

WSR 23-20-013  
PERMANENT RULES  
DEPARTMENT OF

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed September 22, 2023, 7:51 a.m., effective October 23, 2023]

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

Purpose: The legislature provided funding for wage equity for certain nursing facility providers and directed the department of social and health services to make a rule verifying spending and recouping unspent funds.

Citation of Rules Affected by this Order: New WAC 388-96-918.

Statutory Authority for Adoption: RCW 74.46.800; biennial budget 2021-2023, ESSB 5693 (204) (53).

Adopted under notice filed as WSR 22-13-097 [23-15-114] on July 14, 2022 [July 19, 2023].

A final cost-benefit analysis is available by contacting Elizabeth Pashley, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-995-2807, fax 1-877-905-0454, TTY 711 relay service, email Elizabeth.Pashley@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: September 21, 2023.

Lisa N. H. Yanagida  
Chief of Staff

**SHS-4992.1**

NEW SECTION

**WAC 388-96-918 Wage equity funding.** (1) The contractor must submit a report of wage equity funding costs in a standardized manner and in accordance with this chapter and chapter 74.46 RCW on the dates specified in this section.

(2) The department will review the contractor's costs of the wage equity funding in accordance with the methodology effective at the time the services were rendered as described in this chapter and session laws of Washington state 2022 c 297 § 204(53).

(3) No later than September 1, 2023, each contractor must submit to the department a wage equity worksheet for the period of July 1, 2022, through June 30, 2023.

(4) Wage equity worksheets for new contractors must be submitted for the period covering their date of contract through June 30, 2023.

(5) A terminating or assigning contractor must submit to the department a wage equity worksheet for the period from July 1, 2022, through the date the contract was terminated or assigned.

(6) To properly complete the wage equity worksheet, the contractor must submit the wage equity worksheet, including the completed certification page to the document electronically.

(7) If the contractor does not properly complete the wage equity worksheet or the department does not receive it by the due date established in this section, the department may recoup any wage equity funding received by the contractor.

(8) The department may impose civil fines or take adverse rate action against contractors and former contractors who do not submit properly completed wage equity worksheets by the applicable due date established in this section.

(9) The department will review the wage equity worksheet to ensure the contractor has used its wage equity funding to increase wages for low-wage workers by up to four dollars per hour.

(10) The department will recover any funding difference between each contractor's wage equity funding and the amount of wage equity funding that the provider utilizes to increase low-wage worker wages.

(11) The department will separate the settlement amount into the funds attributable to direct care employees and funds attributable to indirect care employees. The direct care portion will be divided into two. One half may be used to offset any direct care final settlement monies owed for the 2022 cost report year. One half may be used to offset any direct care preliminary settlement monies owed for the 2023 cost report year. For partial worksheets due to new contractors, or terminating or assigning contractors, the direct care portion may be offset against the applicable cost report's direct care settlement to the appropriate proportionality.

(12) The verification process must use wages paid as of December 31, 2021, as the base wage to compare contractors' wage spending in the designated job categories to the facility-specific amounts of wage equity funding provided, excluding any amounts adjusted by settlement. If a facility did not have a particular category of staff on December 31, 2021, to set a baseline wage, wages from comparable facilities may be used.

(13) The verification and recovery process in this section is a distinct and separate process from the settlement process described in RCW 74.46.022 and elsewhere described in this chapter.

(14) The provisions of 388-96-901 and 388-96-904 apply to this section.

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**WSR 23-20-014**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed September 22, 2023, 9:58 a.m., effective October 23, 2023]

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

Purpose: The department is adopting chapter 388-439 WAC, Pandemic EBT (P-EBT) program, to include WAC 388-439-0005 What is the pandemic EBT program?, 388-439-0015 General information about pandemic EBT benefits, 388-439-0020 Eligibility of pandemic EBT benefits for children under age six, and 388-439-0025 Eligibility of pandemic EBT benefits during the 2023 summer period.

Adoption of these rules supports implementation and extension of the P-EBT program (as allowed under Section 1101 of H.R. 6201, Families First Coronavirus Response Act, and amended by Section 1108 of H.R. 1319, American Rescue Plan Act of 2021). The supplemental CR-102 filing under WSR 23-15-080 reflects the United States Department of Agriculture, Food and Nutrition Service's recent approval of Washington's P-EBT state plan for children in childcare for school year 2022-23 and Washington's P-EBT state plan for summer 2023.

These rules are currently in effect via emergency filing WSR 23-14-093 filed on June 30, 2023.

Citation of Rules Affected by this Order: New WAC 388-439-0005, 388-439-0015, 388-439-0020, and 388-439-0025.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

Other Authority: Section 1101 of H.R. 6201, Families First Coronavirus Response Act, and amended by Section 1108 of H.R. 1319, American Rescue Plan Act of 2021.

Adopted under notice filed as WSR 23-03-096 and 23-15-080 on January 17, 2023, and July 17, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: September 22, 2023.

Katherine I. Vasquez  
Rules Coordinator

**SHS-4858.12**

**Chapter 388-439 WAC**

**PANDEMIC EBT (P-EBT) PROGRAM**NEW SECTION

**WAC 388-439-0005 What is the pandemic EBT program?** (1) The pandemic electronic benefits transfer (P-EBT) program is a temporary federally funded nutrition program authorized specifically through the families first coronavirus act. P-EBT provides food benefits to eligible children who do not have access to meals at a covered childcare center or free or reduced-price school meals due to the COVID-19 public health emergency. P-EBT is administered by the department of social and health services (department) and is not bound by the same state or federal rules, regulations, and procedures governing the supplemental nutrition assistance program (SNAP). P-EBT is governed by its own specific rules as found in this chapter. The 2022-2023 school year will be the final year for all P-EBT programs due to the May 2023 expiration of the federal public health emergency (PHE).

(2) The following definitions apply to this program:

(a) "Benefit level" means the P-EBT benefit amount provided to an eligible child;

(b) "Child and adult care food program (CACFP)" means a federal program that provides reimbursements for nutritious meals and snacks to eligible children and adults who are enrolled for care at participating childcare centers, day care homes, and adult day care centers;

(c) "Direct certification" means a determination that a child is eligible for free or reduced-priced school meals without further application to the national school lunch program due to:

(i) Receiving a benefit from a federal means tested assistance program, including SNAP, temporary assistance for needy families (TANF), food distribution program on Indian reservations (FDPIR), some medicaid programs; or

(ii) Other source eligible categories, including children in foster care, children experiencing homelessness, students enrolled in the migrant education program, and children enrolled in head start or the early childhood education and assistance program (ECEAP);

(d) "Eligible student" means a child or student, regardless of age, who would have access to free or reduced-price school meals through the national school lunch program (NSLP) and school breakfast program (SBP) during the school year, who is:

(i) Enrolled in a school or registered in a program in Washington state that normally participates in the NSLP;

(ii) Attending a school that has been closed or has reduced attendance or hours for five or more consecutive days during the school year due to the COVID-19 PHE designation; and

(iii) Determined by the school to be eligible for free or reduced-priced school meals or attends a school that operates the community eligibility provision or the provision 2 lunch and breakfast program. Students are identified as eligible for free or reduced-price school meals using direct certification or free or reduced-price school meals application;

(e) "Free or reduced-price school meals" means meals provided to students qualified as eligible by the Richard B. Russell National School Lunch Act;

(f) "Meal service" means the typical meals (SBP and NSLP) served when school is in session and consumed on-site as part of the school day. Meal service includes both breakfast and lunch.

