/99, effective 4/1/00.]

AMENDATORY SECTION (Amending WSR 18-21-059, filed 10/9/18, effective 11/9/18)

**WAC 220-310-020 Catch record cards.** It is unlawful for any person to fail to comply with the catch record requirements as provided for in this section:

(1) An angler must obtain and have in ~~((his or her personal))~~ their physical possession a valid and appropriate paper or electronic Puget Sound Dungeness crab catch record card as described in WAC 220-310-010 to fish for or possess for personal use any Dungeness crab in Catch Record Card Area 4 east of the Bonilla-Tatoosh Line, and in Catch Record Card Areas 5-13.

(2) An angler must obtain and have in ~~((his or her personal))~~ their physical possession a valid and appropriate paper or electronic catch record card as described in WAC 220-310-010 to fish for or possess for personal use any anadromous salmon, sturgeon, halibut, or steelhead except a catch record card is not required for:

(a) Commercially caught salmon retained for personal use, as provided in WAC 220-354-030, and commercially caught sturgeon retained for personal use, as provided in WAC 220-353-110; and

(b) Landlocked steelhead or for salmon in waters designated as "landlocked salmon rules apply" in WAC 220-312-010 through 220-312-060.

(3) ~~((Unless the catch record card is issued by the automated licensing system, anglers must completely, accurately, and legibly complete all personal identification information in ink on the catch record card.))~~ A paper or electronic catch record card remains valid as long as there is one or more unfilled spaces available for the species being fished for, except:

(a) A paper or electronic catch record card remains valid for catch-and-release sturgeon fishing when the sturgeon portion of the card is full in the mainstem Columbia River downstream from where the river forms the common boundary between Oregon and Washington.

(b) It is unlawful to use a second or subsequent paper or electronic catch record card to retain halibut ~~((7))~~ or sturgeon ~~((7 or wild steelhead))~~ after the first card is full.

(4) The fee for a paper or electronic catch record card for halibut is ~~((five dollars))~~ \$5 when purchased with an annual saltwater fishing license, an annual combination fishing license, or an annual fish Washington license. There is no charge for a paper or electronic catch record card for halibut with a temporary combination fishing license that is valid for one to three consecutive days, or with a one-day charter boat or guide operator stamp license, or with a youth license.

(5) Immediately upon catching and possessing a salmon, steelhead, sturgeon, Dungeness crab, or halibut, anglers must enter ~~((7 in ink,))~~ in the appropriate ~~((space))~~ field on the paper or electronic catch record card, the place, date of catch, and species ~~((catch type)).~~ For sturgeon, anglers also must record the length of the fish; for halibut, anglers also must record the vessel type; and for salmon, anglers also must indicate whether or not the fish was marked by having a clipped adipose fin.

~~(6) Immediately upon retaining a Puget Sound Dungeness crab aboard a vessel or on the shore, fishers must enter, in ink, in the appropriate space on the Puget Sound Dungeness crab catch record card, the place and date of catch, the fishery type, and a tally mark for)).~~ Anglers in physical possession of a paper catch record card must enter all required information in ink. Anglers in physical possession of an electronic catch record card must enter all required information through the department-authorized mobile application.

(a) Sturgeon anglers must also record the length of the fish;

(b) Halibut anglers must also record the vessel type;

(c) Salmon anglers must also indicate whether or not the fish was marked by having a clipped adipose fin;

(d) Puget Sound Dungeness crab anglers must also provide a tally mark or count of each Dungeness crab retained from each catch record card area fished. At the end of the fishing day, the fisher must enter the total number of crab tally marks for each fishery type.

~~((7-a))~~ (6) Every person issued a paper catch record card must, by April 30 of the year after they used the card, return the card to the department of fish and wildlife or report the card information at the designated internet site by dates indicated on the card((7)), except:

(a) People issued a paper Puget Sound Dungeness crab catch record card must return the card to the Washington department of fish and wildlife or report the card information at the designated internet site by the dates indicated on the card. Anglers using the electronic

catch record card must record harvest immediately. If no crab are retained, mobile application users must record no harvest by the end of the season through the department-authorized mobile application.

(b) Failure to return a paper Dungeness crab catch record card or to report the Dungeness crab catch record card information electronically at the designated internet site or through the department-authorized mobile application by the dates indicated on the card will result in a (~~ten-dollar~~) \$10 administrative fee. The administrative fee will be collected from anglers when they acquire a subsequent Puget Sound Dungeness crab endorsement.

(~~(7)~~) (7) Any person possessing a paper or electronic catch record card must show (~~the~~) their card to any (~~law enforcement~~) fish and wildlife officer, ex-officio fish and wildlife officer or authorized department employee who asks to inspect the card.

(~~(9)~~) (8) A paper or electronic catch record card must not be transferred, borrowed, altered, or loaned to another person, except as authorized under RCW 77.32.565.

[Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047. WSR 18-21-059 (Order 18-285), § 220-310-020, filed 10/9/18, effective 11/9/18. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-310-020, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.045, and 77.12.047. WSR 15-11-042 (Order 15-126), § 220-56-175, filed 5/14/15, effective 6/14/15. Statutory Authority: RCW 77.12.047. WSR 09-02-069 (Order 09-03), § 220-56-175, filed 1/6/09, effective 2/6/09; WSR 08-07-003, § 220-56-175, filed 3/5/08, effective 4/5/08; WSR 07-09-042 (Order 07-59), § 220-56-175, filed 4/11/07, effective 5/12/07; WSR 06-21-031 (Order 06-262), § 220-56-175, filed 10/9/06, effective 11/9/06; WSR 06-13-023 (Order 06-135), § 220-56-175, filed 6/13/06, effective 7/14/06; WSR 06-05-085 (Order 06-23), § 220-56-175, filed 2/14/06, effective 5/1/06; WSR 04-10-033 (Order 04-91), § 220-56-175, filed 4/29/04, effective 5/30/04; WSR 03-05-057 (Order 03-24), § 220-56-175, filed 2/14/03, effective 5/1/03; WSR 01-06-036 (Order 01-24), § 220-56-175, filed 3/5/01, effective 5/1/01. Statutory Authority: RCW 77.32.050. WSR 00-11-178 (Order 00-80), § 220-56-175, filed 5/24/00, effective 6/24/00. Statutory Authority: RCW 75.08.080, 77.12.040. WSR 00-08-038 (Order 00-29), § 220-56-175, filed 3/29/00, effective 5/1/00; WSR 99-17-066 (Order 99-125), § 220-56-175, filed 8/13/99, effective 4/1/00. Statutory Authority: RCW 75.08.080. WSR 91-08-054 (Order 91-13), § 220-56-175, filed 4/2/91, effective 5/3/91; WSR 90-06-026, § 220-56-175, filed 2/28/90, effective 3/31/90; WSR 89-07-071 (Order 89-05), § 220-56-175, filed 3/20/89; WSR 88-05-002 (Order 88-03), § 220-56-175, filed 2/4/88; WSR 85-11-020 (Order 85-43), § 220-56-175, filed 5/10/85; WSR 80-03-064 (Order 80-12), § 220-56-175, filed 2/27/80, effective 4/1/80. Formerly WAC 220-56-023.]

**OTS-4913.1**

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-413-020 Tagging requirements.** (1) It is unlawful for a person who kills a big game animal or turkey to fail to immediately ~~((cut out and completely remove from his or her tag the designated notches corresponding to the day and month of the kill for that species (unless the tagging requirement is specifically exempted by the fish and wildlife commission), and to fail to immediately attach his or her notched tag to the carcass of such animal or bird. That))~~ validate their tag (unless the tagging requirement is specifically exempted by the fish and wildlife commission). There are two methods of tagging big game animals and turkey, paper tagging and electronic tagging.

(a) A paper tag is validated by cutting out and completely removing the designated notches corresponding to the day and month of the kill for that species and immediately attaching the notched tag to the carcass of the big game animal or turkey.

(b) An electronic tag is validated by following the prompts in the authorized mobile application and writing the confirmation number and date of harvest in ink on material that can withstand the elements and immediately attaching that to the carcass of the big game animal or turkey.

(2) The tag must remain attached to the carcass while it is being transported and must remain with the wildlife during the period of retention of the edible parts.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-413-020, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047. WSR 07-17-064, § 232-12-061, filed 8/13/07, effective 9/13/07. Statutory Authority: RCW 77.12.040. WSR 97-18-020 (Order 97-168), § 232-12-061, filed 8/25/97, effective 9/25/97; WSR 81-22-002 (Order 174), § 232-12-061, filed 10/22/81; WSR 81-12-029 (Order 165), § 232-12-061, filed 6/1/81. Formerly WAC 232-12-160.]

AMENDATORY SECTION (Amending WSR 18-11-061, filed 5/11/18, effective 6/11/18)

**WAC 220-413-100 Mandatory report of hunting activity.** (1) All hunters purchasing a hunting license must report their hunting activity for deer, elk, bear, or turkey.

(a) Hunters must report hunting activity, for each tag and permit acquired, by January 31 or within 10 days after the close of an eligible hunt, whichever date is later.

(b) Reports must be made using the department's ~~((designated automated telephone hunter reporting system (toll free) or internet hunter reporting system))~~ authorized internet hunter reporting system, department-authorized mobile application, or by telephone.

(c) A hunter who fails to report hunting activity, for each tag and permit acquired, by the reporting deadline is in violation of reporting requirements.

(d) Compliance will be credited for each transport tag and permit acquired.



(2) As an incentive for prompt reporting, all hunters who report by midnight January 10 or within 10 days after the last day of their permit hunt will be entered into a drawing for special deer and elk incentive permits. To be eligible for the drawing, hunters must report their hunting activity for each transport tag and permit acquired.

(3) A hunter who fails to report hunting activity by the reporting deadline for deer, elk, bear, or turkey tags and permits acquired the previous year will be required to pay a \$10 administrative fee at the time a new license that includes deer, elk, bear, or turkey tags is issued.

(4) All hunters who purchase a paper or electronic migratory bird authorization must report their hunting activity for each paper or electronic harvest record card issued.

(a) Hunters must report harvest information from band-tailed pigeon harvest record cards by September 30 following the season for which the harvest card was issued. Hunters must report harvest information from brant, sea duck, snow goose, and SW Canada goose (Goose Management Area 2 Coast and Inland) harvest record cards by March 20 following the season for which the harvest card was issued.

(b) Hunters must report migratory bird hunting activity at the department's (~~designated~~) authorized internet hunter reporting system internet site listed on the harvest record card, on the department-authorized mobile application or by mailing all harvest record cards to the department at: P.O. Box 43141, Olympia, WA 98504.

(c) Any hunter who fails to report, for each harvest record card acquired, by the reporting deadlines is in violation of reporting requirements.

(d) Compliance will be credited for each harvest record card acquired.

(5) A hunter who fails to report hunting activity by the reporting deadlines for band-tailed pigeon, brant, sea duck, snow goose, or SW Canada goose harvest record card acquired in the previous hunting season must pay a (~~ten-dollar~~) \$10 administrative fee at the time a new migratory bird authorization and harvest record card is issued.

(6) A hunter may only be required to pay a maximum of one (~~ten-dollar~~) \$10 administrative fee for all game species reporting violations during a license year.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.020, 77.12.040, 77.12.047, 77.12.150, 77.12.210, 77.12.240, 77.12.320, 77.12.570, 77.12.800, 77.15.245, 77.32.007, 77.32.050, 77.32.070, 77.32.090, 77.32.370, and 77.32.530. WSR 18-11-061 (Order 18-76), § 220-413-100, filed 5/11/18, effective 6/11/18. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.150, 77.12.240, 77.12.800, 77.32.090. WSR 17-10-076 (Order 17-10), recodified as § 220-413-100, filed 5/3/17, effective 6/3/17. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.150, and 77.12.240. WSR 15-10-034 (Order 15-96), § 232-28-299, filed 4/28/15, effective 5/29/15. Statutory Authority: RCW 77.12.047, 77.15.280, 77.32.020, and 77.32.070. WSR 10-16-005 (Order 10-187), § 232-28-299, filed 7/21/10, effective 8/21/10. Statutory Authority: RCW 77.12.047, 77.12.020. WSR 08-01-052 (Order 07-292), § 232-28-299, filed 12/13/07, effective 1/13/08. Statutory Authority: RCW 77.12.047. WSR 05-17-098 (Order 05-174), § 232-28-299, filed 8/15/05, effective 9/15/05; WSR 02-15-018 (Order 02-129), § 232-28-299, filed 7/8/02, effective 8/8/02. Statutory Authority: RCW 77.12.040, 77.12.020, 77.32.070,

77.32.530. WSR 01-10-048 (Order 01-69), § 232-28-299, filed 4/26/01, effective 5/27/01.]

## OTS-4914.1

AMENDATORY SECTION (Amending WSR 23-11-118, filed 5/22/23, effective 6/22/23)

**WAC 220-416-060 2023-2024 Migratory gamebird seasons and regulations.** All migratory waterfowl, coot, snipe, mourning dove and band-tailed pigeon are closed to harvest unless season dates are specified in this section. Hunters must comply with the bag, possession, and season limits described in this section. Failure to do so constitutes a violation of RCW 77.15.245, 77.15.400, or 77.15.430, depending on the species hunted and the circumstances of the violation.

### DUCKS

**Statewide:** Oct. 14-22, 2023, and Oct. 25, 2023 - Jan. 28, 2024; except scaup season closed Oct. 14 - Nov. 3, 2023.

Special youth hunting days open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 23, 2023, and Feb. 3, 2024, in Western Washington (West Zone); Sept. 30, 2023, and Feb. 3, 2024, in Eastern Washington (East Zone).

Special veterans and active military personnel hunting day open only to hunters as defined in Section 3 of 16 U.S. Code Sec. 704 as amended by the John D. Dingell, Jr. Conservation, Management, and Recreation Act. Active duty military includes members of the National Guard and Reserves on active duty (other than for training). Veterans must have served in the active military, naval, or air service, and discharged or released under Honorable conditions: Feb. 3, 2024, in Western Washington (West Zone) and Eastern Washington (East Zone). Hunters must have one of the following, or a copy of, during the hunt: DD214, Veteran Benefit Card, Retired Active Military I.D., or Active Duty I.D. card.

Daily Bag Limit: 7 ducks, to include not more than 2 hen mallard, 1 pintail, 2 scaup, 2 canvasback, and 2 redhead statewide; and to include not more than 2 scoter, 2 long-tailed duck, and 2 goldeneye in Western Washington.

Possession Limit for Regular Season: 21 ducks, to include not more than 6 hen mallard, 3 pintail, 6 scaup, 6 canvasback, and 6 redhead statewide; and to include not more than 6 scoter, 6 long-tailed duck, and 6 goldeneye in Western Washington.

Possession Limit for Youth, Veterans and Active Military Personnel Hunting Days: Same as Daily Bag Limit.

Harlequin Duck: Season closed statewide.

### AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT SEA DUCKS

Hunters must physically possess a special 2023-2024 paper or electronic hunting authorization and harvest record card for sea ducks when hunting scoter, long-tailed duck, and goldeneye in Western Washington.

~~((A hunter who has not previously possessed a sea duck harvest report card must submit an application form to Washington state department of fish and wildlife (WDFW).))~~ Immediately after taking a sea duck into possession, hunters must record ~~((in ink the information required within the designated spaces provided on the harvest record card))~~ all required information on the harvest record card. Hunters required to physically possess a paper harvest record card must enter all required information in ink. Hunters required to physically possess an electronic harvest record card must enter all required information through the licensing mobile application.

#### **COOT (Mudhen)**

Same areas and dates (including youth, veterans and active military personnel hunting days) as the duck season.

Daily Bag Limit: 25 coots.

Possession Limit: 75 coots.

Possession Limit for Youth, Veterans and Active Military Personnel  
Hunting Days: Same as Daily Bag Limit.

#### **SNIPE**

Same areas and dates (except youth, veterans and active military personnel hunting days) as the duck season.

Daily Bag Limit: 8 snipe.

Possession Limit: 24 snipe.

#### **GEESE (except Brant)**

Special youth hunting days open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 23, 2023, and Feb. 3, 2024, in Western Washington (West Zone); Sept. 30, 2023, and Feb. 3, 2024, in Eastern Washington (East Zone).