(g) "Operating days" are days a school regularly operates, excluding weekends, breaks, and holidays;

(h) "P-EBT card" means the unique electronic benefit transfer (EBT) card that accesses P-EBT food benefits issued to eligible students or children under age six;

(i) "Public health emergency" means a federal declaration of a public health emergency due to the COVID-19 pandemic as issued by the secretary of health and human services;

(j) "School" means any public or nonprofit private schools, charter schools, and tribal compact schools within the state of Washington;

(k) "School closure" means that the school was closed for in-person or remote learning with no meal service available to students enrolled in the school;

(l) "Summer period" means the months of July and August between the end of the school year and the start of the next school year.

[ ]

#### NEW SECTION

**WAC 388-439-0015 General information about pandemic EBT benefits.** (1) Pandemic electronic benefit transfer (P-EBT) benefits will be deposited into an account accessible with a designated P-EBT card. A P-EBT card and eligibility notice will be issued to each eligible student or child under age six. Each P-EBT card will be:

(a) Linked to a P-EBT account for each eligible student or child under age six for P-EBT benefits; and

(b) Mailed to either:

(i) The last known address on file with the school as reported by the parent or caregiver for the eligible student; or

(ii) The last known address on file with the department as reported by the parent or caregiver for the basic food case for the child under age six.

(c) It is the parent's or caregiver's responsibility to accurately and timely report any address changes to the department for children under six and to the school for school age children. The department or school is not responsible for the expungement of benefits due to unreceived P-EBT notices or cards sent through the mail.

(2) To use a P-EBT account:

(a) The P-EBT card can be used by the eligible student or child under age six or responsible household member, such as a parent or caregiver, on behalf of the eligible student or child under age six, to access the benefits in their EBT account;

(b) A personal identification number (PIN) has to be created that must be used with the P-EBT card to purchase food items;

(c) P-EBT benefits must be accessed from the P-EBT card of an eligible student or child under age six. P-EBT benefits cannot be transferred to a bank account or issued as a check;

(d) P-EBT benefits must be used within 274 days from the initial deposit or last purchase activity on the eligible child's account;

(e) P-EBT benefits not used within 274 days of either activity will be removed; and information about the removal of benefits is included in the initial notice of approval.

(f) P-EBT benefits cannot be replaced once redeemed, removed, lost, or stolen due to fraudulent use.

(g) Families are responsible for keeping the P-EBT card and PIN of an eligible student or child under age six in a safe and secure place.

(3) The purpose of P-EBT benefits is to help low-income families or individuals have a more nutritious diet by providing food benefits to eligible children during the COVID-19 PHE.

(a) P-EBT benefits are used to buy food items for an eligible child (or youth) from a food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. department of agriculture food and nutrition service (FNS).

(b) Use P-EBT benefits the same as other food benefits under WAC 388-412-0046 (2)(c).

(c) It is not legal to use P-EBT benefits as described under WAC 388-412-0046 (2)(d).

(d) If people intentionally misuse P-EBT benefits, they may be:

(i) Subject to fines; or

(ii) Subject to legal action, including criminal prosecution. Department of social and health services (DSHS) will cooperate with state, local, and federal prosecuting authorities to prosecute trafficking P-EBT benefits.

(4) The household must request a hearing within 90 days of the mailing date in the notice when disagreeing with a decision explained in the notice.

[ ]

#### NEW SECTION

**WAC 388-439-0020 Eligibility for pandemic EBT benefits for children under age six.** (1) To be eligible for federally funded pandemic electronic benefits transfer (P-EBT) benefits for children under age six, a child must be:

(a) A member of a household that received supplemental nutrition assistance program (SNAP) between September 1, 2022, and May 11, 2023;

(b) Under age of six during the specified time period.

(2) Children who do not qualify for federally funded P-EBT benefits because they receive state-funded food assistance program (FAP) may be eligible for state-funded P-EBT.

(a) State-funded P-EBT follows the same eligibility rules as subsection (1) of this section, except that the child must be a member of a household that received FAP, instead of SNAP, between September 1, 2022, and May 11, 2023.

(b) State-funded P-EBT benefits are contingent on the availability of state funds.

(3) We calculate a standard benefit level for each month of P-EBT eligibility by:

(a) Using the full daily meal reimbursement rate of \$8.18 for breakfast, lunch, and snack;

(b) For September 2022, through April 2023, multiplied by the statewide average operating days of 18 days per month;

(c) For the partial prorated month of May 2023, multiplied by the nine operating days prior to the May 11 expiration of the PHE;

(d) Multiplied using a percentage of benefit reimbursement based on statewide child and adult care food program (CACFP) reported meal service prior to the COVID-19 PHE compared to the current school year, a 29.8 percent reduction, as follows:

| Child Care Months           | Daily Reimbursement Rate | Average Operating Days | Reduction in CACFP Claims | Average Monthly Benefits |
|-----------------------------|--------------------------|------------------------|---------------------------|--------------------------|
| September 2022 - April 2023 | \$8.18                   | 18                     | 29.8%                     | \$43.88                  |
| May 1, - May 11, 2023       | \$8.18                   | 9                      | 29.8%                     | \$28.94                  |

(e) P-EBT benefits are issued for each month that the household receives a SNAP or FAP benefit more than zero dollars.

(4) P-EBT benefits are issued for a child under age six for a retroactive period of time as follows:

(a) A lump sum one-time P-EBT allotment is issued for eligible months from September 2022, through May 2023;

(b) P-EBT during the summer period benefits are disbursed under WAC 388-439-0025.

(5) Benefits for a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(6) USDA requires all issuances of P-EBT benefits to be complete by December 31, 2023, as federal funding will be exhausted. Any and all P-EBT benefits issued beyond this date will be subject to additional USDA approval and funding.

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**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### NEW SECTION

**WAC 388-439-0025 Eligibility for pandemic EBT benefits during the 2023 summer period.** (1) During the summer period of July and August 2023, schools and covered childcare centers will be deemed as closed.

(2) To be eligible for the pandemic electronic benefits transfer (P-EBT) benefit during the summer period after the 2022-2023 school year, prior to August 31, 2023, a child must be:

(a) An eligible student as defined under WAC 388-439-0005 (2) (d) in June 2023; or

(b) A child under age six, as defined under WAC 388-439-0020(1), between July 1, 2023, and August 31, 2023.