Special veterans and active military personnel hunting day open only to hunters as defined in Section 3 of 16 U.S. Code Sec. 704 as amended by the John D. Dingell, Jr. Conservation, Management, and Recreation Act. Active duty military includes members of the National Guard and Reserves on active duty (other than for training). Veterans must have served in the active military, naval, or air service, and discharged or released under Honorable conditions: Feb. 3, 2024, in Western Washington (West Zone) and Eastern Washington (East Zone). Hunters must have one of the following, or a copy of, during the hunt: DD214, Veteran Benefit Card, Retired Active Military I.D., or Active Duty I.D. card.

Daily Bag Limit for September dates: 4 Canada geese and 10 white-fronted geese.

Daily Bag Limit for February date: 4 Canada geese (except dusky Canada geese which are closed to harvest), 10 white-fronted geese, and 10 white geese (snow, Ross', blue phase), except in Goose Management Area 2 Coast and Inland where the bag limit for Canada geese is reduced to 3 and dusky Canada geese remain closed to harvest.

Possession Limit for Youth, Veterans and Active Military Personnel  
Hunting Days: Same as Daily Bag Limit.

#### **Western Washington Goose Seasons**

Goose Management Area 1: Skagit and Whatcom counties, and that portion of Snohomish County west of Interstate 5.

September Canada Goose Season

Sept. 2-7, 2023.

Daily Bag Limit: 5 Canada geese.

Possession Limit: 15 Canada geese.

Regular Season

Oct. 14 - Nov. 26, and Dec. 9, 2023 - Jan. 28, 2024, for Canada and white-fronted geese (except brant).

Oct. 14 - Nov. 26, and Dec. 9, 2023 - Jan. 28, 2024, and Feb. 10-20, 2024, for snow, Ross', and blue geese (collectively referred to as white geese). During Feb. 10-20, 2024, in Skagit, Whatcom and Snohomish counties, specified WDFW lands including Fir Island Farm Game Reserve, Island Unit, Johnson DeBay's Slough Swan Reserve and Hunt Unit, Leque Island Unit, Samish Unit, Samish River Unit, South Padilla Bay Unit, and Skagit Headquarters Unit of the Skagit Wildlife Area, and all units of the Whatcom Wildlife Area are closed to goose hunting in Goose Management Area 1.

Daily Bag Limit: 4 Canada geese (except dusky Canada geese which are closed to harvest), 10 white-fronted geese, and 10 white geese (snow, Ross', blue phase). During Feb. 10-20, 2024: 20 white geese.

Possession Limit: 12 Canada geese (except dusky Canada geese which are closed to harvest), 30 white-fronted geese, and 30 white geese (snow, Ross', blue phase). During Feb. 10-20, 2024: 60 white geese.

#### **AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT SNOW GEESE**

Hunters must physically possess a special 2023-2024 paper or electronic migratory bird hunting authorization and harvest record card for snow geese when hunting snow, Ross', and blue geese in Goose Management Area 1. (~~(A hunter who has not previously possessed a snow goose harvest report card must submit an application form to Washington state department of fish and wildlife (WDFW).)~~) Immediately after taking a snow, Ross', or blue goose into possession, hunters must record (~~(in ink the information required within the designated spaces provided on the harvest record card)~~) all required information on the harvest record card. Hunters required to physically possess a paper harvest record card must enter all required information in ink. Hunters required to physically possess an electronic harvest record card must enter all required information through the licensing mobile application.

#### **SKAGIT COUNTY AND WHATCOM COUNTY SPECIAL RESTRICTIONS**

It is unlawful to discharge a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County or to discharge a firearm for the purpose of hunting snow geese within 100 feet of any paved public road in other areas of Skagit County or Whatcom County.

While hunting snow geese, if a hunter is convicted of (a) trespass; (b) shooting from, across, or along the maintained part of any public highway; (c) discharging a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County or discharging a firearm within 100 feet of any paved public

road for the purpose of hunting snow geese in other areas of Skagit County or Whatcom County; or (d) exceeding the daily bag limit for geese, authorization will be invalidated for the remainder of the current snow goose season and an authorization will not be issued for the subsequent snow goose season.

**Goose Management Area 2 - Coast:** Pacific County and the portion of Grays Harbor County west of highway 101.

September Canada Goose Season

Sept. 2-10, 2023.

Daily Bag Limit: 5 Canada geese, except 15 Canada geese in Pacific County.

Possession Limit: 15 Canada geese, except 45 Canada geese in Pacific County.

Regular Season

Open in all areas from 30 minutes after the start of official hunting hours to 30 minutes before the end of official hunting hours, 7 days per week during Oct. 14-29, 2023; Saturdays, Sundays, and Wednesdays only, Nov. 1 - Dec. 3, 2023, and Dec. 20, 2023 - Jan. 21, 2024, and Feb. 10-21, 2024. During Feb. 10-21, 2024, U.S. Fish and Wildlife Service National Wildlife Refuges (NWRs) and WDFW Wildlife Areas are closed to goose hunting in Goose Management Area 2 - Coast.

Bag Limits for Goose Management Area 2 - Coast:

Daily Bag Limit: 3 Canada geese (except dusky Canada geese which are closed to harvest), 10 white-fronted geese, and 10 white geese (snow, Ross', blue).

Possession Limit: 9 Canada geese (except dusky Canada geese which are closed to harvest), 30 white-fronted geese, and 30 white geese (snow, Ross', blue).

Dusky Canada geese: SEASON CLOSED.

**Goose Management Area 2 - Inland:** Clark, Cowlitz, Wahkiakum counties and the portion of Grays Harbor County east of highway 101.

September Canada Goose Season

Sept. 2-10, 2023.

Daily Bag Limit: 5 Canada geese.

Possession Limit: 15 Canada geese.

Regular Season

Open in all areas except Ridgefield NWR from 30 minutes after the start of official hunting hours to 30 minutes before the end of official hunting hours, 7 days per week during Oct. 14-29, 2023; Saturdays, Sundays, and Wednesdays only, Nov. 22, 2023 - Jan. 14, 2024, and Feb. 10 - Mar. 6, 2024. During Feb. 10 - Mar. 6, 2024, U.S. Fish and Wildlife Service National Wildlife Refuges (NWRs) and WDFW Wildlife Areas are closed to goose hunting in Goose Management Area 2 - Inland. Ridgefield NWR open from 30 minutes after the start of official hunting hours to 30 minutes before the end of official hunting hours, Tuesdays, Thursdays, and Saturdays only, Oct. 14-29, 2023, and Nov. 22, 2023 - Jan. 13, 2024.

Bag Limits for Goose Management Area 2 - Inland:

Daily Bag Limit: 3 Canada geese (except dusky Canada geese which are closed to harvest), 10 white-fronted geese, and 10 white geese (snow, Ross', blue).

Possession Limit: 9 Canada geese (except dusky Canada geese which are closed to harvest), 30 white-fronted geese, and 30 white geese (snow, Ross', blue).

Dusky Canada geese: SEASON CLOSED.

**Special Provisions for Goose Management Area 2 Coast and Inland Regular Season only:**

A dusky Canada goose is defined as a dark-breasted (as shown in the Munsell color chart 10 YR, 5 or less) Canada goose with a culmen (bill) length of 40-50 mm.

Hunters must physically possess a valid special 2023-2024 paper or electronic migratory bird hunting authorization and harvest record card for geese when hunting all goose species in Goose Management Area 2 Coast and Inland. New hunters and those who did not maintain a valid 2022-2023 authorization must review goose identification training materials and score a minimum of 80% on a goose identification test to receive authorization. Hunters who fail a test must wait 28 days before retesting, and will not be issued a reciprocal authorization until that time. Immediately after taking a goose into possession, hunters must record (~~in ink the information required within the designated spaces provided on the harvest record card~~) all required information on the harvest record card. Hunters required to physically possess a paper harvest record card must enter all required information in ink. Hunters required to physically possess an electronic harvest record card must enter all required information through the licensing mobile application.

It is unlawful for hunters in Goose Management Area 2 Coast and Inland to fail to comply with the directions of authorized department personnel related to the collection of goose subspecies information pursuant to RCW 77.12.071. A person who prevents department personnel from collecting samples of tissue or other bodily parts is subject to prosecution under RCW 77.15.360 Unlawful interfering in department operations—Penalty. If a hunter takes a dusky Canada goose or does not comply with requirements listed above regarding WDFW collection of subspecies information, authorization will be invalidated by the department and the hunter will not be able to hunt geese in Goose Management Area 2 Coast and Inland for the remainder of the season. It is unlawful to fail to comply with all provisions listed above for Goose Management Area 2 Coast and Inland. Taking one dusky Canada goose is punishable as an infraction under RCW 77.15.160 (5)(b). Other violations of Area 2 goose hunting rules are punishable as an infraction under RCW 77.15.160 (2)(e) or as a misdemeanor or gross misdemeanor under RCW 77.15.400 unlawful hunting of wild birds, depending on the circumstances of the violation.

**Goose Management Area 3**

Includes all parts of Western Washington not included in Goose Management Areas 1 and 2.

September Canada Goose Season

Sept. 2-7, 2023.

Daily Bag Limit: 5 Canada geese.

Possession Limit: 15 Canada geese.

Regular Season

Oct. 14-26, 2023, and Nov. 4, 2023 - Jan. 28, 2024.

Daily Bag Limit: 4 Canada geese (except dusky Canada geese which are closed to harvest), 10 white-fronted geese, and 10 white geese (snow, Ross', blue).

Possession Limit: 12 Canada geese (except dusky Canada geese which are closed to harvest), 30 white-fronted geese, and 30 white geese (snow, Ross', blue).

#### **Eastern Washington Goose Seasons**

September Canada Goose Season (Eastern Washington)

Sept. 2-3, 2023.

Daily Bag Limit: 5 Canada geese.

Possession Limit: 10 Canada geese.

#### **Goose Management Area 4**

Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla counties.

Saturdays, Sundays, and Wednesdays only during Oct. 14, 2023 - Jan. 21, 2024; additionally, to accommodate opportunity during recognized holiday periods, the 2023-2024 season will include: Nov. 10, 23, and 24, 2023; Dec. 25, 26, 28, and 29, 2023, and Jan. 1 and 15, 2024; and every day Jan. 22-28, 2024, for Canada geese and white-fronted geese.

Saturdays, Sundays, and Wednesdays only during Oct. 14-22, 2023, and Nov. 10, 2023 - Jan. 21, 2024; additionally, to accommodate opportunity during recognized holiday periods, the 2022-2023 season will include: Nov. 10, 23, and 24, 2023; Dec. 25, 26, 28, and 29, 2023, and Jan. 1 and 15, 2024; and every day Jan. 22-28, 2024, and Feb. 17 - Mar. 3, 2024, for snow, Ross', and blue phase geese (collectively referred to as white geese).

#### **Goose Management Area 5**

Includes all parts of Eastern Washington not included in Goose Management Area 4.

Oct. 14-30, 2023, and every day from Nov. 4, 2022 - Jan. 28, 2024.

Bag Limits for all Eastern Washington Goose Management Areas during regular seasons:

Daily Bag Limit: 4 Canada geese, 10 white-fronted geese, and 10 white geese (snow, Ross', blue). During Feb. 17 - Mar. 3, 2024, in GMA4: 20 white geese.

Possession Limit: 12 Canada geese, 30 white-fronted geese, and 30 white geese (snow, Ross', blue). During Feb. 17 - Mar. 3, 2024, in GMA4: 60 white geese.

**BRANT**

Will remain closed in Skagit County, including during the youth, veteran, and active military date, and may only open under the following conditions on specified dates.

If the 2023-2024 brant population in Skagit County is below 3,000 (as determined by aerial survey), the brant season in Skagit County will remain closed.

If the 2023-2024 brant population in Skagit County is 3,000-6,000 (as determined by aerial survey), the brant season in Skagit County will be open on the following dates: Jan. 20, 24, and 27, 2024, and during the Feb. 3, 2024, youth, veterans, and active military date.

If the 2022-2023 brant population in Skagit County is greater than 6,000 (as determined by aerial survey), the brant season in Skagit County will be open on the following dates: Jan. 13, 14, 17, 20, 21, 24, 27, and 28, 2024, and during the Feb. 3, 2024, youth, veterans, and active military date.

Open in Clallam and Whatcom counties only on the following dates: Jan. 20, 24, and 27, 2024.

Open in Pacific County only on the following dates: Jan. 6, 7, 9, 11, 13, 14, 16, 18, 20, 21, 23, 25, 27, and 28, 2024, but may be adjusted pending the most recent 3-year running average results of the Pacific flyway winter brant survey.

Special youth, open to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting), veterans and active military personnel hunting day, open to hunters as defined in Section 3 of 16 U.S. Code Sec. 704 as amended by the John D. Dingell, Jr. Conservation, Management, and Recreation Act. Active duty military includes members of the National Guard and Reserves on active duty (other than for training). Veterans must have served in the active military, naval, or air service, and discharged or released under Honorable conditions: Feb. 3, 2024. Hunters must have one of the following, or a copy of, during the hunt: DD214, Veteran Benefit Card, Retired Active Military I.D., or Active Duty I.D. card.

#### **AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT BRANT**

Hunters must physically possess a special 2023-2024 paper or electronic migratory bird hunting authorization and harvest record card for brant when hunting brant. (~~(A hunter who has not previously possessed a brant harvest report card must submit an application form to Washington state department of fish and wildlife (WDFW).)~~) Immediately after taking a brant into possession, hunters must record (~~(in ink the information required within the designated spaces provided on the harvest record card)~~) all required information on the harvest record card. Hunters required to physically possess a paper harvest record card must enter all required information in ink. Hunters required to physically possess an electronic harvest record card must enter all required information through the licensing mobile application.

Bag Limits for Clallam, Skagit, Pacific and Whatcom counties:

Daily Bag Limit: 2 brant.

Possession Limit: 6 brant.

Special youth, veterans and active military personnel hunting day.

Daily Bag and Possession Limit: 2 brant.



**SWANS**

Season closed statewide.

**MOURNING DOVE**

Sept. 1 - Oct. 30, 2023, statewide.

Daily Bag Limit: 15 mourning doves.

Possession Limit: 45 mourning doves.

**BAND-TAILED PIGEON**

Sept. 16-24, 2023, statewide.

Daily Bag Limit: 2 band-tailed pigeons.

Possession Limit: 6 band-tailed pigeons.

**AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT BAND-TAILED PIGEONS**

Hunters must physically possess a special 2023-2024 paper or electronic migratory bird hunting authorization and harvest record card for band-tailed pigeons when hunting band-tailed pigeons. (~~A hunter who has not previously possessed a band-tailed pigeon harvest report card must submit an application form to Washington state department of fish and wildlife (WDFW).~~) Immediately after taking a band-tailed pigeon into possession, hunters must record (~~in ink the information required within the designated spaces provided on the harvest record card~~) all required information on the harvest record card. Hunters required to physically possess a paper harvest record card must enter all required information in ink. Hunters required to physically possess an electronic harvest record card must enter all required information through the licensing mobile application.

**FALCONRY SEASONS****DUCKS, COOTS, SNIPE, GEESE, AND MOURNING DOVES (EXCEPT BRANT) (Falconry)**

Same season dates for each species in each area as listed above.

Daily Bag Limit: 3, straight or mixed bag, including ducks, coots, snipe, geese, and mourning doves during established seasons.

Possession Limit: 3 times the daily bag limit.

**DUCKS, COOTS, CANADA GEESE, WHITE-FRONTED GEESE, WHITE GEESE AND BRANT****(Extended Falconry)**

Sept. 23, 2023, and Feb. 3, 2024, in Western Washington (West Zone).

Sept. 30, 2023, and Feb. 3, 2024, in Eastern Washington (East Zone).

Daily Bag Limit: 3, straight or mixed bag, including allowable species specified under youth, veterans and active military personnel dates.

Possession Limit: Same as the Daily Bag Limit.

**MOURNING DOVE (Extended Falconry)**

Oct. 31 - Dec. 16, 2023.

Daily Bag Limit: 3, straight or mixed bag, including ducks, coots, snipe, and geese during established seasons.

Possession Limit: 3 times the daily bag limit.