(3) A child determined eligible in subsection (2) of this section will receive a one-time, lump sum payment of \$120 for the 2023 summer period.

(4) Summer P-EBT benefits for an eligible student or a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(5) USDA requires all issuances of P-EBT benefits to be complete by December 31, 2023, as federal funding will be exhausted. Any and all P-EBT benefits issued beyond this date will be subject to additional USDA approval and funding.

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**WSR 23-20-015**  
**PERMANENT RULES**  
**GAMBLING COMMISSION**

[Filed September 22, 2023, 3:07 p.m., effective October 23, 2023]

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

Purpose: The amended rule would eliminate the restriction on non-profits and bona fide charitable organizations to have their head office or principal location in the same county were they operate bingo. The amendment brings the rule in line with the recently amended RCW 9.46.0205.

Citation of Rules Affected by this Order: Amending WAC 230-10-460 Shared bingo facilities.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 23-16-133 on August 1, 2023.

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

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

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

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

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

Date Adopted: September 22, 2023.

Lisa C. McLean  
Legislative and Policy Manager

**OTS-4651.1**

AMENDATORY SECTION (Amending WSR 07-10-033, filed 4/24/07, effective 1/1/08)

**WAC 230-10-460 Shared bingo facilities.** Multiple bingo licensees must enter into a written agreement before sharing a facility. Before operating in a shared facility, licensees must:

(1) Send us written notification of intent to share facilities at least (~~thirty~~) 30 days before operating bingo in a shared facility. The notification must include, at least:

(a) The name of all organizations sharing the facility; and  
(b) Names and signatures of the highest ranking officer for each organization involved; and

(c) Copies of any written agreements between organizations; and  
(d) The method used to share expenses.

(2) Maintain management over their individual gambling activities.

(3) Be solely responsible for their individual records, inventory, management, equipment, and operation of the gambling activities for which they hold a license.



(4) Complete a separate quarterly activity report according to the gambling receipts and expenses it is responsible for under the terms of the written agreement between the licensees.

~~((5) Locate their head office or principal location in the same county where they operate bingo, or as otherwise defined in RCW 9.46.0205.))~~

[Statutory Authority: RCW 9.46.070. WSR 07-10-033 (Order 610), § 230-10-460, filed 4/24/07, effective 1/1/08.]

**WSR 23-20-017**  
**PERMANENT RULES**  
**GAMBLING COMMISSION**

[Filed September 22, 2023, 3:28 p.m., effective October 23, 2023]

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

Purpose: The new and amended rules will allow for the use of a ticket-in ticket-out (TITO) system for table games at house-banked card rooms. In addition to changing the rule related to the process for selling and redeeming chips, rule amendments are necessary to expand the definition of "gambling equipment," define the various components of the system, establish requirements for those components, and update processes for accounting for table inventory and for how conducting and concluding the count are done and recorded.

Citation of Rules Affected by this Order: New WAC 230-15-775, 230-15-758, 230-15-761, 230-15-764, 230-15-767, 230-15-770, 230-15-773, 230-15-776, 230-15-779 and 230-15-782; and amending WAC 230-03-200, 230-15-150, 230-15-280, 230-15-500, 230-15-505, 230-15-553, 230-15-585, 230-15-615, and 230-15-620.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 23-16-132 on August 1, 2023.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 10, Amended 9, Repealed 0.

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

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

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

Date Adopted: September 22, 2023.

Lisa C. McLean  
Legislative and Policy Manager

**OTS-4707.2**

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

**WAC 230-03-200 Defining "gambling equipment."** "Gambling equipment" means any device, gambling-related software, expendable supply, or any other paraphernalia used as a part of gambling or to make gambling possible. "Gambling equipment" includes, but is not limited to:

- (1) Amusement games;
- (2) Punch boards and pull-tabs;
- (3) Devices for dispensing pull-tabs;
- (4) Electronic devices for conducting, facilitating, or accounting for the results of gambling activities including, but not limited to:

- (a) Components of a tribal lottery system;
- (b) Electronic devices for reading and displaying outcomes of gambling activities; and
- (c) Accounting systems that are a part of, or directly connected to, a gambling system including, but not limited to:
  - (i) Bet totalizers; or
  - (ii) Progressive jackpot meters; or
  - (iii) Keno systems;
- (5) Bingo equipment;
- (6) Electronic raffle systems;
- (7) Devices and supplies used to conduct card games, fund-raising events, recreational gaming activities, or Class III gaming activities, as defined in the Indian Gaming Regulatory Act at U.S.C. 25 chapter 29 § 2703 and in tribal-state compacts including, but not limited to:
  - (a) Gambling chips;
  - (b) Cards;
  - (c) Dice;
  - (d) Card shuffling devices;
  - (e) Graphical game layouts for table games;
  - (f) Ace finders or no-peek devices;
  - (g) Roulette wheels;
  - (h) Keno equipment; and
  - (i) Tables manufactured exclusively for gambling purposes;
- (8) Debit card reading devices used at gambling tables to sell chips to players;
- (9) Ticket in ticket out (TITO) systems to include, but are not limited to:
  - (a) TITO-enabled bill validators;
  - (b) Ticket redemption kiosks.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-03-200, filed 5/19/23, effective 6/19/23; WSR 21-21-079, § 230-03-200, filed 10/18/21, effective 11/18/21; WSR 06-07-157 (Order 457), § 230-03-200, filed 3/22/06, effective 1/1/08.]

#### OTS-4708.4

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

**WAC 230-15-150 Selling and redeeming chips.** Card game licensees must:

- (1) Sell chips and redeem chips at the same value; and
- (2) Sell chips for cash at gambling tables. Provided that house-banked card game licensees may allow players to use debit cards to purchase chips at house-banked card game tables in accordance with WAC 230-15-506 and 230-15-507. Provided further that house-banked card game licensees may allow players to purchase chips at gambling tables with valid tickets generated by TITO-enabled bill validators; and
- (3) Keep all funds from selling chips separate and apart from all other money received; and

(4) Not extend credit to a person purchasing chips, including to card room employees playing cards.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-15-150, filed 5/19/23, effective 6/19/23; WSR 07-10-034 (Order 611), § 230-15-150, filed 4/24/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

**WAC 230-15-280 Surveillance requirements for house-banked card games.** House-banked card game licensees must use a closed circuit television system (CCTV) to closely monitor and record all gambling activities and areas, including, at least:

- (1) Each table, including:
  - (a) Cards; and
  - (b) Wagers; and
  - (c) Chip tray; and
  - (d) Drop box openings; and
  - (e) Table number; and
  - (f) Card shoe; and
  - (g) Shuffling devices; and
  - (h) Players; and
  - (i) Dealers; and
  - (j) Debit card reading devices at gambling tables; and
  - (k) TITO-enabled bill validators at tables and the cashier's cage; and

- (1) Ticket redemption kiosks; and
- (2) The designated gambling areas; and
- (3) The cashier's cage, including:
  - (a) Outside entrance; and
  - (b) Fill/credit dispenser; and
  - (c) Customer transactions; and
  - (d) Cash and chip drawers; and
  - (e) Vault/safe; and
  - (f) Storage cabinets; and
  - (g) Fill or credit transactions; and
  - (h) Floor; and
- (4) The count room, including:
  - (a) The audio; and
  - (b) Count table; and
  - (c) Floor; and
  - (d) Counting devices; and
  - (e) Trolley; and
  - (f) Drop boxes; and
  - (g) Storage shelves/cabinets; and
  - (h) Entrance and exit; and
- (5) The movement of cash, gambling chips, and drop boxes; and
- (6) Entrances and exits to the card room.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-15-280, filed 5/19/23, effective 6/19/23; WSR 07-09-033 (Order 608), § 230-15-280, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

**WAC 230-15-500 Accounting for table inventory.** (1) House-banked card game licensees must establish procedures to ensure proper accounting for chips and coins stored at gambling tables, known as the "table inventory."