**HIP REQUIREMENTS:**

All hunters of migratory game birds (duck, goose, coot, snipe, mourning dove, and band-tailed pigeon) age 16 and over are required to complete a harvest information program (HIP) survey at a license dealer and possess a Washington migratory bird permit as evidence of compliance with this requirement when hunting migratory game birds. Youth hunters are required to complete a HIP survey and possess a Washington migratory bird permit (free for youth) as evidence of compliance with this requirement when hunting migratory game birds.

[Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.08.030. WSR 23-11-118, § 220-416-060, filed 5/22/23, effective 6/22/23. Statutory Authority: RCW 77.04.012, 77.04.055, and 77.12.047. WSR 22-15-096 (Order 22-71), § 220-416-060, filed 7/19/22, effective 8/19/22. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240. WSR 21-14-022 (Order 21-61), § 220-416-060, filed 6/28/21, effective 7/29/21; WSR 20-12-080 (Order 20-76), § 220-416-060, filed 6/1/20, effective 7/2/20. Statutory Authority: RCW 77.04.090, 77.04.130, 77.15.568, 77.08.010, 77.65.510, 77.65.515, and 77.65.520. WSR 19-10-011 (Order 19-79), § 220-416-060, filed 4/19/19, effective 5/20/19. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.020, 77.12.040, 77.12.047, 77.12.150, 77.12.210, 77.12.240, 77.12.320, 77.12.570, 77.12.800, 77.15.245, 77.32.007, 77.32.050, 77.32.070, 77.32.090, 77.32.370, and 77.32.530. WSR 18-11-061 (Order 18-76), § 220-416-060, filed 5/11/18, effective 6/11/18. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.150, 77.12.240, 77.12.800, 77.32.090. WSR 17-10-076 (Order 17-10), amended and recodified as § 220-416-060, filed 5/3/17, effective 6/3/17. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.150, 77.12.240, 77.12.800, 77.32.090, and 77.32.155. WSR 16-12-087, § 232-28-436, filed 5/31/16, effective 7/1/16. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.32.070. WSR 15-18-032 (Order 15-275), § 232-28-436, filed 8/25/15, effective 9/25/15; WSR 14-17-081 (Order 14-213), § 232-28-436, filed 8/18/14, effective 9/18/14. Statutory Authority: RCW 77.12.047, 77.12.240, 77.32.070. WSR 13-17-083 (Order 13-186), § 232-28-436, filed 8/19/13, effective 9/19/13. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, 77.32.070, and C.F.R. Title 50, Part 20; Migratory Bird Treaty Act. WSR 12-18-001 (Order 12-191), § 232-28-436, filed 8/22/12, effective 9/22/12.]

**WSR 23-18-084****PROPOSED RULES****DEPARTMENT OF HEALTH**

(Examining Board of Psychology)

[Filed September 5, 2023, 2:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-23-019.

Title of Rule and Other Identifying Information: Health equity continuing education (CE) for psychologists under chapter 246-924 WAC, Psychologists. The examining board of psychology (board) proposes amending WAC 246-924-230 to establish health equity CE requirements to implement ESSB 5229 (chapter 276, Laws of 2021).

Additionally, the board is proposing amendments to WAC 246-924-240, 246-924-250, 246-924-255, 246-924-300, and 246-924-330. These amendments improve clarity and remove outdated language.

Hearing Location(s): On October 13, 2023, at 2:00 p.m., via Microsoft Teams meeting. Click here to join on your computer or mobile app <https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting?rtc=1>, Meeting ID 244 111 655 260, Passcode BjjFtA; or call in (audio only) +1 564-999-2000, 496883862# United States, Olympia, 833-322-1218, 496883862# United States (toll-free), Phone Conference ID 496 883 862#. The board will hold a virtual public hearing without a physical meeting space.

Date of Intended Adoption: October 13, 2023.

Submit Written Comments to: Zachary Patnode, Office of Health Professions, P.O. Box 47850, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, [www.doh.wa.gov](http://www.doh.wa.gov), by October 13, 2023.

Assistance for Persons with Disabilities: Contact Zachary Patnode, phone 360-490-2587, TTY 711, email [psychology@doh.wa.gov](mailto:psychology@doh.wa.gov), by September 29, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 43.70.613 (3)(b) directs the rule-making authority for each health profession licensed under Title 18 RCW that is subject to CE to adopt rules requiring a licensee to complete health equity CE training at least once every four years. The statute also directs the department of health (department) to create model rules establishing the minimum standards for health equity CE programs. The department filed model rules for health equity CE minimum standards on November 23, 2022, under WSR 22-23-167. Any rules developed for the board must meet or exceed the minimum standards in the model rules in WAC 246-12-800 through 246-12-830.

The board is proposing an amendment to WAC 246-924-230 to implement ESSB 5229. The board proposes adopting the health equity model rules, WAC 246-12-800 through 246-12-830, for licensed psychologists to comply with RCW 43.70.613.

The proposed rule adds two hours of health equity education, as required in the model rules, to be completed as part of the current CE requirements every three years. Health equity CE is required every three years, instead of every four years as established in the model rules, in order to align with licensed psychologists' three-year CE cycle. The proposed rule does not change the total of 60 CE hours but requires two hours in health equity CE every three years, which is absorbed into the existing number of CE hours required. The health equity CE requirement is counted under existing, unspecified CE requirements for the profession.

Additional changes improve clarity in the chapter and remove obsolete language, including provisions that allow the board to permit CE from another jurisdiction to fulfill Washington's CE requirements and allow the board to waive CE requirements for a retired psychologist who wishes to maintain active licensure.

Reasons Supporting Proposal: The goal of health equity CE is to equip health care workers with the skills to recognize and reduce health inequities in their daily work. The content of health equity trainings includes implicit bias training to identify strategies to reduce bias during assessment and diagnosis in an effort to address structural factors, such as bias, racism, and poverty, that manifest as health inequities.

Two hours of training allows professionals to gain a foundation in health equity that can have an immediate positive impact on the professional's interaction with those receiving care. Health equity training enables health care professionals to care more effectively for patients from diverse cultures, groups, and communities, varying race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity. The two hours of health equity CE credits may be earned as part of the health professional's existing CE requirements, therefore not requiring completion of additional CE hours.

Regarding the amendments to clarify the rules and remove outdated provisions, the board proposes removing language that allows the board to permit CE from another jurisdiction to fulfill Washington's CE requirements and allows the board to waive CE requirements for a retired psychologist who wishes to maintain active licensure. Both of these provisions are confusing, rarely used, and lead to ambiguity in licensure standards. Removing these provisions will increase clarity, set clear standards for licensure, and protect patient safety.

Statutory Authority for Adoption: RCW 43.70.613, 18.83.050, 18.83.090.

Statute Being Implemented: RCW 43.70.613; ESSB 5229 (chapter 276, Laws of 2021).

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

Name of Proponent: Examining board of psychology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Zachary Patnode, 111 Israel Road S.E., Tumwater, WA 98501, 360-490-2587.

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 Zachary Patnode, Office of Health Professions, P.O. Box 47850, Olympia, WA 98504, phone 360-490-2587, TTY 711, email psychology@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).

Explanation of exemptions: The proposed rules affect individual professional licenses, not businesses.

Scope of exemption for rule proposal:

Is fully exempt.

August 30, 2023  
Cedar O'Donnell, PhD, Chair  
Examining Board of Psychology

## OTS-4801.3

AMENDATORY SECTION (Amending WSR 14-01-071, filed 12/16/13, effective 1/1/14)

**WAC 246-924-230 Continuing education requirements.** (1) To renew a license, a licensed psychologist ~~((must))~~ shall complete ~~((a minimum of sixty))~~ at least 60 hours of continuing education (CE) every three years, including a minimum of:

(a) ~~((A minimum of))~~ Four hours ~~((must be))~~ in ethics. Areas to be covered, depending on the ~~((licensee's))~~ psychologist's primary area(s) of function are practice, consultation, research, teaching, or supervision.

(b) ~~((Beginning January 1, 2014, once every six years, a minimum of))~~ Two hours in health equity. Qualifying trainings must meet the standards in WAC 246-12-830.

(c) ~~Six hours ((must be training covering suicide assessment, treatment, and management as specified in WAC 246-924-255. These hours count toward the total sixty hours of CE.~~

~~(i) Except as provided in (b)(ii)(A) and (B) of this subsection, the training must be completed during the first full CE reporting period after January 1, 2014, or the first full CE period after initial licensure, whichever occurs later.~~

~~(ii) A psychologist applying for initial licensure on or after January 1, 2014, may delay completion of the first training for six years after initial licensure, if he or she can demonstrate successful completion of six-hour training in suicide assessment, treatment, and management that:~~

~~(A) Was completed no more than six years prior to the application for initial licensure; and~~

~~(B) Meets the qualifications listed in WAC 246-924-255(1))~~ in suicide prevention, every six years. Qualifying trainings must meet the standards in WAC 246-924-255 and be listed on the department's model list.

(2) Faculty providing CE offerings shall meet the training and the full qualifications of their respective professions. All faculty shall have demonstrated an expertise in the areas in which they are instructing.

(3) The Washington state examining board of psychology may require any ~~((licensee))~~ licensed psychologist to submit documentation to demonstrate compliance with the ~~((sixty))~~ 60 hours of CE.

[Statutory Authority: RCW 43.70.442(7), 18.83.090, 2012 c 181, and 2013 c 78. WSR 14-01-071, § 246-924-230, filed 12/16/13, effective 1/1/14. Statutory Authority: RCW 18.83.090. WSR 99-14-075, § 246-924-230, filed 7/6/99, effective 8/6/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-924-230, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.83.050(5). WSR 94-12-039, § 246-924-230, filed 5/25/94, effective 6/25/94. Statutory Authority: RCW 18.83.050. WSR 91-04-021 (Order 129B), § 246-924-230, filed 1/28/91, effective 2/28/91; WSR 91-04-020 (Order 117B), recodified as § 246-924-230, filed 1/28/91, effective 2/28/91; Order PL 276, § 308-122-515, filed 11/16/77.]

AMENDATORY SECTION (Amending WSR 14-01-071, filed 12/16/13, effective 1/1/14)

**WAC 246-924-240** (~~(Definitions of categories of creditable)~~) **Approved continuing education activities.** (1) All continuing education (CE) activities must be directly relevant to maintaining or increasing professional or scientific competence in psychology.

(2) Courses or workshops primarily designed to increase practice income or office efficiency, are specifically noneligible for CE credit.

(3) (~~(Program sponsors or institutes will not receive prior or current board approval for CE status or category.)~~) The board does not review individual courses for preapproval.

(4) Courses, seminars, workshops, and postdoctoral institutes offered or sponsored by the following qualify for CE credit for a licensed psychologist:

(a) Educational institutions chartered by a state and recognized (accredited) by a regional association of schools, colleges and universities as providing graduate level course offerings. Documentation must be recorded on an official transcript or certificate of completion;

(b) The American Psychological Association;

(c) Regional or state psychological associations or their sub-chapters;

(d) Psychology internship training centers;

(e) Other professionally or scientifically recognized behavioral science organizations; and

(f) The Washington state examining board of psychology.

(5) A licensed psychologist may earn credit toward the CE requirement through teaching an approved CE program. The CE credit earned may not exceed (~~(thirty)~~) 30 hours every three years. Credit for teaching an approved CE program may be earned on the following basis:

(a) One credit hour for each (~~(sixty)~~) 60 minutes actually spent teaching the program for the first event. Credit may be conferred for teaching similar subject matter only if the psychologist has actually spent an equal or greater amount of preparation time updating the subject matter to be taught on a later occasion.

(b) One credit hour for each (~~(sixty)~~) 60 minutes actually spent participating in a panel presentation.

(~~(6) A licensed psychologist may earn CE credit by attending an approved training in suicide assessment, treatment, and management.~~)

[Statutory Authority: RCW 43.70.442(7), 18.83.090, 2012 c 181, and 2013 c 78. WSR 14-01-071, § 246-924-240, filed 12/16/13, effective 1/1/14. Statutory Authority: RCW 18.83.090. WSR 99-14-075, § 246-924-240, filed 7/6/99, effective 8/6/99. Statutory Authority: RCW 18.83.050(5). WSR 94-12-039, § 246-924-240, filed 5/25/94, effective 6/25/94. Statutory Authority: RCW 18.83.050. WSR 91-04-021 (Order 129B), § 246-924-240, filed 1/28/91, effective 2/28/91; WSR 91-04-020 (Order 117B), recodified as § 246-924-240, filed 1/28/91, effective 2/28/91; Order PL 276, § 308-122-520, filed 11/16/77.]

AMENDATORY SECTION (Amending WSR 99-14-075, filed 7/6/99, effective 8/6/99)

**WAC 246-924-250 Continuing education—Special considerations.**

~~((In lieu (total or partial) of sixty hours of CE)) (1) Expired li-~~  
~~cense. In accordance with WAC 246-12-040, a psychologist whose creden-~~  
~~tial has been expired for three years or more must document completion~~  
~~of 40 hours of continuing education (CE), including four hours of eth-~~  
~~ics. This CE must have been obtained within the two years prior to re-~~  
~~instatement.~~

~~(2) The board may consider awarding total or partial CE credit~~  
~~((hour approval and acceptance of)) for other programs as they are de-~~  
~~veloped and implemented, such as:~~

~~((1)) (a) Compliance with a CE program developed by the Ameri-~~  
~~can Psychological Association which provides either a recognition~~  
~~award or certificate(, may be evaluated and considered for partial or~~  
~~total fulfillment of the CE credit hour requirements of the board.~~

~~(2) Psychologists licensed in the state of Washington but prac-~~  
~~ticing in a different state or country which has a mandatory or volun-~~  
~~tary CE program may submit to the board evidence of completion of that~~  
~~other state's or country's CE requirements for evaluation and partial~~  
~~or total credit hour approval.~~

~~(3) Psychologists licensed in the state of Washington but prac-~~  
~~ticing in a state, U.S. territory or foreign country without CE re-~~  
~~quirements, or who are not legally required to meet those CE require-~~  
~~ments, may submit evidence of their CE activities pursued outside of~~  
~~Washington state directly to the board for evaluation and approval~~  
~~based on conformity to the board's CE requirements.~~

~~(4) The board may also accept evidence of diplomate award by the~~  
~~American Board of Professional Psychology (ABPP) and American Board of~~  
~~Psychological Hypnosis (ABPH) in lieu of sixty hours of CE for that~~  
~~three year period in which the diplomate was awarded.~~

~~(5) Credit hours may be earned for other specialty board or di-~~  
~~ploma certifications if and when such are established.~~

~~(6) In accordance with WAC 246-12-040 (2) (c) (ix), psychologists~~  
~~who have allowed their credential to expire for three years or more~~  
~~must document completion of forty hours of CE, of which four hours~~  
~~must be in ethics. This CE must have been obtained within the two most~~  
~~recent years immediately prior to reinstatement);~~

~~(b) A diplomate award by the American Board of Professional Psy-~~  
~~chology (ABPP) or American Board of Psychological Hypnosis (ABPH); and~~

~~(c) Credit hours for other specialty board or diploma certifica-~~  
~~tions if and when they are established.~~

[Statutory Authority: RCW 18.83.090. WSR 99-14-075, § 246-924-250, filed 7/6/99, effective 8/6/99. Statutory Authority: RCW 18.130.250 and 18.83.050. WSR 96-08-007, § 246-924-250, filed 3/22/96, effective 4/22/96. Statutory Authority: RCW 18.83.050(5). WSR 94-12-039, § 246-924-250, filed 5/25/94, effective 6/25/94. Statutory Authority: RCW 18.83.050. WSR 91-04-020 (Order 117B), recodified as § 246-924-250, filed 1/28/91, effective 2/28/91; Statutory Authority: RCW 18.83.050(5). WSR 86-04-087 (Order PL 578), § 308-122-525, filed 2/5/86; Order PL 276, § 308-122-525, filed 11/16/77.]

AMENDATORY SECTION (Amending WSR 21-09-031, filed 4/12/21, effective 5/13/21)

**WAC 246-924-255 Suicide ((intervention)) prevention training standards.** (1) Each licensed psychologist ((must)) shall, at least once every six years, complete a six-hour training in suicide ((assessment, treatment, and management.

~~(2) An approved training in suicide assessment, treatment, and management must:~~

~~(a) Cover training in suicide assessment, including screening and referral, suicide treatment, and suicide management;~~

~~(b) Be provided by a single provider and must be at least six hours in length, which may be provided in one or more sessions; and~~

~~(c) Be on the department's model list developed in accordance with RCW 43.70.442. Nothing in this section invalidates trainings completed according to this chapter before July 1, 2017.~~

~~(3)) prevention that meets the standards of chapter 246-12 WAC and is included on the department's model list.~~

~~(a) A psychologist's first training must be in suicide assessment, treatment, and management.~~

~~(b) Beginning July 1, 2021, a psychologist must complete a qualifying advanced training or training in treatment modalities shown to be effective in working with people who are suicidal.~~

~~(i) If a qualifying training is not reasonably available, the psychologist may substitute a six-hour training that meets the requirements of (a) of this subsection.~~

~~(ii) If a psychologist has already completed their second training prior to July 1, 2021, the psychologist's next training must comply with (b) of this subsection.~~

~~(2) A licensed psychologist who is a state or local government employee is exempt from the requirements of subsection ((2)) (1) of this section if the psychologist receives ((a total of)) at least six hours of training in suicide assessment, treatment, and management from their employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or ((may be spread among)) in shorter training sessions ((at the employer's discretion)).~~

~~((4)) (3) A licensed psychologist who is an employee of a community mental health agency or substance use disorder treatment program licensed under chapter 71.24 RCW ((or a chemical dependency program certified under chapter 70.96A RCW)) is exempt from the requirements of subsection ((2)) (1)(a) of this section if the psychologist receives ((a total of)) at least six hours of training in suicide assessment, treatment, and management from an employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or ((may be spread among)) in shorter training sessions ((at the employer's discretion)).~~

~~((5)) (4) A licensed psychologist who obtained training under subsection ((3) or (4)) (2) or (3) of this section may obtain continuing education credit for that training subject to documentation as defined in WAC 246-924-300.~~

~~((6) Beginning July 1, 2021, a licensed psychologist's second training must be a qualifying advanced training or training in treatment modalities shown to be effective in working with people who are suicidal, developed under RCW 43.70.442 and listed on the department's model list.~~



~~(7) If a licensed psychologist has already completed the psychologist's second training prior to July 1, 2021, the psychologist's next training must comply with subsection (6) of this section.~~

~~(8) The requirements listed in subsection (6) of this section do not apply if the licensee demonstrates that the training required is not reasonably available.)~~

[Statutory Authority: RCW 18.83.050, 2020 c 229, and 2020 c 76. WSR 21-09-031, § 246-924-255, filed 4/12/21, effective 5/13/21. Statutory Authority: RCW 18.83.090 and 43.70.442. WSR 17-06-056, § 246-924-255, filed 2/28/17, effective 3/31/17. Statutory Authority: RCW 43.70.442(7), 18.83.090, 2012 c 181, and 2013 c 78. WSR 14-01-071, § 246-924-255, filed 12/16/13, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 99-14-075, filed 7/6/99, effective 8/6/99)

**WAC 246-924-300 Definition of acceptable documentation and proof of ((CE)) continuing education.** ((Licensees)) (1) Licensed psychologists are responsible for acquiring and maintaining all acceptable documentation of their continuing education (CE) activities.

(2) Acceptable documentation shall include transcripts, letters from course instructors, or certificate of completion or other formal certification. In all cases other than transcripts, the documentation must show the participant's name, the activity title, number of CE credit hours, date(s) of activity, faculty's name(s) and degree and the signature of verifying individual (program sponsor).

[Statutory Authority: RCW 18.83.090. WSR 99-14-075, § 246-924-300, filed 7/6/99, effective 8/6/99. Statutory Authority: RCW 18.83.050(5). WSR 94-12-039, § 246-924-300, filed 5/25/94, effective 6/25/94. Statutory Authority: RCW 18.83.050. WSR 91-04-021 (Order 129B), § 246-924-300, filed 1/28/91, effective 2/28/91.]

AMENDATORY SECTION (Amending WSR 99-14-075, filed 7/6/99, effective 8/6/99)

**WAC 246-924-330 Continuing education—Exemptions.** ((In the event a licensee fails to meet requirements, because of illness, retirement (with no further provision of psychological services to consumers), failure to renew, or other extenuating circumstances, each case will be considered by the board on an individual basis. When)) (1) Extension. A licensed psychologist may use the extension request form to request additional time to meet their continuing education (CE) requirements in order to renew their license and in other extenuating circumstances. Based on the circumstances ((justify it)), the board may grant a time extension((. The board may, in its discretion)) and, if appropriate, limit in part or in whole the provision of consumer psychological services ((to the consumers)) until the CE requirements are met.

~~((In the case of retirement or illness,))~~ (2) Waiver. A licensed psychologist may use the waiver request form to request the board waive their CE requirements indefinitely due to illness.

(a) The board may grant indefinite waiver of CE as a requirement for relicensure, provided ((an affidavit is received indicating)) the waiver request form indicates the psychologist is not providing consumer psychological services ((to consumers)).

(b) If ((such)) the psychologist's illness ((or retirement)) status ((is changed or)) changes or the psychologist resumes providing consumer psychological services ((are resumed, it is incumbent upon the licensee to)), the psychologist must immediately notify the board and ((to)) resume meeting CE requirements for relicensure. CE credit hours will be prorated for the portion of that three year period involving resumption of ((such)) services.

[Statutory Authority: RCW 18.83.090. WSR 99-14-075, § 246-924-330, filed 7/6/99, effective 8/6/99. Statutory Authority: RCW 18.83.050. WSR 91-04-021 (Order 129B), § 246-924-330, filed 1/28/91, effective 2/28/91.]

## WSR 23-18-085

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed September 5, 2023, 3:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-106.

Title of Rule and Other Identifying Information: WAC 182-501-0200  
Third-party resources.

Hearing Location(s): On October 10, 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\\_fMyM6MV1SmqpIcKuyrlgYQ](https://us02web.zoom.us/webinar/register/WN_fMyM6MV1SmqpIcKuyrlgYQ). 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: October 11, 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 October 10, 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 September 29, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule:

(1) Identifies responsible third parties and requires them to respond within 60 days to agency inquiries regarding certain payment claims;

(2) Describes the circumstances that prevent responsible third parties from failing to pay claims, including the lack of prior authorization for the claim under the third-party's rules; and

(3) Includes an exemption to the third-party response requirement and the bar on a third-party's failure to pay claims.

Reasons Supporting Proposal: HCA is making these revisions to align with Sec. 1902 (a) (25) (I) of the Consolidated Appropriations Act of 2022 (CAA, 2022; P.L. 117-103).

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, CAA, 2022; P.L. 117-103.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1406; Implementation and Enforcement: Kasandra Wilson, P.O. Box 45564, Olympia, WA 98504-5564, 360-725-1351.

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.

Explanation of exemptions: CAA requires states to have laws that bar liable third-party payers from refusing payment for a health care item or service solely on the basis that the item or service did not

receive prior authorization under the third-party payer's rules. CAA also requires that third parties must respond within 60 days of receipt of a state health claim inquiry.

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 remaining rule revisions that are not exempt (such as describing a responsible third-party payer) do not impose any costs on small businesses.

September 5, 2023  
Wendy Barcus  
Rules Coordinator

### OTS-4826.1

AMENDATORY SECTION (Amending WSR 20-15-015, filed 7/6/20, effective 8/6/20)

**WAC 182-501-0200 Third-party resources.** (1) The medicaid agency requires a provider to seek timely reimbursement from a responsible third party when a client has available third-party resources, except as described under subsections (2) and (3) of this section. Responsible third parties include health insurers and other third parties legally liable for health care items and services received by clients.

(2) The agency pays for medical services and seeks reimbursement from a (~~liable~~) responsible third party when the claim is for preventive pediatric services as covered under the early and periodic screening, diagnosis and treatment (EPSDT) program.

(3) The agency pays for medical services and seeks reimbursement from any (~~liable~~) responsible third party when both of the following apply:

(a) The provider submits to the agency documentation of billing the third party and the provider has not received payment after (~~one hundred~~) 100 days from the date of services; and

(b) The claim is for a covered service provided to a client on whose behalf the office of support enforcement is enforcing a noncustodial parent to pay support. For the purpose of this section, "is enforcing" means the noncustodial parent either:

(i) Is not complying with an existing court order; or

(ii) Received payment directly from the third party and did not pay for the medical services.

(4) Responsible third parties, except those identified in subsection (5) of this section, must:

(a) Respond within 60 days to any agency inquiry regarding a claim for payment for any health care item or service submitted within three years after the date the item or service was provided; and

(b) Not deny a claim submitted by the agency solely based on:

(i) The submission date of the claim;

(ii) The type or format of the claim form;

(iii) Lack of prior authorization under the responsible third-party's rules; or

(iv) Any other requirement as described in RCW 74.09A.030.

(5) The following programs found in Title XVIII of the federal Social Security Act are exempt from subsection (4) of this section:

(a) The original medicare fee-for-service program under parts A and B;

(b) A medicare advantage plan offered by a medicare advantage organization under part C;

(c) A reasonable cost reimbursement plan under section 1876 of the federal Social Security Act;

(d) A health care prepayment plan under section 1833 of the federal Social Security Act; or

(e) A prescription drug plan offered under part D that requires prior authorization for an item or service furnished to a person eligible to receive medical assistance under Title XIX of the federal Social Security Act.

(6) The provider may not bill the agency or the client for a covered service when a third party pays a provider the same amount as or more than the agency rate.

~~((5))~~ (7) When the provider receives payment from a third party after receiving reimbursement from the agency, the provider must refund to the agency the amount of the:

(a) Third-party payment when the payment is less than the agency's maximum allowable rate; or

(b) Agency payment when the third-party payment is equal to or more than the agency's maximum allowable rate.

~~((6))~~ (8) The agency does not pay for medical services if third-party benefits are available to pay for the client's medical services when the provider bills the agency, except under subsections (2) and (3) of this section.

~~((7))~~ (9) The client is liable for charges for covered medical services that would be paid by the third-party payment when the client either:

(a) Receives direct third-party reimbursement for the services;  
or

(b) Fails to execute legal signatures on insurance forms, billing documents, or other forms necessary to receive insurance payments for services rendered. See WAC 182-503-0540 for assignment of rights.

~~((8))~~ (10) The agency considers an adoptive family to be a third-party resource for the medical expenses of the birth ~~((mother))~~ parent and child only when there is a written contract between the adopting family and either the birth ~~((mother))~~ parent, the attorney, the provider, or the adoption service. The contract must specify that the adopting family will pay for the medical care associated with the pregnancy.

~~((9))~~ (11) A provider cannot refuse to furnish covered services to a client because of a third-party's potential liability for the services.

~~((10))~~ (12) For third-party liability on personal injury litigation claims, the agency or managed care organization (MCO) is responsible for providing medical services under WAC 182-501-0100.

[Statutory Authority: RCW 41.05.021, 41.05.160, 42 U.S.C. Sec. 1902 (a) (25) (E), section 53102 (a) (1) of the Bipartisan Budget Act of 2018 and 42 U.S.C. Sec. 1305 (7) (a). WSR 20-15-015, § 182-501-0200, filed 7/6/20, effective 8/6/20. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396a (a) (25) (E). WSR 19-23-008, § 182-501-0200, filed 11/6/19, effective 12/7/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-23-021, § 182-501-0200, filed

11/4/16, effective 1/1/17; WSR 15-15-053, § 182-501-0200, filed 7/9/15, effective 8/9/15. WSR 11-14-075, recodified as § 182-501-0200, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 10-19-057, § 388-501-0200, filed 9/14/10, effective 10/15/10. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 00-11-141, § 388-501-0200, filed 5/23/00, effective 6/23/00; WSR 00-01-088, § 388-501-0200, filed 12/14/99, effective 1/14/00.]

## WSR 23-18-088

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed September 6, 2023, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-10-033.

Title of Rule and Other Identifying Information: WAC 182-500-0075 Medical assistance definitions—N, 182-500-0085 Medical assistance definitions—P, 182-502-0005 Core provider agreement (CPA), 182-502-0030 Termination of provider agreement—For cause, 182-526-0195 Prehearing conferences, 182-530-1000 Outpatient drug program—General, and 182-531-0250 Who can provide and bill for physician-related and health care professional services.

Hearing Location(s): On October 10, 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\\_fMyM6MV1SmqpIcKuyrlgYQ](https://us02web.zoom.us/webinar/register/WN_fMyM6MV1SmqpIcKuyrlgYQ). 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: October 11, 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 October 10, 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 September 29, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

WAC 182-502-0030:

- Removed the term "agreement" from the WAC title and replace it with "enrollment."
- Removed the term "core provider agreement" (CPA) and replace it with "enrollment" to provide clarity that all providers (not just those with a CPA) are subject to the rules.
- Updated the WAC reference in subsection (1)(a)(ii) from WAC 246-934-100 to chapter 246-16 WAC to align with the correct department of health (DOH) definition of sexual misconduct.
- Added a new subsection (4) to address effective date of termination.
- Added a new subsection (5) to address administrative hearings/appeals.
- Added language clarification and housekeeping fixes in WAC 182-502-0030.

WAC 182-500-0075:

- Removed the definition of nonbilling provider and referenced updated provider definition in WAC 182-500-0085.

WAC 182-502-0085:

- Amended the definition of provider to include servicing providers, nonbilling providers, providers with a CPA, and providers with other contracts with the medicaid agency.

WAC 182-502-0005, 182-530-1000, and 182-531-0250:

- Updated the term "performing provider" to "servicing provider" to align with consistent agency language.

WAC 182-526-0195:

- Added a new subsection (7)(e) added to reflect that an appeal by a provider of their termination under this rule requires a mandatory prehearing conference with a reference to WAC 182-502-0030.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Josh Morse, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-0839.

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 agency is amending these rules to provide more precise language to define the program parameters and ensure consistency. This change does not impose a more-than-minor cost.

September 6, 2023

Wendy Barcus

Rules Coordinator

## OTS-4796.1

AMENDATORY SECTION (Amending WSR 18-24-023, filed 11/27/18, effective 1/1/19)

**WAC 182-500-0075 Medical assistance definitions—N. "National correct coding initiative (NCCI)"** is a national standard for the accurate and consistent description of medical goods and services using procedural codes. The standard is based on coding conventions defined in the American Medical Association's Current Procedural Terminology (CPT®) manual, current standards of medical and surgical coding practice, input from (~~specialty~~) professional societies, and analysis of current coding practices. The Centers for Medicare and Medicaid Services (CMS) maintain NCCI policy. Information can be found at: <http://www.cms.hhs.gov/NationalCorrectCodInitEd/>.



**"National provider indicator (NPI)"** is a ~~((federal system for uniquely identifying all providers of health care services, supplies, and equipment))~~ unique identification number for covered health care providers.

**"NCCI edit"** is a software step used to determine if a claim is billing for a service that is not in accordance with federal and state statutes, federal and state regulations, agency or the agency's designee's fee schedules, billing instructions, and other publications. The agency or the agency's designee has the final decision whether the NCCI edits allow automated payment for services that were not billed in accordance with governing law, NCCI standards or agency or agency's designee policy.

**"Nonapplying spouse"** see "spouse" in WAC 182-500-0100.

**"Nonbilling provider"** ~~((is a health care professional enrolled with the agency only as an ordering, referring, prescribing provider for the Washington medicaid program and who is not otherwise enrolled as a medicaid provider with the agency))~~ see definition for provider in WAC 182-500-0085.

**"Noncovered service"** see "covered service" in WAC 182-500-0020.

**"Nonphysician practitioner"** means the following professionals who work in collaboration with an ordering physician: Nurse practitioner, clinical nurse specialist, certified nurse midwife, or physician assistant.

**"Nursing facility"** see "institution" in WAC 182-500-0050.

**"Nursing facility long-term care services"** are services in a nursing facility when a person does not meet the criteria for rehabilitation. Most long-term care assists people with support services. (Also called custodial care.)