(2) Licensees must not add or remove chips or coins from the table inventory except:

(a) In exchange for cash from players; or

(b) In exchange for debit card transactions from players according to WAC 230-15-506; or

(c) In exchange for tickets generated by TITO-enabled bill validators; or

(d) To pay winning wagers and collect losing wagers made at the gambling table; or

~~((d))~~ (e) In exchange for chips received from a player having an equal total face value (known as "coloring up" or "coloring down"); or

~~((e))~~ (f) In compliance with fill and credit procedures.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-15-500, filed 5/19/23, effective 6/19/23; WSR 07-09-033 (Order 608), § 230-15-500, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

**WAC 230-15-505 Selling gambling chips to players.** House-banked card game licensees must accurately account for all chips, debit card transaction receipts, tickets generated by TITO-enabled bill validators, and cash when they sell chips to players. Licensees must sell chips only at the gambling table.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-15-505, filed 5/19/23, effective 6/19/23. Statutory Authority: RCW 9.46.070 and 9.46.0282. WSR 14-11-021 (Order 699), § 230-15-505, filed 5/9/14, effective 7/1/14. Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-505, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 08-03-062, filed 1/14/08, effective 2/14/08)

**WAC 230-15-553 Defining "cash equivalent."** "Cash equivalent" means a:

(1) Treasury check; or

(2) Personal check; or

(3) Traveler's check; or

(4) Wire transfer of funds; or

(5) Money order; or

(6) Certified check; or

(7) Cashier's check; or

- (8) Check drawn on the licensee's account payable to the patron or to the licensee; or
- (9) Voucher recording cash drawn against a credit card or debit card; or
- (10) Tickets generated by TITO-enabled bill validators.

[Statutory Authority: RCW 9.46.070. WSR 08-03-062 (Order 623), § 230-15-553, filed 1/14/08, effective 2/14/08.]

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

**WAC 230-15-585 Using drop boxes.** (1) House-banked card game licenses must use a drop box to collect all cash, tickets redeemed by TITO-enabled bill validators, chips, coins, debit card transaction receipts, requests for fill, fill slips, requests for credit, credit slips, and table inventory forms.

(2) The dealer or the floor supervisor must deposit these items in the drop box.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-15-585, filed 5/19/23, effective 6/19/23; WSR 07-09-033 (Order 608), § 230-15-585, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

**WAC 230-15-615 Conducting the count.** (1) All house-banked card room licenses must have a three person count team except as set forth in subsections (2) and (3) of this section. The three person count team must conduct the count as follows:

(a) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

(b) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable, loudly enough to be heard by all persons present and to be recorded by the audio recording equipment; and

(c) A count team member must empty the contents onto the count table; and

(d) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to at least one other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

(e) Count team member(s) must separate the contents of each drop box into separate stacks on the count table by denominations of coin, chips, and cash and by type of form, record, or document; and

(f) At least two count team members must count, either manually or mechanically, each denomination of coin, chips, cash, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators separately and independently. Count team members must place individual bills and coins of the same denomination ~~((and))~~, debit

card transaction receipts, and tickets redeemed by TITO-enabled bill validators on the count table in full view of the closed circuit television cameras, and at least one other count team member must observe and confirm the accuracy of the count orally or in writing; and

(g) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, cash, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators counted (the drop) on the master games report; and

(h) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

(i) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

(2) The two person count team for licensees with card game gross gambling receipts of less than ~~(( $\$5$  million))~~  $\$5,000,000$  in their previous fiscal year must conduct the count as follows:

(a) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

(b) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable, loudly enough to be heard by all persons present and to be recorded by the audio recording equipment; and

(c) A count team member must empty the contents onto the count table; and

(d) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to at least one other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

(e) A count team member must separate the contents of each drop box into separate stacks on the count table by denominations of coin, chips, and cash and by type of form, record, or document; and

(f) One count team member must count, either manually or mechanically, each denomination of coin, chips, cash, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators separately and independently. The count team member must place individual bills and coins of the same denomination ~~((and))~~, debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators on the count table in full view of the closed circuit television cameras, and the other count team member must observe and confirm the accuracy of the count orally or in writing; and

(g) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, cash, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators counted (the drop) on the master games report; and

(h) As the count is occurring, a surveillance employee must record in the surveillance log the total chips cash, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators counted for each drop box and the announcement by the count team of the combined dollar count of all drop boxes; and

(i) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

(j) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

(3) The two person count team for licensees with card game gross gambling receipts between (~~(\$5 million and \$15 million)~~) \$5,000,000 and \$15,000,000 in their previous fiscal year and use a currency counter must conduct the count as follows:

(a) The currency counter to be used must meet the following requirements:

(i) Automatically provides two separate counts of the funds at different stages in the count process. If the separate counts are not in agreement during the count process and the discrepancy cannot be resolved immediately, the count must be suspended until a third count team member is present to manually complete the count as set forth in subsection (1) of this section until the currency counter is fixed; and

(ii) Displays the total bill count and total dollar amount for each drop box on a screen, which must be recorded by surveillance.

(b) Immediately prior to the count, the count team must verify the accuracy of the currency counter with previously counted currency for each denomination actually counted by the currency counter to ensure the counter is functioning properly. The test results must be recorded on the table games count documentation and signed by the two count team members performing the test; and

(c) The currency counter's display showing the total bill count and total dollar amount of each drop box must be recorded by surveillance during the count; and

(d) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

(e) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable, loudly enough to be heard by all persons present and be recorded by the audio recording equipment; and

(f) A count team member must empty the contents onto the count table; and

(g) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to the other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

(h) Count team member(s) must combine all cash into one stack and separate the contents of each drop box into separate stacks on the count table by denomination of coin and chips, by type of form, record, or document; and

(i) Count team members must place all of the cash from a drop box into the currency counter which will perform an aggregate count by denomination of all of the currency collected from the drop box; and



(j) One count team member must count each denomination of coin, chips, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators separately and independently by placing coins and chips of the same denomination on the count table in full view of the closed circuit television cameras, and the other count team member must observe and confirm the accuracy of the count orally or in writing; and

(k) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, cash, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators counted (the drop) on the master games report; and

(l) As the count is occurring, a surveillance employee must record in the surveillance log the currency counter accuracy information in (b) of this subsection, currency verification amount, debit card transaction receipt amount, ticket redemption amount, total bill and dollar count of each drop box and the announcement by the count team of the combined dollar count of all drop boxes; and

(m) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

(n) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-15-615, filed 5/19/23, effective 6/19/23; WSR 18-23-074, § 230-15-615, filed 11/19/18, effective 1/1/19; WSR 07-09-033 (Order 608), § 230-15-615, filed 4/10/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 23-11-108, filed 5/19/23, effective 6/19/23)

**WAC 230-15-620 Concluding the count.** (1) After the count team finishes their count, the cage cashier or accounting department employee must verify the contents of the drop boxes.

(2) In the presence of the count team and before looking at the master game report, the verifier must recount the cash, coin, chips, ~~((and))~~ debit card transaction receipts, and tickets redeemed by TITO-enabled bill validators either manually or mechanically.

(3) The verifier must sign the master game report verifying that the cash and debit card transaction receipt counts are accurate.

(4) Each count team member must sign the report attesting to the accuracy of the information recorded.

(5) After the report is signed, the master game report must be taken directly to the accounting department, along with the debit card transaction receipts, requests for fills, the fill slips, the requests for credit, the credit slips, tickets redeemed by TITO-enabled bill validators, and the table inventory slips removed from drop boxes. The cage cashiers must not be allowed access to any of these records.

[Statutory Authority: RCW 9.46.070. WSR 23-11-108, § 230-15-620, filed 5/19/23, effective 6/19/23. Statutory Authority: RCW 9.46.070 and 9.46.0282. WSR 14-11-021 (Order 699), § 230-15-620, filed 5/9/14, effective 7/1/14. Statutory Authority: RCW 9.46.070. WSR 07-09-033 (Order 608), § 230-15-620, filed 4/10/07, effective 1/1/08.]

**TICKET IN TICKET OUT (TITO) SYSTEM REQUIREMENTS IN HOUSE-BANKED CARD ROOMS**

NEW SECTION

**WAC 230-15-755 "Ticket in ticket out (TITO) system" defined.**

For the purposes of this chapter, "ticket in ticket out (TITO) system" refers to electromechanical devices equipped with a ticket in ticket out (TITO) enabled bill validator and a ticket validation system that allows for the reporting issuance, validation, and acceptance of tickets.

[]

NEW SECTION

**WAC 230-15-758 "Ticket" defined.** For the purposes of this chapter, a "ticket" means an encoded paper ticket or voucher dispensed by an approved TITO-enabled bill validator.

[]

NEW SECTION

**WAC 230-15-761 "Invalid ticket" defined.** For the purposes of this chapter, "invalid ticket" means an encoded paper ticket or voucher that is expired, damaged/unreadable, and/or voided.

[]

NEW SECTION

**WAC 230-15-764 "TITO-enabled bill validator" defined.** For the purposes of this chapter, "TITO-enabled bill validator" means an electromechanical device that accepts United States currency (bills) and issues, validates, and accepts encoded paper tickets or vouchers.

[]

NEW SECTION

**WAC 230-15-767 "Ticket redemption kiosk" defined.** For the purposes of this chapter, "ticket redemption kiosk" means an electromechanical device that accepts redeemable encoded tickets or vouchers issued from TITO-enabled bill validators for cash.

[]

NEW SECTION

**WAC 230-15-770 Ticket requirements.** Tickets printed by TITO-enabled bill validators must have the following minimum standards:

- (1) Card room name; and
  - (2) Date and time the ticket was generated; and
  - (3) Dollar value of ticket, printed both numerically and in text;
- and
- (4) A unique identifier such as a magnetic strip or bar code; and
  - (5) A primary and secondary validation number; and
  - (6) A statement that the ticket will expire in 30 days; and
  - (7) Be the same size and dimension as United States currency (bills); and
  - (8) Include a problem gambling message on the printed ticket.

[]

NEW SECTION

**WAC 230-15-773 Requirements for ticket validation system.** Ticket validation systems must:

- (1) Not use, permit the use of, validate, or redeem tickets issued by another licensee; and
- (2) Be able to identify invalid tickets and issued tickets, and notify the cashier, dealer, or kiosk, which is applicable, if:
  - (a) The validation number cannot be found; or
  - (b) The ticket has already been redeemed; or
  - (c) The amount on file for the ticket does not match; and
- (3) Uniquely identify TITO-enabled bill validators and ticket redemption kiosks connected to it; and
- (4) Be able to generate the following reports to be reconciled with all validated/redeemed tickets:
  - (a) Ticket issuance report; and
  - (b) Ticket redemption report; and
  - (c) Ticket liability report; and
  - (d) Ticket drop variance report; and
  - (e) Transaction detail report that shows all tickets generated and redeemed by a TITO-enabled bill validator and ticket redemption kiosk; and

- (f) Cashier report, which is to detail individual tickets and the sum of tickets paid by a cage cashier or ticket redemption kiosk; and
- (5) Employ encryption standards suitable for the transmission and storage of all confidential or sensitive information between all components of the system; and
- (6) Not allow for any wireless connections or communication; and
- (7) Can only be connected to authorized gambling equipment; and
- (8) Have all servers and components that store sensitive information in a locked secure enclosure with both camera coverage and key controls in place; and
- (9) Have a machine entry authorization log (MEAL) for all entries into a locked area that indicates the date, time, purpose of entering the locked area(s), and the name and employee number of the employee doing so; and
- (10) Maintain an internal clock that reflects the current time and date that shall be used to provide the following:
- (a) Time stamping of significant events; and
- (b) Reference clock for reporting; and
- (c) Time stamping of configuration changes; and
- (11) Have a recent backup that is securely stored, separate from the system, in case of catastrophic failure and the ticket validation system cannot be restarted. Backups must be retained for a period of at least two years. Backups must contain:
- (a) Significant events; and
- (b) Accounting information; and
- (c) Auditing information; and
- (d) All information utilized in the ticket redemption and issuance process; and
- (12) Be connected to a device that provides surge protection and a temporary power source, such as a uninterruptible power supply (UPS), to provide a means for an orderly shutdown in the event of a main power system failure; and
- (13) Have no built-in facility where a casino user/operator can bypass system auditing to modify any database(s) directly; and
- (14) Log any changes made by a user to accounting or significant event log information that was received from a device on the system. The log must include:
- (a) Date data was altered; and
- (b) Value prior to alteration; and
- (c) Value after alteration; and
- (d) Identification of personnel that made the alteration; and
- (15) Record significant events generated by any TITO devices on the system. Each event must be stored in a database(s) and include the following information:
- (a) Date and time the event occurred; and
- (b) Identify the device that generated the event; and
- (c) A unique number/code that identifies the event; and
- (d) A brief text that describes the event in the local language; and
- (16) Have a means by which any user accessing the system software, either by password, keycard, or PIN have a username or user number unique to that individual and log the date and time of access.