**"Nursing facility rehabilitative services"** are the planned interventions and procedures which constitute a continuing and comprehensive effort to restore a person to the person's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Section 440.70. WSR 18-24-023, § 182-500-0075, filed 11/27/18, effective 1/1/19. Statutory Authority: 42 C.F.R. 455.410, RCW 41.05.021. WSR 13-19-037, § 182-500-0075, filed 9/11/13, effective 10/12/13. WSR 11-14-075, recodified as § 182-500-0075, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 2011 1st sp.s. c 15. WSR 11-14-053, § 388-500-0075, filed 6/29/11, effective 7/30/11.]

AMENDATORY SECTION (Amending WSR 15-21-063, filed 10/19/15, effective 11/19/15)

**WAC 182-500-0085 Medical assistance definitions—P. "Patient transportation"** means client transportation to or from covered health care services under federal and state health care programs.

**"Physician"** means a doctor of medicine, osteopathy, naturopathy, or podiatry who is legally authorized to perform the functions of the profession by the state in which the services are performed.

**"Prescribing provider"** means a health care professional authorized by law or rule to prescribe drugs to Washington apple health ~~((WAH))~~ clients.

**"Prior authorization"** (~~(is)~~) means the requirement that a provider must request, on behalf of a client and when required by rule or agency billing instructions, the agency or the agency's designee's approval to provide a health care service before the client receives the health care service, prescribed drug, device, or drug-related supply. The agency or the agency's designee's approval is based on medical necessity. Receipt of prior authorization does not guarantee payment. Expedited prior authorization and limitation extension are types of prior authorization.

**"Prosthetic device"** means a preventive, replacement, corrective, or supportive device prescribed by a (~~(physician or other)~~) licensed (~~(practitioner,)~~) provider within (~~(the)~~) their scope of (~~(his or her)~~) practice under state law.

**"Provider"** means an institution, agency, or person that is licensed, certified, accredited, credentialed, or registered according to (~~(Washington)~~) state law, is an eligible provider type according to WAC 182-502-0002, authorized to provide services to Washington apple health clients, and has(~~(~~

~~(a) A signed core provider agreement or contract with the agency or the agency's designee, and is authorized to provide health care, goods, and services to WAH clients; or~~

~~(b) Authorization from a managed care organization (MCO) that contracts with the agency or the agency's designee to provide health care, goods, and services to eligible WAH clients enrolled in the MCO plan.)~~ a signed core provider agreement, a nonbilling provider agreement, or other contract with the agency or is a servicing provider.

(a) "Servicing provider" means a health care professional screened and enrolled with the agency under a group, facility, or organization that has a signed core provider agreement (CPA).

(b) "Nonbilling provider" means a health care professional enrolled with the agency only as an ordering, referring, prescribing provider for the Washington medicaid program and who is not otherwise enrolled as a medicaid provider with the agency.

**"Provider guide"** means an agency publication that describes a specific benefit covered under (~~(WAH)~~) Washington apple health, which includes client eligibility verification instructions, provider responsibilities, authorization requirements, coverage, billing, and how to complete and submit claims.

**"Public institution"** see "institution" in WAC 182-500-0050.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-21-063, § 182-500-0085, filed 10/19/15, effective 11/19/15. Statutory Authority: RCW 41.05.021, 2013 2nd sp.s. c 4, and Patient Protection and Affordable Care Act (P.L. 111-148). WSR 14-06-045, § 182-500-0085, filed 2/26/14, effective 3/29/14. Statutory Authority: 42 C.F.R. 455.410, RCW 41.05.021. WSR 13-19-037, § 182-500-0085, filed 9/11/13, effective 10/12/13. WSR 11-14-075, recodified as § 182-500-0085, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 2011 1st sp.s. c 15. WSR 11-14-053, § 388-500-0085, filed 6/29/11, effective 7/30/11.]

OTS-4797.2

AMENDATORY SECTION (Amending WSR 13-19-037, filed 9/11/13, effective 10/12/13)

- WAC 182-502-0005 Core provider agreement (CPA).** (1) The agency only pays claims submitted for services provided by or on behalf of:
- (a) A health care professional, health care entity, supplier or contractor of service that has an approved core provider agreement (CPA) with the agency (~~(, is a performing)~~);
  - (b) A servicing provider (~~(, is a performing)~~) enrolled under an approved CPA with the agency (~~(, is a performing)~~); or
  - (c) A provider who has an approved agreement with the agency as a nonbilling provider in accordance with WAC 182-502-0006.
- (2) (~~(Performing)~~) Servicing providers (~~(, is a performing)~~) performing services (~~(, is a performing)~~) for a (~~(medical assistance)~~) client must be enrolled under the billing providers' CPA.
- (3) Any ordering, prescribing, or referring providers must be enrolled in the agency's claims payment system in order for any services or supplies ordered, prescribed, or referred by them to be paid. The national provider identifier (NPI) of any referring, prescribing, or ordering provider must be included on the claim form. Refer to WAC 182-502-0006 for enrollment as a nonbilling provider.
- (4) For services provided out-of-state, refer to WAC 182-501-0180, 182-501-0182, and 182-501-0184.
- (5) The agency does not pay for services provided to clients during the CPA application process or application for nonbilling provider process, regardless of whether the agency later approves or denies the application, except as provided in subsection (6) of this section or WAC 182-502-0006(5).
- (6) Enrollment of a provider applicant is effective on the date the agency approves the provider application.
- (a) A provider applicant may ask for an effective date earlier than the agency's approval of the provider application by submitting a written request to the agency's chief medical officer. The request must specify the requested effective date and include an explanation justifying the earlier effective date. The chief medical officer will not authorize an effective date that is:
    - (i) Earlier than the effective date of any required license or certification; or
    - (ii) More than (~~(three hundred sixty five)~~) 365 days prior to the agency's approval of the provider application.
  - (b) The chief medical officer or designee may approve exceptions as follows:
    - (i) Emergency services;
    - (ii) Agency-approved out-of-state services;
    - (iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;
    - (iv) Retroactive client eligibility; or
    - (v) Other critical agency need as determined by the agency's chief medical officer or designee.
  - (c) For federally qualified health centers (FQHCs), see WAC 182-548-1200. For rural health clinics (RHCs), see WAC 182-549-1200.
  - (d) Exceptions granted under this subsection (6) do not supersede or otherwise change the agency's timely billing requirements under WAC 182-502-0150.

[Statutory Authority: 42 C.F.R. 455.410, RCW 41.05.021. WSR 13-19-037, § 182-502-0005, filed 9/11/13, effective 10/12/13. Statutory Authori-

ty: RCW 41.05.021 and 42 C.F.R. 455 subpart E Provider Screening and Enrollment requirements. WSR 12-12-032, § 182-502-0005, filed 5/29/12, effective 7/1/12. WSR 11-14-075, recodified as § 182-502-0005, 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, § 388-502-0005, filed 5/9/11, effective 6/9/11.]

AMENDATORY SECTION (Amending WSR 15-14-039, filed 6/24/15, effective 7/25/15)

**WAC 182-502-0030 Termination of ((a)) provider ((agreement)) enrollment—For cause.** (1) The medicaid agency may immediately terminate a provider's ((core provider agreement (CPA))) enrollment for any one or more of the following reasons, each of which constitutes cause:

(a) Provider exhibits significant risk factors that endanger client health or safety. These factors include, but are not limited to:

(i) Moral turpitude;

(ii) Sexual misconduct ((as defined in WAC 246-934-100)) according to chapter 246-16 WAC or in profession specific rules of the department of health (DOH);

(iii) A statement of allegations or statement of charges by DOH or equivalent from other state licensing boards;

(iv) Restrictions or limitations placed by ((DOH)) any state licensing, credentialing, or certification agency on the provider's current credentials or practice ((such as chaperone required for rendering treatment, preceptor required to review practice, or prescriptive limitations));

(v) Limitations, restrictions, or loss of hospital privileges or participation in any health care plan or failure to disclose the reasons to the agency;

(vi) Negligence, incompetence, inadequate or inappropriate treatment, or lack of appropriate follow-up treatment;

(vii) Patient drug mismanagement, failure to identify substance ((abuse or addiction)) use disorder, or failure to refer the patient for substance ((abuse)) use disorder treatment once ((abuse or addiction is)) identified;

(viii) Use of health care providers or health care staff who are unlicensed to practice or who provide health care services that are outside their recognized scope of practice or the standard of practice in the state of Washington;

(ix) Failure of the health care provider to comply with the requirements of WAC 182-502-0016;

(x) Failure of the health care ((practitioner)) provider with ((an alcohol or chemical dependency)) a substance use disorder(s) to furnish documentation or other assurances as determined by the agency to adequately safeguard the health and safety of Washington apple health clients that the provider:

(A) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(B) Is receiving treatment adequate to ensure that the ((dependency problem)) disorder will not affect the quality of the provider's practice.

(xi) Infection control deficiencies;

- (xii) Failure to maintain adequate professional malpractice coverage;
- (xiii) Medical malpractice claims or professional liability claims that constitute a pattern of questionable or inadequate treatment, or contain any gross or flagrant incident of malpractice; or
- (xiv) Any other act that the agency determines is contrary to the health and safety of its clients.
- (b) Provider exhibits significant risk factors that affect the provider's credibility or honesty. These factors include, but are not limited to:
- (i) Failure to meet the requirements in WAC 182-502-0010 and 182-502-0020;
- (ii) Dishonesty or other unprofessional conduct;
- (iii) (~~Investigatory (e.g., audit), civil,~~) Civil or criminal findings of fraudulent or abusive billing practices through an investigation or other review (e.g., audit or record review);
- (iv) Exclusion from participation in medicare, medicaid, or any other federally funded health care program;
- (v) Any conviction, no contest plea, or guilty plea relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct;
- (vi) Any conviction, no contest plea, or guilty plea of a criminal offense;
- (vii) Failure to comply with a DOH request for information or an ongoing DOH investigation;
- (viii) Noncompliance with a DOH or other state health care agency's stipulation to disposition, agreed order, final order, or other similar licensure restriction;
- (ix) Misrepresentation or failure to disclose information (~~on the~~) to the agency during or after enrollment including on the application for a core provider agreement (CPA), ((failure to supply requested information, or failure to update CPA as required)) a nonbilling provider agreement, or servicing providers enrolled under a core provider agreement;
- (x) Failure to comply with an agency request for information;
- (xi) Failure to cooperate with an agency investigation, audit, or review;
- (xii) Providing health care services that are outside the provider's recognized scope of practice or the standard of practice in the state of Washington;
- (xiii) Unnecessary medical, dental, or other health care procedures;
- (xiv) Discriminating in the furnishing of health care services, supplies, or equipment as prohibited by 42 U.S.C. § 2000d; and
- (xv) Any other dishonest or discreditable act that the agency determines is contrary to the interest of the agency or its clients.
- (2) If a (~~provider~~) provider's enrollment is terminated for cause, the agency pays only for authorized services provided up to the date of termination (~~only~~) of enrollment if other program requirements are met including, but not limited to, the requirements in WAC 182-502-0016.
- (3) (~~If~~) When the agency terminates enrollment of a servicing provider who is also a full or partial owner of ((a)) an enrolled group practice, the agency ((also)) terminates the enrolled group practice and all enrolled servicing providers who are not linked to ((the)) another enrolled group practice contracted with the agency.

The remaining practitioners in the group practice may reapply for participation with the agency subject to WAC 182-502-0010((~~(2)~~)).

~~(4) ((A provider who is terminated for cause may dispute an agency decision under the process in WAC 182-502-0050.))~~ Effective date. The effective date of the termination of a provider's enrollment is the date stated in the notice. The filing of an appeal as provided in subsection (5) of this section does not stay the effective date of termination.

(5) Administrative hearing.

(a) The provider may appeal the agency decision to terminate the provider's enrollment for cause by submitting a written request to the address contained in the decision notice within 28 calendar days of the date on the notice and in a manner that provides proof of receipt by the agency. The agency does not allow good cause exception related to this subsection.

(b) If the agency receives a timely appeal, the presiding officer will schedule a prehearing conference in accordance with WAC 182-526-0195.

(c) The administrative hearing process is governed by the Administrative Procedure Act, chapter 34.05 RCW, and chapter 182-526 WAC.

(d) Burden of proof.

(i) The provider has the burden of proof.

(ii) The standard of proof in a provider termination hearing is "clear and convincing evidence" meaning the evidence is highly and substantially more likely to be true than untrue. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-14-039, § 182-502-0030, filed 6/24/15, effective 7/25/15. WSR 11-14-075, recodified as § 182-502-0030, 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, § 388-502-0030, filed 5/9/11, effective 6/9/11. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.530. WSR 00-15-050, § 388-502-0030, filed 7/17/00, effective 8/17/00.]

## OTS-4798.1

AMENDATORY SECTION (Amending WSR 21-18-077, filed 8/27/21, effective 9/27/21)

**WAC 182-526-0195 Prehearing conferences.** (1) ~~((Unlike a prehearing meeting,))~~ A prehearing conference is a formal proceeding conducted on the record by an administrative law judge (ALJ) to address issues and prepare for a hearing.

(a) The ALJ must make an audio record of the prehearing conference.

(b) An ALJ may conduct the prehearing conference in person, by telephone, or in any other manner acceptable to the parties.

(2) All parties must attend the prehearing conference. If the party who requested the hearing does not attend the prehearing conference, the ALJ may enter an order of default and an order dismissing the hearing.

(3) The ALJ may require a prehearing conference. Any party may request a prehearing conference.

(4) The ALJ must grant the appellant's, and may grant the managed care organization's or the agency representative's, first request for a prehearing conference if it is filed with the office of administrative hearings (OAH) at least seven business days before the scheduled hearing date.

(5) When the ALJ grants a party's request for a prehearing conference, the ALJ must continue the previously scheduled hearing when necessary to comply with notice requirements in this section.

(6) The ALJ may grant additional requests for prehearing conferences.

(7) The office of administrative hearings (OAH) must schedule prehearing conferences for all cases which concern:

(a) Provider and vendor overpayment hearings.

(b) Estate recovery and predeath liens.

(c) Notice of violation disputes under chapter 182-51 WAC.

(d) Notice of violation disputes under chapter 182-70 WAC.

(e) Provider termination disputes under WAC 182-502-0030.

(8) During a prehearing conference the parties and the ALJ may:

(a) Simplify or clarify the issues to be decided during the hearing;

(b) Agree to the date, time, and place of the hearing;

(c) Identify any accommodation or safety issues;

(d) Agree to postpone the hearing;

(e) Allow the parties to make changes in their own documents, including the notice or the hearing request;

(f) Agree to facts and documents to be entered during the hearing;

(g) Set a deadline to exchange names and phone numbers of witnesses and documents before the hearing;

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

(j) Consider granting a stay if authorized by law or program rule; or

(k) Rule on any procedural issues and substantive motions raised by any party.

(9) After the prehearing conference, the ALJ must enter a written order describing:

(a) The actions taken at the prehearing conference;

(b) Any changes to the documents;

(c) A statement of the issue or issues identified for the hearing;

(d) Any agreements reached; and

(e) Any ruling of the ALJ.

(10) OAH must serve the prehearing order on the parties at least (~~fourteen~~) 14 calendar days before the scheduled hearing.

(11) A party may object to the prehearing order by notifying OAH in writing within (~~ten~~) 10 calendar days after the mailing date of the order. The ALJ must issue a ruling on the objection within five days from the date a party files an objection.

(12) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(13) The ALJ may take further appropriate actions to address other concerns raised by the parties.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-18-077, § 182-526-0195, filed 8/27/21, effective 9/27/21. Statutory Authority: RCW 41.05.021, 41.05.160, 43.71C.110, and 2019 c 334. WSR 21-11-039, § 182-526-0195, filed 5/12/21, effective 6/12/21. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-05-066, § 182-526-0195, filed 2/13/17, effective 3/16/17. Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0195, filed 12/19/12, effective 2/1/13.]

## OTS-4799.1

AMENDATORY SECTION (Amending WSR 13-19-037, filed 9/11/13, effective 10/12/13)

**WAC 182-530-1000 Outpatient drug program—General.** (1) The purpose of the outpatient drug program is to reimburse providers for outpatient drugs, vitamins, minerals, devices, and drug-related supplies according to medicaid agency rules and subject to the limitations and requirements in this chapter.

(2) The agency reimburses for outpatient drugs, vitamins, minerals, devices, and pharmaceutical supplies that are:

(a) Covered. Refer to WAC 182-530-2000 for covered drugs, vitamins, minerals, devices, and drug-related supplies and to WAC 182-530-2100 for noncovered drugs and drug-related supplies;

(b) Prescribed by a provider with prescriptive authority (see exceptions for family planning and emergency contraception for women ((~~eighteen~~)) 18 years of age and older in WAC 182-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 182-530-2000 (1)(g));

(c) Prescribed by:

(i) A provider with an approved core provider agreement;

(ii) A provider who is enrolled as a ((~~performing~~)) servicing provider on an approved core provider agreement; or

(iii) A provider who is enrolled as a nonbilling provider.

(d) Within the scope of an eligible client's medical assistance program;

(e) Medically necessary as defined in WAC 182-500-0070 and determined according to the process found in WAC 182-501-0165;

(f) Authorized, as required within this chapter;

(g) Billed according to WAC 182-502-0150 and 182-502-0160; and

(h) Billed according to the requirements of this chapter.

(3) Coverage determinations for the agency are made by the agency's pharmacists or medical consultants in accordance with applicable federal law. The agency's determination may include consultation with the drug use review (DUR) board.

[Statutory Authority: 42 C.F.R. 455.410, RCW 41.05.021. WSR 13-19-037, § 182-530-1000, filed 9/11/13, effective 10/12/13. Statutory Authority: RCW 41.05.021 and 42 C.F.R. 455.410. WSR 13-04-095, § 182-530-1000, filed 2/6/13, effective 3/9/13. WSR 11-14-075, recodified as § 182-530-1000, filed 6/30/11, effective 7/1/11. Statutory Au-



thority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 09-05-007, § 388-530-1000, filed 2/5/09, effective 3/8/09. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.700, 2008 c 245. WSR 08-21-107, § 388-530-1000, filed 10/16/08, effective 11/16/08. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 07-20-049, § 388-530-1000, filed 9/26/07, effective 11/1/07; WSR 06-24-036, § 388-530-1000, filed 11/30/06, effective 1/1/07. Statutory Authority: RCW 74.09.080, 74.04.050 and 42 C.F.R. Subpart K, subsection 162.1102. WSR 02-17-023, § 388-530-1000, filed 8/9/02, effective 9/9/02. Statutory Authority: RCW 74.08.090, 74.04.050. WSR 01-01-028, § 388-530-1000, filed 12/7/00, effective 1/7/01. Statutory Authority: RCW 74.08.090. WSR 96-21-031, § 388-530-1000, filed 10/9/96, effective 11/9/96.]

### OTS-4800.1

AMENDATORY SECTION (Amending WSR 15-17-066, filed 8/14/15, effective 9/14/15)

**WAC 182-531-0250 Who can provide and bill for physician-related and health care professional services.** (1) The health care professionals and health care entities listed in WAC 182-502-0002 and enrolled with the medicaid agency can bill for physician-related and health care professional services that are within their scope of practice.

(2) The agency pays for services provided by, or in conjunction with, a resident physician when:

(a) The services are billed under the teaching hospital's national provider identifier (NPI) or the supervising physician's NPI;

(b) The (~~performing~~) servicing provider is identified on the claim under the teaching or resident physician's NPI; and

(c) The services are provided and billed according to this chapter and chapters 182-501 and 182-502 WAC.

(3) The agency does not pay for services performed by any of the health care professionals listed in WAC 182-502-0003.

(4) The agency pays eligible providers for physician-related services and health care professional services if those services are mandated by, and provided to clients who are eligible for, one of the following:

(a) The early and periodic screening, diagnosis, and treatment (EPSDT) program;

(b) A Washington apple health program for qualified medicare beneficiaries (QMB); or

(c) A waiver program.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-17-066, § 182-531-0250, filed 8/14/15, effective 9/14/15; WSR 15-03-041, § 182-531-0250, filed 1/12/15, effective 2/12/15. WSR 11-14-075, recodified as § 182-531-0250, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 11-14-055, § 388-531-0250, filed 6/29/11, effective 7/30/11. Statutory Authority: RCW 74.09.521. WSR 08-12-030, § 388-531-0250, filed 5/29/08, effective 7/1/08. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-12-022, § 388-531-0250, filed

5/20/05, effective 6/20/05; WSR 01-01-012, § 388-531-0250, filed  
12/6/00, effective 1/6/01.]

**WSR 23-18-089**  
**PROPOSED RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2023-04—Filed September 6, 2023, 9:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-15-112.

Title of Rule and Other Identifying Information: Implementation of HB 1061 (chapter 21, Laws of 2023) Insurance producers—Prelicensing education.

Hearing Location(s): On Tuesday, October 10, 2023, at 10:00 a.m. Zoom meeting posted on the office of the insurance commissioner (OIC) website here <https://www.insurance.wa.gov/eliminating-prelicensing-education-requirements-insurance-producers-r-2023-04>. Written comments are due to OIC by close of business (5 p.m. PST) on October 11, 2023. Written comments can be emailed to [RulesCoordinator@oic.wa.gov](mailto:RulesCoordinator@oic.wa.gov).

Date of Intended Adoption: October 12, 2023.

Submit Written Comments to: Andrew Davis, P.O. Box 40260, Olympia, WA 98504-0260, email [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax 360-586-3109, by October 11, 2023.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email [katie.bennett@oic.wa.gov](mailto:katie.bennett@oic.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OIC will consider adopting rules to amend sections of chapter 284-17 WAC following passage of HB 1061, which eliminated the requirement that an applicant for a resident insurance producer license complete a prelicensure course of study for the lines of authority for which the person applied. This rule making will remove language referencing prelicensing education from existing rules to align with the newly amended statute. For purposes of clarification, a definition from repealed WAC 284-17-505 was preserved and listed under WAC 284-17-001.

Reasons Supporting Proposal: Eliminating the prelicensing education requirement for producers provides applicants the flexibility to study in the way that works best for them to pass the exam. This proposal removes a barrier to let more people enter the insurance profession. It also increases the number of producers selling insurance products and brings them to communities across the state at a time when the industry is not producing enough insurance producers.

Statutory Authority for Adoption: RCW 48.02.060 and 48.17.005.

Statute Being Implemented: RCW 48.17.090.

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

Name of Proponent: OIC, governmental.

Name of Agency Personnel Responsible for Drafting: Andrew Davis, P.O. Box 40260, Olympia, WA 98504-0260, 360-586-3109; Implementation: Jeff Baughman, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7156; and Enforcement: Charles Malone, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7050.

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 making is exempt from the cost-benefit analysis under RCW 34.05.328 (5) (b) (iii) and 34.05.328 (5) (b) (v). Under RCW 34.05.328 (5) (b) (iii), rule making is exempt from a cost-benefit analysis if the

proposed rules are adopting or incorporating by reference without material change Washington state statutes, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rules. Here, OIC is adopting statutory requirements for insurance producer licensing under RCW 48.17.090 into WAC as rules that regulate the same subject matter without material change.

Additionally, under RCW 34.05.328 (5)(b)(v), rule making is exempt from a cost-benefit analysis if the content of the rules is explicitly and specially dictated by statute. Here, the proposed producer licensure rules under chapter 284-17 WAC are drafted to align with RCW 48.17.090, and these rules are explicitly and specifically dictated by statute.

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

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

Is exempt under RCW 34.05.310 (4)(c) and (e).

Explanation of exemptions: Under RCW 34.05.310 (4)(c), rule making is exempt if the proposed rules are adopting or incorporating by reference without material change Washington state statutes, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rules. Here, OIC is adopting statutory requirements for insurance producer licensing under RCW 48.17.090 into WAC as rules that regulate the same subject matter without material change.

Additionally, under RCW 34.05.310 (4)(e), rule making is exempt if the content of the rules is explicitly and specially dictated by statute. Here, the proposed producer licensure rules under chapter 284-17 WAC are drafted to align with RCW 48.17.090, and these rules are explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

September 6, 2023

Mike Kreidler

Insurance Commissioner

### OTS-4748.3

AMENDATORY SECTION (Amending WSR 13-14-099, filed 7/2/13, effective 8/2/13)

**WAC 284-17-001 Definitions.** For purposes of this chapter, unless the context requires otherwise:

(1) "Affiliation" is a type of appointment whereby a business entity authorizes an individual insurance producer or surplus line broker to represent it when conducting insurance business.

(2) "Business entity" has the meaning set forth in RCW 48.17.010(2) and includes a sole proprietorship having associated licensees authorized to act on its behalf in the business or trade name of the sole proprietorship.

(3) "Days" means calendar days including Saturday and Sunday and holidays, unless otherwise specified.

(4) "Electronic submission" or "submitted electronically" means submission of a licensing process by an applicant, licensee, insurer, or education provider by means of the commissioner's website or a third-party licensing provider or other state agency.

(5) "File" means a record in any retrievable format, and unless otherwise specified, includes paper and electronic formats.

(6) "Home state" has the meaning set forth in RCW 48.17.010(4).

(7) "Independent testing service" means the entity having a contract with the commissioner to develop, administer, and score insurance examinations.

(8) "Insurer" has the meaning set forth in RCW 48.17.010(7).

~~((8))~~ (9) "Licensee" means a person licensed by the commissioner under Title 48 RCW to sell, solicit or negotiate insurance and includes adjusters and surplus line brokers.

~~((9))~~ (10) "Line of authority" means a license issued in one or more lines of insurance listed in RCW 48.17.170.

~~((10))~~ (11) "NAIC" means the National Association of Insurance Commissioners.

~~((11))~~ (12) "Third-party licensing provider" is designated on the commissioner's website at: [www.insurance.wa.gov](http://www.insurance.wa.gov).

~~((12))~~ (13) "Reinstatement" means the reissuance by the commissioner of a license that was not renewed more than ~~((sixty))~~ 60 days but fewer than ~~((twelve))~~ 12 months after its expiration date.

~~((13))~~ (14) "Resident" means a person who has elected to make Washington his or her home state, or, in the case of a business entity, has a place of business in this state.

~~((14))~~ (15) "Sending written notice" or "sending a copy of the written notice" means transmitting the required information in writing and, where required, on forms designated by the commissioner for that purpose, via first class mail, commercial parcel delivery company, telefacsimile, or electronic transmission, unless a specific method of transmission is specified.

~~((15))~~ (16) "Specialty producer license—Portable electronics" means a license issued under RCW 48.120.010 that authorizes a vendor to offer or sell insurance as provided in RCW 48.120.015.

~~((16))~~ (17) "Surety" means that limited line of authority of insurance or bond that covers obligations to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust.

~~((17))~~ (18) "Travel insurance" means insurance coverage for personal risks incident to planned travel including, but not limited to:

- (a) Interruption or cancellation of trip or event;
- (b) Loss of baggage or personal effects;
- (c) Damages to accommodations or rental vehicles; or
- (d) Sickness, accident, disability, or death occurring during limited duration travel.

Travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting six months or longer, including those working overseas as an expatriate or military personnel being deployed.

~~((18))~~ (19) "Travel insurance producer" means a licensed limited lines producer of travel insurance.

~~((19))~~ (20) "Travel retailer" means a business entity that offers and disseminates travel insurance on behalf of and under the direction and supervision of a licensed travel insurance producer.

~~((20))~~ (21) "Written" or "in writing" means any retrievable method of recording an agreement or document, and, unless otherwise specified, includes paper and electronic formats.

[Statutory Authority: RCW 48.02.060 and 48.120.050. WSR 13-14-099 (Matter No. R 2013-07), § 284-17-001, filed 7/2/13, effective 8/2/13. Statutory Authority: RCW 48.17.005. WSR 13-06-023 (Matter No. R 2012-26), § 284-17-001, filed 2/27/13, effective 7/1/13. Statutory Authority: RCW 48.02.060 and 48.17.005. WSR 12-22-020 (Matter No. R 2012-23), § 284-17-001, filed 10/29/12, effective 11/29/12. Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.005. WSR 11-19-040 (Matter No. R 2011-12), § 284-17-001, filed 9/13/11, effective 10/14/11. Statutory Authority: RCW 48.15.015 and 48.17.005. WSR 11-04-067 (Matter No. R 2010-07), § 284-17-001, filed 1/28/11, effective 2/28/11. Statutory Authority: RCW 48.02.060, 48.17.005. WSR 09-02-073 (Matter No. R 2008-06), § 284-17-001, filed 1/6/09, effective 7/1/09.]

AMENDATORY SECTION (Amending WSR 09-02-073, filed 1/6/09, effective 7/1/09)

**WAC 284-17-175 Education referrals.** No person may accept any rebate, refund, fee, commission, or discount in connection with referrals of students to ~~((an insurance education prelicense or))~~ a continuing insurance education provider without making a full disclosure to each student so referred.

[Statutory Authority: RCW 48.02.060, 48.17.005. WSR 09-02-073 (Matter No. R 2008-06), § 284-17-175, filed 1/6/09, effective 7/1/09. Statutory Authority: RCW 48.02.060 and 48.17.070. WSR 89-01-055 (Order R 88-14), § 284-17-175, filed 12/16/88.]

AMENDATORY SECTION (Amending WSR 17-01-142, filed 12/20/16, effective 1/20/17)

**WAC 284-17-551 (~~((Prelicensing insurance education))~~) Candidate information bulletin.** The ~~((prelicensing insurance education curriculum is))~~ exam content outlines are described in the candidate information bulletin. The candidate information bulletin is incorporated by reference and its entire contents will be enforced by the commissioner. A copy of the current candidate information bulletin is available through the commissioner's website at [www.insurance.wa.gov](http://www.insurance.wa.gov).

~~((1) Information in the current version of the candidate information bulletin must be provided to each license candidate at the time of enrollment.~~

~~((2) If changes are implemented in the prescribed prelicensing education curriculum, the prelicensing insurance education provider must submit a revised course outline at least fifteen calendar days before the implementation date.))~~

[Statutory Authority: RCW 48.02.060 and 48.17.005. WSR 17-01-142 (Matter No. R 2016-25), § 284-17-551, filed 12/20/16, effective 1/20/17; WSR 09-02-073 (Matter No. R 2008-06), § 284-17-551, filed 1/6/09, effective 7/1/09. Statutory Authority: RCW 48.02.060 and 48.17.150. WSR 91-12-033 (Order R 91-3), § 284-17-551, filed 6/3/91, effective 7/4/91. Statutory Authority: RCW 48.02.060 and 48.17.070. WSR 89-01-055 (Order R 88-14), § 284-17-551, filed 12/16/88.]

#### NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
284-17-551	284-17-126

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 284-17-505	Definitions.
WAC 284-17-510	Prelicensing insurance education requirement.
WAC 284-17-515	Waiver of the prelicensing insurance education requirement—Equivalent education.
WAC 284-17-516	Home self-study—Candidate, course materials and approved providers.
WAC 284-17-517	Home self-study—Materials, course standards.
WAC 284-17-520	Certificates of completion required for admittance to licensing exam—Passing score report must be provided to the commissioner.
WAC 284-17-530	Requirements applicable to all prelicensing insurance education providers.
WAC 284-17-535	Program director's qualifications and responsibilities.
WAC 284-17-537	Prelicensing insurance education instructor qualifications and responsibilities.
WAC 284-17-539	Certificates of completion of a prelicensing insurance education course.

- WAC 284-17-540 Requirements applicable to independent prelicensing insurance education providers.
- WAC 284-17-545 Requirements applicable to insurer-based prelicensing education providers.
- WAC 284-17-547 Renewal—Prelicensing insurance education provider.
- WAC 284-17-550 Prelicensing insurance education course standards.
- WAC 284-17-560 Providers denied approval.
- WAC 284-17-565 Suspension or revocation of approved prelicensing insurance education providers.
- WAC 284-17-572 Fee.
- WAC 284-17-574 Prelicensing insurance education provider numbers.
- WAC 284-17-576 Actions by a prelicensing insurance education provider that may result in a fine.
- WAC 284-17-578 Reinstatement of approval of a prelicensing insurance education provider.
- WAC 284-17-580 Grounds for revocation or suspension of approval of a prelicensing insurance education course.