[]

NEW SECTION**WAC 230-15-776 Requirements for TITO-enabled bill validators.**

TITO-enabled bill validators must:

- (1) Only be used in conjunction with approved ticketing (TITO) systems; and
- (2) Be secure from unauthorized access, tampering, and bill/ticket removal; and
- (3) Only be installed at house-banked card game tables or in the cashier's cage; and
- (4) Only accept United States bills (no foreign currency) and be able to differentiate between genuine and counterfeit bills to a high degree of accuracy; and
- (5) Only accept tickets from the licensed card room they are installed at; and
- (6) Be able to identify invalid tickets; and
- (7) Not accept promotional tickets, coupons, or vouchers such as free play or match play; and
- (8) Not allow redemption of tickets for cash at house-banked card game tables; and
- (9) Be equipped with a drop box/cassette to collect the bills and/or tickets inserted into the bill validator; and
- (10) Be equipped with a ticket printer designed to detect paper jams, paper out, and print failure; and
- (11) Not be capable of offering an element of chance and/or skill in the determination of prizes; and
- (12) Not contain some form of activation to initiate a wager; and
- (13) Not be capable of delivering or determining an outcome from a gambling activity.

[]

NEW SECTION

**WAC 230-15-779 Requirements for drop boxes/cassettes in TITO-enabled bill validators.** Ticket-enabled bill validators must be equipped with a drop box/cassette to collect, store, and secure currency and tickets.

- (1) Drop boxes/cassettes must:
  - (a) Be housed in a locked compartment; and
  - (b) (i) Have a separate lock to open the drop box/cassette; and  
(ii) The locks to secure the compartment housing and drop box/cassette must be different from each other; and
  - (c) Have labels on the lockable drop boxes/cassettes with a permanent number clearly visible which corresponds to a permanent number on the gambling table to which the electronic bill acceptor is affixed; and
- (2) The transportation and storing of drop boxes/cassettes in TITO-enabled bill validators must adhere to WAC 230-15-590 and 230-15-600.

[]

NEW SECTION

**WAC 230-15-782 Requirements for ticket redemption kiosks.** Ticket redemption kiosks must:

- (1) Only be used in conjunction with approved ticketing (TITO) systems; and
- (2) Be secure from unauthorized access, tampering, and bill/ticket removal; and
- (3) Contain a lockable ticket and currency storage box which retains tickets and currency accepted by the kiosk. The kiosk must have:
  - (a) One lock securing the compartment housing the currency drop boxes/cassettes; and
  - (b) (i) One lock securing the contents of the storage box; and
  - (ii) The locks to secure the compartment housing and storage box must be different from each other.
- (4) Only accept tickets from the licensed card room they are installed at; and
- (5) Be capable of validating ticket values and dispensing an equivalent amount of cash; and
- (6) Only validate and pay out tickets up to \$1,000; and
- (7) Be able to identify invalid tickets; and
- (8) Not be allowed to accept cash to exchange for a ticket; and
- (9) Not be allowed to accept debit, credit, or EBT cards; and
- (10) Have a mechanism to generate a transaction history report with at least the following information:
  - (a) Date, time, ticket validations numbers, and amount of all ticket redemptions; and
  - (b) Total amount of ticket vouchers accepted; and
  - (c) Total count of ticket vouchers; and
- (11) Have a machine entry authorization log (MEAL) for all entries into locked areas of the kiosk that indicates the date, time, purpose of entering the locked area(s), and the name and employee number of the employee doing so; and
- (12) Not be capable of offering an element of chance and/or skill in the determination of prizes; and
- (13) Not contain some form of activation to initiate a wager; and
- (14) Not be capable of delivering or determining an outcome from a gambling activity.

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## WSR 23-20-018

## PERMANENT RULES

## GAMBLING COMMISSION

[Filed September 22, 2023, 3:40 p.m., effective October 23, 2023]

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

Purpose: The amended rule would include professional major league baseball-affiliated minor league teams and the Western Hockey League in the definition of qualified sports teams, allowing charitable or nonprofit organizations established by, or directly affiliated with, those teams to operate 50/50 electronic raffles.

Citation of Rules Affected by this Order: Amending WAC 230-03-138 Defining "qualified sports team."

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 23-16-134 on August 1, 2023.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: September 22, 2023.

Lisa C. McLean  
Legislative and Policy Manager

**OTS-4640.2**

AMENDATORY SECTION (Amending WSR 21-21-079, filed 10/18/21, effective 11/18/21)

**WAC 230-03-138 Defining "qualified sports team."** "Qualified sports team" as used in WAC 230-03-153 means a Major League or highest-level team organized in Washington state as a member of Major League Baseball, National Hockey League, National Football League, National Basketball Association, Women's National Basketball Association, Major League Soccer, ~~((or))~~ National Women's Soccer League, Professional MLB-affiliated Minor League teams, or the Western Hockey League. ~~((This does not include lower-level teams including, but not limited to, minor, farm, or development league teams.))~~

[Statutory Authority: RCW 9.46.070. WSR 21-21-079, § 230-03-138, filed 10/18/21, effective 11/18/21.]

**WSR 23-20-021**

**PERMANENT RULES**

**BUILDING CODE COUNCIL**

[Filed September 25, 2023, 1:58 p.m., effective March 15, 2024]

Effective Date of Rule: March 15, 2024.

Purpose: To delay the effective date of the rules adopted under WSR 22-14-091 and 23-12-101, the 2021 Washington State Energy Code, Commercial Provisions, chapter 51-11C WAC. The building code council is delaying the effective date until March 15, 2024. The effective date of this rule was originally July 1, 2023, under WSR 22-14-091, and was delayed to October 29, 2023, under WSR 23-12-101, to evaluate what, if any, changes are necessary to maintain compliance with the Energy Policy and Conservation Act given the recent 9th circuit court of appeals ruling on the Berkeley, California ordinance. This review is still in progress. All sections filed within WSR 22-14-091 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3) (b).

Citation of Rules Affected by this Order: All new, repealed, and amended sections as filed within WSR 22-14-091.

Statutory Authority for Adoption: RCW 19.27A.020, 19.27A.025, 19.27A.160.

Other Authority: Chapters 19.27A, 19.27 RCW.

Adopted under notice filed as WSR 22-02-076 on January 5, 2022.

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from October 29, 2023, to March 15, 2024.

Date Adopted: September 15, 2023.

Tony Doan  
Council Chair



**WSR 23-20-022**

**PERMANENT RULES**

**BUILDING CODE COUNCIL**

[Filed September 25, 2023, 1:58 p.m., effective March 15, 2024]

Effective Date of Rule: March 15, 2024.