## WSR 23-18-091

## PROPOSED RULES

## DEPARTMENT OF TRANSPORTATION

[Filed September 6, 2023, 10:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-12-087.

Title of Rule and Other Identifying Information: WAC 468-38-435  
Federal weight increases on the interstate system.

Hearing Location(s): On October 24, 2023, at 1:00 p.m., at the  
Transportation Building, Nisqually Room, 310 Maple Park Avenue S.E.,  
Olympia, WA 98504.

Date of Intended Adoption: October 24, 2023.

Submit Written Comments to: Justin Heryford, P.O. Box 47367,  
Olympia, WA 98504-7367, email Heryfoj@wsdot.wa.gov, fax 360-704-6391,  
by October 15, 2023.

Assistance for Persons with Disabilities: Contact Danielle Oliv-  
er, phone 360-918-4196, email OliverD@wsdot.wa.gov, by October 15,  
2023.

Purpose of the Proposal and Its Anticipated Effects, Including  
Any Changes in Existing Rules: The proposal is to be consistent with  
language in the Fixing America's Surface Transportation Act (FAST  
Act). Changes to subsection (1) adds language to include electric pow-  
ered vehicles, and the changes in subsection (3) of the proposal is to  
treat fluid milk products as a nondivisible load providing for the  
permit parameters when operating under a permit. The proposal is con-  
sistent with FAST Act § 1409; 23 U.S.C. 127(s), FAST Act § 1410; 23  
U.S.C. 127.

Reasons Supporting Proposal: The FAST Act includes a number of  
provisions that modify federal requirements regarding the size and  
weight of vehicles that may travel on the interstate system. The fed-  
eral requirements mandate that states adhere to these requirements.  
Failure to adhere to the requirements can result in loss of federal  
funding.

Statutory Authority for Adoption: RCW 46.44.098, 46.44.090,  
46.44.0941.

Statute Being Implemented: RCW 46.44.098.

Rule is necessary because of federal law, FAST Act § 1409; 23  
U.S.C. 127, FAST Act § 1410; 23 U.S.C. 127.

Agency Comments or Recommendations, if any, as to Statutory Lan-  
guage, Implementation, Enforcement, and Fiscal Matters: The Wash-  
ington state department of transportation (WSDOT) and Washington state patrol  
(WSP) have been adhering to the federal requirement prior to this pro-  
posal. Minimal fiscal impact for creation of a new permit type in  
WSDOT's permit system and modifying literature/manuals.

Name of Proponent: Federal Highway Administration (FHWA), WSP,  
Washington Trucking Associations, governmental.

Name of Agency Personnel Responsible for Drafting: Justin Hery-  
ford, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-705-7987; Im-  
plementation: Scott Zeller, 7345 Linderson Way S.W., Tumwater, WA  
98501, 360-705-7290; and Enforcement: CVEO 4, Jonas Mast, 106 11th  
Avenue S.E., Olympia, WA 98504, 360-596-3800.

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  
proposal is in response to federal regulation changes.

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: FAST Act § 1409; 23 U.S.C. 127 and FAST Act § 1410; 23 U.S.C. 127, noncompliance can lead to sanctions by FHWA up to, and including, withholding of federal aid highway funds.

Scope of exemption for rule proposal:

Is fully exempt.

September 6, 2023  
Sam Wilson, Director  
Business Support Services

## OTS-4905.1

AMENDATORY SECTION (Amending WSR 19-06-036, filed 3/1/19, effective 4/1/19)

**WAC 468-38-435 Federal weight increases on the interstate system.** (1) **Are there any weight exemptions for natural gas engines or electric battery vehicles?**

Yes, for the interstate system and no more than one mile access to and from the interstate system, natural gas vehicles or electric battery vehicles, if operated by an engine fueled primarily by natural gas or electric batteries, may exceed vehicle weight limits set in RCW 46.44.041 up to (~~two thousand~~) 2,000 pounds with a maximum gross vehicle weight of (~~eighty-two thousand~~) 82,000 pounds. The increase in weight shall equal the difference between:

- (a) The weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle; and
- (b) The weight of a comparable diesel tank and fueling system.

(2) **What weights are authorized for emergency vehicles to travel on the interstate system?**

(a) Emergency vehicles may operate without a permit on the interstate system and no more than one mile to and from the interstate system to a maximum gross vehicle weight of (~~eighty-six thousand~~) 86,000 pounds and axle weights of:

- (i) Twenty-four thousand pounds on a single steering axle;
- (ii) Thirty-three thousand five hundred pounds on a single drive axle;
- (iii) Sixty-two thousand pounds on a tandem axle; or
- (iv) Fifty-two thousand pounds on a tandem rear drive steer axle.

(b) In this section, the term emergency vehicle means a vehicle designed to be used under emergency conditions:

- (i) To transport personnel and equipment; and
- (ii) To support the suppression of fires and mitigation of other hazardous situations.

(~~(3)~~) (c) Operators of emergency vehicles described in this section shall check their route on Washington state department of

transportation, commercial vehicle services website for restrictions prior to travel. These vehicles shall obtain approval/permit from the local jurisdiction when traveling on any local roads. Any firefighting apparatus or emergency vehicle shall obtain a permit from commercial vehicles services office prior to traveling on state highways that are not part of the interstate system if their weights exceed what is prescribed in RCW 46.44.190(4).

(3) Can liquid bulk milk be treated as a nondivisible load? Per the Fixing America's Transportation Act (FAST Act), a vehicle carrying fluid milk products shall be considered a load that cannot be easily dismantled or divided (nondivisible). Carriers may obtain annual permits up to 129,000 lbs., and up to 85 ft. of load length when using a double trailer combination. For this section, a double trailer is a tractor, semi-trailer and a second semi-trailer. This section applies to a vehicle that transports raw milk from a farm and/or raw milk products to or from a milk plant, receiving station or transfer station. Transporters of liquid bulk milk are exempt from holiday and commuter curfew restrictions when operating under a permit.

(a) Annual double trailer milk permits cannot exceed legal axle weight per RCW 46.44.041;

(b) Cannot exceed a load length of 85 ft.; and

(c) Must adhere to posted limits and restrictions on WSDOT's commercial vehicle services website.

[Statutory Authority: RCW 46.44.098, 46.44.090, and 23 U.S.C. 127. WSR 19-06-036, § 468-38-435, filed 3/1/19, effective 4/1/19.]



OTS-4894.1

AMENDATORY SECTION (Amending WSR 11-01-118, filed 12/20/10, effective 1/20/11)

**WAC 308-96A-560 Special license plates—Criteria for creation or continued issuance.** (1) **What is a special license plate series?** For the purpose of this rule a special license plate series is one license plate design with a range of numbers and letter combinations to be determined by the department.

(2) **What is required for an organization to apply to create a new plate through the department?** The organization must submit a completed application packet, signature sheet and supporting documentation as required by law. Signature sheets must reflect that they are collected within three years of submission.

~~((If an organization started collecting signature sheets before the moratorium was put into place that ends on July 1, 2009, they are exempt from the three-year time frame. However, organizations collecting signatures during the moratorium must submit their completed application packet and signature sheets to the department within ninety days after the moratorium is lifted. If an organization does not submit the signature sheets to the department within ninety days after the moratorium, the signature sheets are no longer valid.))~~

(3) **What are the design criteria for a special license plate series?**

(a) The jurisdiction must be located at the top of the license plate;

(b) The plate dimensions, bolt hole placement, and other features must comply with the Department's Specialty Plate Design Guide;

(c) Plate color usage must be readable by state tolling facilities or law enforcement plate readers, consistent with the department's published guidance; and

(d) Other criteria as established by the department.

(4) **What criteria are used to discontinue issuing special license plates?** A special license plate series may be canceled if:

(a) The department determines that fewer than ~~((five hundred))~~ 500 special license plates are purchased annually and fewer than ~~((one thousand five hundred))~~ 1,500 special license plates are purchased in any continuous three-year period. (Except those license plates issued under RCW 46.16.301, 46.16.305, and 46.16.324); or

(b) If the sponsoring organization does not submit an annual financial statement required by RCW 46.16.765 and certified by an accountant; or

(c) The legislature concurs with a recommendation from the department to discontinue a plate series created after January 1, 2003; or

(d) The state legislature changes the law allowing that plate series.

~~((4))~~ (5) **What information must be contained in the annual financial report?** The annual financial report must include all expenditures related to programs, fund-raising, marketing, and administrative expenses related to their special license plate(s). The report must include:

(a) The stated purpose of the organization receiving the special plate revenue;

- (b) A message from the chair or director of the organization;
- (c) Program highlights with a detailed list of how the funds were expended for those programs;
- (d) List of special events the organization held to market their special plate for the current reporting year;
- (e) A summary of financial information:
  - (i) Previous revenue received during current reporting year;
  - (ii) Total revenue received during current reporting year;
  - (iii) Summary of administrative expenses.

If an organization is disbursing funds through a grant program or to another nonprofit organization supporting Washington citizens, a list including the program and the organizations must be submitted which includes their name and amount received.

~~((5))~~ **(6) What steps are taken by the department if the annual financial report is not submitted as required or the special plate revenue is expended for purposes other than allowed by law?** The department will follow the guidelines as established in the organization's contractual agreement with the department:

- (a) Send a written notice of the violations to the organization;
- (b) The organization is given ~~((thirty))~~ 30 days to correct the violation;
- (c) If the violation is not corrected, the department may immediately terminate the contract.

~~((6))~~ **(7) Can an organization have more than one special plate series?** No. Organizations cannot have more than one special license plate series except those issued before January 1, 2006. Those organizations that already have multiple special plate series may not have more.

An updated design of the current special license plates does not constitute more than one special plate series. The newest design supersedes the prior design. The assigned number and letter combination cannot be changed when a new plate design is created.

**(8) Are tribal license plates established pursuant to RCW 46.16A.230 subject to the requirements of this section?** No. Tribal license plates enacted through the compacting process described in RCW 46.16A.230 are exempt from the special license plate requirements established in this section.

[Statutory Authority: RCW 46.01.110. WSR 11-01-118, § 308-96A-560, filed 12/20/10, effective 1/20/11; WSR 08-22-067, § 308-96A-560, filed 11/4/08, effective 12/5/08; WSR 07-20-110, § 308-96A-560, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 46.01.110, 46.16.135, 46.16.225, 46.16.490, 46.16.276. WSR 04-08-079, § 308-96A-560, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 46.01.110, 46.16.335, 46.16.276. WSR 01-10-069, § 308-96A-560, filed 4/30/01, effective 5/31/01. Statutory Authority: RCW 46.01.110 and 1997 c 291. WSR 98-01-151, § 308-96A-560, filed 12/22/97, effective 1/22/98. Statutory Authority: RCW 46.16.301, 46.16.324 and 46.01.110. WSR 95-11-043, § 308-96A-560, filed 5/10/95, effective 6/10/95. Statutory Authority: RCW 46.01.110. WSR 93-14-083, § 308-96A-560, filed 6/30/93, effective 7/31/93; WSR 91-03-091, § 308-96A-560, filed 1/18/91, effective 2/18/91.]

## WSR 23-18-094

## PROPOSED RULES

## DEPARTMENT OF LICENSING

[Filed September 6, 2023, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-15-117.

Title of Rule and Other Identifying Information: WAC 308-04-030  
Retail sales and use tax exemption criteria for clean alternative fuel vehicles.

Hearing Location(s): On October 19, 2023, at 9:30 a.m. Join Zoom meeting <https://dol-wa.zoom.us/j/82811615105?pwd=R0tQQSszSlpjSHBoYjFSdDhCdXMzQT09>, Meeting ID 828 1161 5105, Passcode 743843; one tap mobile +12532158782,,82811615105#,,,,\*743843# US (Tacoma), +12532050468,,82811615105#,,,,\*743843# US, Meeting ID 828 1161 5105, Passcode 743843. Find your local number [https://dol-wa.zoom.us/u/kfYD7xBai](https://dol-wa.zoom.us/j/82811615105?pwd=R0tQQSszSlpjSHBoYjFSdDhCdXMzQT09). If you are having difficulty joining the Zoom meeting at the time of the public hearing, please call 360-902-0131. An in-person option is available at the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: October 20, 2023.

Submit Written Comments to: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov), by October 18, 2023.

Assistance for Persons with Disabilities: Contact Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov), by October 9, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Moving these rules to chapter 308-56A WAC.

Reasons Supporting Proposal: This change will better align the section's subject with the subject of the rule chapter.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority, 82.08.809 Exemptions—Vehicles using clean alternative fuels and electric vehicles, exceptions—Quarterly transfers, and 82.12.809 Exemptions—Vehicles using clean alternative fuels and electric vehicles, exceptions—Quarterly transfers.

Statute Being Implemented: WAC 308-56A-170 Retail sales and use tax exemption criteria for clean alternative fuel vehicles.

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

Name of Agency Personnel Responsible for Drafting: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0131; Implementation and Enforcement: Chante Vernie, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3937.

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. These changes are nonsubstantive; they simply move the location of the rule language in the chapter for easier access to subject material.

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.

September 6, 2023

Ellis Starrett  
Rules and Policy Manager

**OTS-4909.1**

NEW SECTION

**WAC 308-56A-170 Retail sales and use tax exemption criteria for clean alternative fuel vehicles.** For the purposes of RCW 82.08.809 and 82.12.809:

- (1) The lowest manufacturer's retail price for a base model vehicle is the one provided by a vendor selected by the department;
- (2) The department publishes and periodically updates a list of all vehicle models qualifying for the sales and use tax exemptions under those sections; and
- (3) The list of qualifying vehicle models is available on the department's website.

As used in this section, "base model" means the least expensive and least optioned model of a qualifying vehicle identified in RCW 82.08.809 (1)(a) and 82.12.809 (1)(a).

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**OTS-4908.1**

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-04-030	Retail sales and use tax exemption criteria for clean alternative fuel vehicles.
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## WSR 23-18-095

## PROPOSED RULES

## DEPARTMENT OF LICENSING

[Filed September 6, 2023, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-15-118.

Title of Rule and Other Identifying Information: Chapter 308-09  
WAC, Military service members or spouses—Professional license.

Hearing Location(s): On October 30, 2023, at 9:30 a.m. Join Zoom  
meeting [https://dol-wa.zoom.us/j/82572537210?](https://dol-wa.zoom.us/j/82572537210?pwd=ZVlyZHNTTTRQd1ZWl3VktlRrUlpOdz09)  
[pwd=ZVlyZHNTTTRQd1ZWl3VktlRrUlpOdz09](https://dol-wa.zoom.us/j/82572537210?pwd=ZVlyZHNTTTRQd1ZWl3VktlRrUlpOdz09), Meeting ID 825 7253 7210, Pass-  
code 266041; one tap mobile +12532050468,,82572537210#,,,,\*266041# US,  
+12532158782,,82572537210#,,,,\*266041# US (Tacoma), Meeting ID 825  
7253 7210, Passcode 266041. Find your local number [https://dol-](https://dol-wa.zoom.us/j/82572537210?pwd=ZVlyZHNTTTRQd1ZWl3VktlRrUlpOdz09)  
[wa.zoom.us/u/kdpf3cy8Vy](https://dol-wa.zoom.us/j/82572537210?pwd=ZVlyZHNTTTRQd1ZWl3VktlRrUlpOdz09). If you are having difficulty joining the Zoom  
meeting at the time of the public hearing, please call 360-902-0131.  
An in-person option is available at the Highways and Licensing Build-  
ing, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: October 31, 2023.

Submit Written Comments to: Kelsey Stone, 1125 Washington Street  
S.E., Olympia, WA 98504, email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov), by October  
29, 2023.

Assistance for Persons with Disabilities: Contact Kelsey Stone,  
1125 Washington Street S.E., Olympia, WA 98504, email  
[rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov), by October 20, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including  
Any Changes in Existing Rules: Creating a definition for the military  
spouse coordinator.

Reasons Supporting Proposal: Aligns with requirements in 2SHB  
1009 passed during the 2023 legislative session.

Statutory Authority for Adoption: RCW 18.340.020 Expedition of  
professional license, certification, registration, or permit,  
43.24.130 License moratorium for persons in service—Rules, and  
46.01.110 Rule-making authority.

Statute Being Implemented: WAC 308-09-010 Definitions.