Purpose: To delay the effective date of the rules adopted under WSR 23-02-060 and 23-12-102, the 2021 Washington State Energy Code, Residential Provisions, chapter 51-11R WAC. The building code council is delaying the effective date until March 15, 2024. The effective date of this rule was originally July 1, 2023, under WSR 23-02-060, and was delayed to October 29, 2023, under WSR 23-12-102, to evaluate what, if any, changes are necessary to maintain compliance with the Energy Policy and Conservation Act given the recent 9th circuit court of appeals ruling on the Berkeley, California ordinance. This review is still in progress. All sections filed within WSR 23-02-060 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3) (b).

Citation of Rules Affected by this Order: All new, repealed, and amended sections as filed within WSR 23-02-060.

Statutory Authority for Adoption: RCW 19.27A.020, 19.27A.045, 19.27A.160.

Other Authority: Chapter 19.27A RCW.

Adopted under notice filed as WSR 22-17-149 on August 23, 2022

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from October 29, 2023, to March 15, 2024.

Date Adopted: September 15, 2023.

Tony Doan  
Council Chair

**WSR 23-20-023**

**PERMANENT RULES**

**BUILDING CODE COUNCIL**

[Filed September 25, 2023, 2:00 p.m., effective March 15, 2024]

Effective Date of Rule: March 15, 2024.

Purpose: To delay the effective date of the rules adopted under WSR 23-02-073 and 22-13-094, the 2021 International Building Code and the 2021 International Existing Building Code, published by the International Code Council, with state amendments. The building code council is delaying the effective date of the statewide building codes until March 15, 2024. The effective date of this rule was originally July 1, 2023, under WSR 23-02-073 and 22-013-094, and was delayed to October 29, 2023, under WSR 23-12-103. All sections filed within WSR 23-02-073 and 22-13-094 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3)(b). Further delays may be considered.

Citation of Rules Affected by this Order: All new, repealed, and amended sections as filed within WSR 23-02-073 and 22-13-094.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Other Authority: RCW 19.27.540.

Adopted under notice filed as WSR 22-17-151 on August 23, 2022, and WSR 22-02-040 on December 30, 2021.

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from October 29, 2023, to March 15, 2024.

Date Adopted: September 15, 2023.

Tony Doan  
Council Chair

**WSR 23-20-024**

**PERMANENT RULES**

**BUILDING CODE COUNCIL**

[Filed September 25, 2023, 2:03 p.m., effective March 15, 2024]

Effective Date of Rule: March 15, 2024.

Purpose: To delay the effective date of the rules adopted under WSR 23-02-058, the 2021 International Residential Code, published by the International Code Council (ICC), with state amendments. The building code council is delaying the effective date of the statewide building codes until March 15, 2024. The effective date of this rule was originally July 1, 2023, under WSR 23-02-058, and was delayed to October 29, 2023, under WSR 23-12-104. All sections filed within WSR 23-02-058 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3)(b). Further delays may be considered.

Citation of Rules Affected by this Order: All new, repealed, and amended sections as filed within WSR 23-02-058.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Adopted under notice filed as WSR 22-17-148 on August 23, 2022.

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from October 29, 2023, to March 15, 2024.

Date Adopted: September 15, 2023.

Tony Doan  
Council Chair

**WSR 23-20-025**

**PERMANENT RULES**

**BUILDING CODE COUNCIL**

[Filed September 25, 2023, 2:05 p.m., effective March 15, 2024]

Effective Date of Rule: March 15, 2024.

Purpose: To delay the effective date of the rules adopted under WSR 23-02-055, the 2021 International Mechanical Code and the 2021 International Fuel Gas Code, published by the International Code Council, with state amendments. The building code council is delaying the effective date of the statewide building codes until March 15, 2024. The effective date of this rule was originally July 1, 2023, under WSR 23-02-055, and was delayed to October 29, 2023, under WSR 23-12-106. All sections filed within WSR 23-02-055 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3) (b). Further delays may be considered.

Citation of Rules Affected by this Order: All new, repealed, and amended sections as filed within WSR 23-02-055.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Other Authority: RCW 19.27.031, 19.27.074.

Adopted under notice filed as WSR 22-17-147 on August 23, 2022.

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from October 29, 2023, to March 15, 2024.

Date Adopted: September 15, 2023.

Tony Doan  
Council Chair

**WSR 23-20-027**

**PERMANENT RULES**

**BUILDING CODE COUNCIL**

[Filed September 25, 2023, 2:07 p.m., effective March 15, 2024]

Effective Date of Rule: March 15, 2024.

Purpose: To delay the effective date of the rules adopted under WSR 22-13-093, the 2021 International Fire Code, published by the International Code Council, with state amendments. The building code council is delaying the effective date of the statewide building codes until March 15, 2024. The effective date of this rule was originally July 1, 2023, under WSR 22-13-093, and was delayed to October 29, 2023, under WSR 23-12-107. All sections filed within WSR 22-13-093 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3)(b). Further delays may be considered.

Citation of Rules Affected by this Order: All new, repealed, and amended sections as filed within WSR 22-13-093.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 22-02-041 on December 30, 2021.

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from October 29, 2023, to March 15, 2024.

Date Adopted: September 15, 2023.

Tony Doan  
Council Chair

**WSR 23-20-028**

**PERMANENT RULES**

**BUILDING CODE COUNCIL**

[Filed September 25, 2023, 2:08 p.m., effective March 15, 2024]

Effective Date of Rule: March 15, 2024.

Purpose: To delay the effective date of the rules adopted under WSR 23-02-056, the 2021 Washington Wildland-Urban Interface Code. The building code council is delaying the effective date of the statewide building codes until March 15, 2024. The effective date of this rule was originally July 1, 2023, under WSR 23-02-056, and was delayed to October 29, 2023, under WSR 23-12-109. All sections filed within WSR 23-02-056 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3)(b). Further delays may be considered.

Citation of Rules Affected by this Order: All new, repealed, and amended sections as filed within WSR 23-02-056.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Other Authority: RCW 19.27.560.

Adopted under notice filed as WSR 22-17-150 on August 23, 2022.

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from October 29, 2023, to March 15, 2024.

Date Adopted: September 15, 2023.

Tony Doan  
Council Chair

**WSR 23-20-029**

**PERMANENT RULES**

**BUILDING CODE COUNCIL**

[Filed September 25, 2023, 2:09 p.m., effective March 15, 2024]

Effective Date of Rule: March 15, 2024.

Purpose: To delay the effective date of the rules adopted under WSR 23-02-057, the 2021 Uniform Plumbing Code, published by the International Association of Plumbing and Mechanical Officials, with state amendments. The building code council is delaying the effective date of the statewide building codes until March 15, 2024. The effective date of this rule was originally July 1, 2023, under WSR 23-02-057, and was delayed to October 29, 2023, under WSR 23-12-110. All sections filed within WSR 23-02-057 are delayed with the publication of this rule filing, in accordance with RCW 34.05.380 (3)(b). Further delays may be considered.