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

Name of Agency Personnel Responsible for Drafting: Kelsey Stone,  
1125 Washington Street S.E., Olympia, WA 98504, 360-902-0131; Imple-  
mentation and Enforcement: Deb Allen-Ba, P.O. Box 9021, Olympia, WA  
98507, 360-664-1399.

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.  
These changes are nonsubstantive; they simply add a definition for the  
new agency military spouse coordinator.

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.

September 6, 2023  
Ellis Starrett  
Rules and Policy Manager

## OTS-4915.1

AMENDATORY SECTION (Amending WSR 20-13-048, filed 6/11/20, effective 7/12/20)

**WAC 308-09-010 Definitions.** (1) "Director" means the director of the department of licensing or designee.

(2) "Employment" means self-employment and employment by any other entity.

(3) "Good standing" means the condition of a valid license authorizing a person to engage in a regulated profession or occupation. A license in good standing is not subject to any disciplinary sanctions, terms, conditions, or restrictions by the licensing authority of this state, or the jurisdiction where the licensee is licensed to practice.

(4) "License" means permission to engage in a profession or occupation as defined by chapter 18.235 or 46.70 RCW.

(5) "Licensee" means a person who possesses a license to engage in a regulated profession or occupation.

(6) "Licensing authority" means:

(a) The director of the department of licensing or designee with respect to those occupations or professions identified in chapter 46.70 RCW and RCW 18.235.020 (2) (a); or

(b) A board having licensing authority over those occupations or professions identified in RCW 18.235.020 (2) (b) if the appropriate licensing authority has adopted these rules.

(7) "Military coordinator" means a person who is identified as a contact within the licensing authority to assist military members and military spouse applicants and licensees.

~~(8)~~ "Military service member" means a person serving in the military.

~~((8))~~ (9) "Military service" or "serving in the military" means being enlisted or commissioned in the United States Armed Forces (active or reserve components), the United States health service commissioned corps, the United States National Guard, or the Merchant Marines of the United States or a veteran of these branches.

~~((9))~~ (10) "Military spouse" means any person currently or previously married to or in a registered domestic partnership with a military service member during the military service member's period of active, reserve, or National Guard service.

~~((10))~~ (11) "Regulated profession or occupation" means a profession or occupation identified in chapter 46.70 RCW or RCW 18.235.020 (2) (a) or (b) if the appropriate board or commission has adopted these rules.

~~((11))~~ (12) "Standard license" means a license of standard duration and renewal requirements, as established by that program's governing statute.

~~((12))~~ (13) "Status" means the condition of a license, wherein:

(a) An "active license" status means the licensee is authorized to engage in a regulated profession or occupation;

(b) An "inactive license" status means the licensee has qualified for the license but is not currently authorized to engage in a regulated profession or occupation for nondisciplinary reasons, for example because the licensee has left Washington state as a result of their spouse or partner being deployed or stationed to a location outside of Washington state;

(c) A licensee may place their license in "military status" if they are serving in the military. A license in military status is an active license.

~~((13))~~ (14) "Substantially equivalent" means the requirements to qualify for the same or similar license in another state are materially similar to Washington requirements in terms of quality, quantity of training, or experience.

~~((14))~~ (15) "Temporary license" is a license that authorizes the licensee to engage in a regulated profession or occupation for a defined period of time during which the licensee completes additional requirements for Washington licensure that are not related to training or practice standards of the profession as noted in RCW 18.340.020 (2) (c).

~~((15))~~ (16) "Training or practice standards" means education, experience, Washington specific examination, or a combination thereof, directly relating to the state's interest in regulating a specific profession or occupation to protect the public health, safety, or welfare.

[Statutory Authority: RCW 18.340.020, 43.24.023, and 43.24.130. WSR 20-13-048, § 308-09-010, filed 6/11/20, effective 7/12/20.]

AMENDATORY SECTION (Amending WSR 20-13-048, filed 6/11/20, effective 7/12/20)

**WAC 308-09-025 Converting a military spouse's active license to an inactive license.** (1) The licensing authority will convert a military spouse's active license in good standing to an inactive license when the licensee:

(a) Submits a written request for the license status to be changed from active to inactive due to the licensee's spouse or registered domestic partner being deployed or stationed in a location outside Washington state.

(b) Submits, upon request, the following:

(i) A copy of service orders verifying the licensee's spouse or domestic partner is a member of the military service areas defined in WAC 308-09-010 ~~((8))~~ (9) and has been, or will be deployed or stationed to a location outside Washington state.

(ii) A copy of the marriage certificate or evidence of the registered domestic partnership with the military service member.

(2) The licensee must not practice in Washington while the license is in an inactive status.

[Statutory Authority: RCW 18.340.020, 43.24.023, and 43.24.130. WSR 20-13-048, § 308-09-025, filed 6/11/20, effective 7/12/20.]

AMENDATORY SECTION (Amending WSR 20-13-048, filed 6/11/20, effective 7/12/20)

**WAC 308-09-040 Licensee with active licenses who enter the military.** (1) A person who already holds a license issued by the licensing authority who then enters active military service may notify the department to request their license be assigned military status. This

allows the licensee to maintain their license in full force and effect while in military service.

(2) The licensing authority will convert an active licensee whose license is in good standing to military status when the licensee submits all of the following:

(a) A written request for military status due to entering active military service, including the expected duration of their deployment; and

(b) A copy of service orders verifying the licensee is an active duty member of the armed forces of the United States or the other services described in WAC 308-09-010(~~(+8)~~) (9).

(3) The licensee may obtain military status at any time the criteria in subsection (2) of this section are met. There is no fee required for military status. Portions of the current renewal fee will not be prorated or refunded.

(4) A military status license remains in full force and effect so long as the service continues and allows practice throughout the state of Washington unless sooner suspended, canceled, or revoked by the licensing authority.

(5) A military spouse or registered domestic partner with power of attorney can act as an agent for the military service member.

[Statutory Authority: RCW 18.340.020, 43.24.023, and 43.24.130. WSR 20-13-048, § 308-09-040, filed 6/11/20, effective 7/12/20.]

AMENDATORY SECTION (Amending WSR 20-13-048, filed 6/11/20, effective 7/12/20)

**WAC 308-09-045 Maintaining a military status license.** (1) As long as a military service member licensee's military service continues, the licensee is not required to renew their license, but should maintain the license in military status. To maintain a military status license, the licensee should submit to the department an official copy of service orders verifying that they are an active duty member of the United States Armed Forces or other services described in WAC 308-09-010(~~(+8)~~) (9).

(2) The department will provide courtesy notices to the licensee's address on file using the license renewal cycles.

(3) A licensee should return the courtesy notice to the department with an official copy of their service orders.

(4) Military status license maintenance requests are accepted by the department no sooner than (~~ninety~~) 90 days prior to the date the license would expire if not in military status.

(5) Continuing education is not required while the license is in military status.

[Statutory Authority: RCW 18.340.020, 43.24.023, and 43.24.130. WSR 20-13-048, § 308-09-045, filed 6/11/20, effective 7/12/20.]

## WSR 23-18-098

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Podiatric Medical Board)

[Filed September 6, 2023, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-029.

Title of Rule and Other Identifying Information: Health equity continuing education (CE) for WAC 246-922-300 and 246-922-310. The podiatric medical board (board) is proposing amendments to rule to establish health equity CE requirements to implement ESSB 5229.

Hearing Location(s): On October 19, 2023, at 9:00 a.m., via Zoom at [https://us02web.zoom.us/webinar/register/WN\\_6e8bfZ88TQe0ms2mflkPNQ](https://us02web.zoom.us/webinar/register/WN_6e8bfZ88TQe0ms2mflkPNQ); or in person at 111 Israel Road S.E., Town Center 2, Room 153, Tumwater, WA 98501. Anyone wishing to preregister may do so at the following link [https://us02web.zoom.us/webinar/register/WN\\_6e8bfZ88TQe0ms2mflkPNQ](https://us02web.zoom.us/webinar/register/WN_6e8bfZ88TQe0ms2mflkPNQ). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: October 19, 2023.

Submit Written Comments to: Tommy Simpson III, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by October 9, 2023.

Assistance for Persons with Disabilities: Contact Tommy Simpson III, program manager, phone 360-236-4901, fax 360-236-2901, TTY 711, email [Tommy.Simpson@doh.wa.gov](mailto:Tommy.Simpson@doh.wa.gov), by October 9, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 43.70.613 (3)(b) directs the rule-making authority for each health profession licensed under Title 18 RCW that is subject to CE to adopt rules requiring a licensee to complete health equity CE training at least once every four years. The statute also directs the department of health (department) to create model rules establishing the minimum standards for health equity CE programs. The department filed model rules for health equity CE minimum standards on November 23, 2022, under WSR 22-23-167. Any rules developed for the board must meet or exceed the minimum standards in the model rules in WAC 246-12-800 through 246-12-830.

The board is proposing amendments to WAC 246-922-300 and 246-922-310 to implement ESSB 5229. The board is proposing adopting the health equity model rules, WAC 246-12-800 through 246-12-830, for podiatric physicians and surgeons to comply with RCW 43.70.613.

The proposed rule adds two hours of health equity education, as required in the model rules, to be completed as part of the current CE requirements every four years. The proposed rule does not change total CE hours but requires two hours in health equity CE every four years which is absorbed into the existing number of CE hours required. The health equity CE requirement is counted under existing, unspecified CE requirements for the profession.

The board is also clarifying WAC 246-922-300 (1) and (3) to reflect that a resident in an approved postgraduate residency training program is not required to participate in podiatric continuing medical education.

Reasons Supporting Proposal: The goal of health equity CE is to equip health care workers with the skills to recognize and reduce health inequities in their daily work. The content of health equity trainings include implicit bias trainings to identify strategies to

reduce bias during assessment and diagnosis in an effort to address structural factors, such as bias, racism, and poverty, that manifest as health inequities.

Two hours of training allows individuals to gain a foundation in health equity that can have an immediate positive impact on the professional's interaction with those receiving care. Health equity training enables health care professionals to care effectively for patients from diverse cultures, groups, and communities, varying race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity. The two hours of health equity CE credits may be earned as part of the health professional's existing CE requirements, therefore not requiring completion of additional CE hours.

Statutory Authority for Adoption: RCW 43.70.613, 18.22.015.

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

Name of Proponent: Podiatric medical board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tommy Simpson III, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4910.

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 Tommy Simpson III, Department of Health, P.O. Box 47852-7852, Olympia, WA 98507, phone 360-236-4910, fax 360-236-2901, TTY 711, email Tommy.Simpson@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.

September 1, 2023

U. James Chaney

Executive Director

Office of Health Professions

## OTS-4872.1

AMENDATORY SECTION (Amending WSR 22-20-092, filed 10/4/22, effective 11/4/22)

### **WAC 246-922-300 Podiatric continuing medical education required.**

(1) The board requires a (~~licensed~~) podiatric physician and surgeon to participate in podiatric continuing medical education as a mechanism to maintain and enhance competence and stay informed of recent developments within podiatric medicine and related fields. A resident in an approved postgraduate residency training program is not required to participate in podiatric continuing medical education.

(2) A podiatric physician and surgeon must complete 100 hours of continuing medical education every two years and comply with WAC 246-12-170 through 246-12-240 and WAC 246-922-310.

(3) To satisfy the continuing medical education requirements identified in subsection (2) of this section, a podiatric physician and surgeon may:

~~(a) ((Serve as a resident in an approved postgraduate residency training program; such individuals shall be credited 50 hours for each year of training completed during their continuing medical education cycle;~~

~~(b))~~ Certify or recertify within the previous four years with a specialty board recognized by the Council on Podiatric Medical Education (CPME); or

~~((e))~~ (b) Meet the requirements for participation in a maintenance of certification program for a specialty board recognized by the CPME.

(4) If a podiatric physician and surgeon uses subsection (3) of this section to comply with podiatric continuing medical education requirements, the podiatric physician and surgeon must assure that they have taken a minimum of two hours of health equity continuing medical education training every four years pursuant to WAC 246-922-310(4).

[Statutory Authority: RCW 18.22.015. WSR 22-20-092, § 246-922-300, filed 10/4/22, effective 11/4/22. Statutory Authority: RCW 18.22.005, 18.22.015, and 18.130.050. WSR 16-01-106, § 246-922-300, filed 12/16/15, effective 10/1/17. Statutory Authority: RCW 18.22.015. WSR 99-20-096, § 246-922-300, filed 10/5/99, effective 11/5/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-922-300, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.22.015. WSR 94-05-051, § 246-922-300, filed 2/10/94, effective 3/13/94; WSR 91-10-041 (Order 158B), § 246-922-300, filed 4/25/91, effective 5/26/91.]

AMENDATORY SECTION (Amending WSR 22-20-092, filed 10/4/22, effective 11/4/22)

**WAC 246-922-310 Categories of creditable podiatric continuing medical education activities.** To meet the requirements of WAC 246-922-300, a podiatric physician and surgeon shall earn continuing medical education in the following board-approved categories; such activities may be obtained through in-person or remote attendance, or through interactive online or prerecorded courses:

(1) Category 1 - A minimum of 40 hours (~~(; however, all 100 credit hours may be earned in this category)~~). Category 1 activities include:

(a) Scientific courses or seminars approved, offered, or sponsored by the American Podiatric Medical Association and its component societies and affiliated and related organizations;

(b) Scientific courses or seminars offered or sponsored by entities such as the American College of Foot and Ankle Surgery, the American Medical Association, the American Osteopathic Association, the American Heart Association, the American Diabetes Association, or the American Physical Therapy Association when offering or sponsoring continuing medical education programs related to podiatric medicine; and

(c) Scientific courses or seminars accredited by the Council on Podiatric Medical Education or the Accrediting Council for Continuing Medical Education.

(2) Category 2 - A maximum of 50 hours. Category 2 activities include courses or seminars related to health care delivery offered or sponsored by entities such as nonprofit organizations, other propriet-

ary organizations, and individuals when offering or sponsoring continuing medical education in health care delivery.

(3) Category 3 - A maximum of 60 hours. Category 3 credit hours and activities include:

(a) Up to 30 hours through teaching, lecturing, and publishing in a peer-reviewed, scientific journal or textbook;

(b) Up to 30 hours through online prerecorded or remote-attended study and programs not otherwise specified in subsection (1) or (2) of this section;

(c) Up to 30 hours through self-study including, but not limited to, specialty board examination preparation, reading books, papers, and publications, participating in journal clubs, or viewing or attending exhibits; and

(d) Up to 30 hours for participation in a health care institution or government agency:

(i) Peer-review committee;

(ii) Staff committee for subjects including, but not limited to, quality of care, utilization review, credentialing, bylaws, and medical records;

(iii) Surgical privilege credentialing to include proctoring activity; or

(iv) Serving as a board member on the podiatric medical board.

(4) Category 4 - As of January 1, 2024, a minimum of two hours of health equity continuing medical education training offered by entities listed in subsection (1) or (2) of this section or listed or offered by the department of health must be obtained every four years as follows:

(a) The first training must be completed by the end of the first full continuing medical education reporting cycle after January 1, 2024, or by the end of the first full continuing medical education reporting cycle after initial licensure, whichever is later; and

(b) Health equity continuing medical education training must meet the minimum standards under RCW 43.70.613 and WAC 246-12-800 through 246-12-830.

(5) One contact hour is defined as a typical 50-minute classroom instructional session or its equivalent.

~~((5))~~ (6) The board will not give prior approval for any continuing medical education. The board will accept any continuing medical education that reasonably falls within these regulations and relies upon the integrity of each individual podiatric physician and surgeon to comply with these requirements.

[Statutory Authority: RCW 18.22.015. WSR 22-20-092, § 246-922-310, filed 10/4/22, effective 11/4/22. Statutory Authority: RCW 18.22.005, 18.22.015, and 18.130.050. WSR 16-01-106, § 246-922-310, filed 12/16/15, effective 10/1/17. Statutory Authority: RCW 18.22.015. WSR 99-20-096, § 246-922-310, filed 10/5/99, effective 11/5/99; WSR 94-05-051, § 246-922-310, filed 2/10/94, effective 3/13/94; WSR 91-10-041 (Order 158B), § 246-922-310, filed 4/25/91, effective 5/26/91.]