Citation of Rules Affected by this Order: All new, repealed, and amended sections as filed within WSR 23-02-057.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Adopted under notice filed as WSR 22-17-153 on August 23, 2022.

Changes Other than Editing from Proposed to Adopted Version: This rule revises the effective date of the adopted rules from October 29, 2023, to March 15, 2024.

Date Adopted: September 15, 2023.

Tony Doan  
Council Chair

WSR 23-20-032  
**PERMANENT RULES**  
**BOARD OF**  
**PILOTAGE COMMISSIONERS**

[Filed September 26, 2023, 8:11 a.m., effective October 27, 2023]

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

Purpose: The purpose of the proposed rule language is to decouple the training stipend from training program job requirements, to implement existing practices into the WAC language, restructure certain sections for clarity and flow, and conduct minor housekeeping in preparation for the upcoming 2024 marine pilot exam and training of the successful applicants.

Citation of Rules Affected by this Order: Amending WAC 363-116-078.

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

Adopted under notice filed as WSR 23-16-074 on July 28, 2023.

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

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

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

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

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

Date Adopted: September 21, 2023.

Jaimie C. Bever  
 Executive Director

**OTS-4789.1**

AMENDATORY SECTION (Amending WSR 19-03-141, filed 1/22/19, effective 2/22/19)

**WAC 363-116-078 Pilot training program.** After ~~((passing))~~ successful completion of the ~~((written))~~ pilot examination ~~((and simulator evaluation))~~ as required by RCW 88.16.090, pilot candidates pursuing a pilot license are positioned on a ranked list for the applicable pilotage district(s) and must enter and successfully complete a training program specified by the board before consideration for licensure. Pilot candidates shall be ranked for entry into the training program in accordance with RCW 88.16.090(4) and as provided below.

(1) Trainee evaluation committee. There is hereby created a trainee evaluation committee (TEC) to which members shall be appointed by the board of pilotage commissioners (board). The TEC shall include at a minimum:



(a) Three active licensed Washington state pilots who, to the extent possible, shall be from the pilotage district in which the pilot trainee seeks a license, and at least one of whom shall be a member of the board;

(b) One representative of the marine industry (who may be a board member) who holds, or has held, the minimum U.S. Coast Guard license required by RCW 88.16.090; and

(c) One other member of the board who is not a pilot.

The TEC may include such other persons as may be appointed by the board. The TEC shall be chaired by a pilot member of the board and shall meet as necessary to complete assigned tasks. In the event that the TEC cannot reach consensus with regard to any issue, it shall report both majority and minority opinions to the board. The TEC is an advisory body and shall have no policy or rule-making authority, nor shall the TEC be authorized to act on behalf of the board, conduct hearings, or take testimony or public comment.

(2) Notification. Pilot candidates on a list as described in ((subsection (2) of)) this section((,)) and waiting to enter a training program shall provide the board with the best address for notification to enter into a training program. In addition, a pilot candidate shall provide the board with other means of contact such as postal mailing or electronic mail (email) address, phone number, and/or fax number. The email address with a read receipt request, however, will be considered the primary means of notification by the board. It will be the responsibility of the pilot candidate to ensure the board has current contact information at all times. If a pilot candidate cannot personally receive postal or ((electronic mail)) email at the address(es) provided to the board for any period of time, another person may be designated in writing as having power of attorney specifically to act ((in)) on the pilot candidate's behalf regarding such notice. If notice for entry into a training program sent to the email address provided by the pilot candidate is not acknowledged after three attempts and within 30 calendar days or if notice sent via certified mail is returned after three attempts to deliver, that pilot candidate will be skipped and the next pilot candidate on the list will be contacted for entry into a training program. A person so skipped will ((remain next)) retain their position on the list, except that a pilot candidate who is skipped more than once under this subsection shall be moved to the bottom of the list. If a pilot candidate or ((his/her)) their designated attorney-in-fact ((shall)) does not respond within ((fifteen)) 15 calendar days of receipt of notification to accept, refuse, or request a delayed entry into a training program, the pilot candidate shall be skipped and will retain their position on the list, except that a pilot candidate who is skipped more than once under this subsection shall be moved to the bottom of the list.

((2)) (3) Entry. At such time that the board chooses to start a pilot candidate ((or candidates)) in a training program for either pilotage district, notification shall be given as provided in subsection ((1) of this section. Pilot candidates shall be ranked in accordance with a point system established by the board based on overall performance on the written examination and simulator evaluation. Candidates shall be eligible to enter a training program for a pilotage district in the order of such rankings or as otherwise may be determined by the board)) (2) of this section. A pilot candidate who refuses entry into a program will be removed from the waiting list ((with no further obligation by the board to offer a position in that district's training program to such pilot candidate)). However, if the pilot candidate re-

fuses entry into a program in one district, but indicated interest in the other pilotage district on the application for the written examination, the candidate shall remain available for that other district's training program in accordance with ((his/her)) their position on that list.

(a) Delayed entry with board consent. A pilot candidate who is not able to start a training program within two months of the board's specified entry date may, with written consent of the board, delay entry into that training program. When a pilot candidate delays entry into a training program by more than two months, the board gives notice to the next pilot candidate on the list for that pilotage district to enter a training program. The pilot candidate who delays entry shall remain eligible for the next position in that district provided that the next position becomes available within the earlier of:

(i) Four years from the pilot candidate's taking the written examination; or

(ii) The date ((scheduled for)) of the next ((pilotage)) written examination for the district.

Provided, that a pilot candidate who delays entry into a pilotage district in which the candidate has previously been granted a delay under this subsection, may be moved to the bottom of the list for that district.

(b) Delayed entry without board consent. A pilot candidate not able to start in a training program within two months of the board's specified entry date and who does not obtain the board's written consent to delay entry into a training program shall no longer be eligible for that district's training program ((without retaking the examination provided in WAC 363-116-076 and the simulator evaluation provided in WAC 363-116-077)). Nothing in this subsection prohibits a no-longer eligible pilot candidate from applying for the pilot examination at a later time, in which case the pilot candidate shall be evaluated as if they were a new applicant.

((3)) (c) Effect of accepting training program. A pilot candidate who accepts entry into a training program in a pilotage district shall not be eligible to enter into a training program in the other pilotage district and shall be removed from the list for that district.

(4) Training license. All training licenses shall be signed by the chairperson or their designee and shall have an expiration date. Training licenses shall be surrendered to the board upon completion or termination of the training program. Prior to receiving a training license pilot candidates must:

(a) Pass a physical examination by a board-designated physician and in accordance with the requirements of WAC 363-116-120 for initial pilot candidates. A form provided by the board must be completed by the physician and submitted to the board along with a cover letter indicating the physician's findings and recommendations as to the pilot candidate's fitness to pilot. The physical examination must be taken not more than ((ninety)) 90 days before issuance of the training license. Holders of a training license will be required to pass a general physical examination annually within ((ninety)) 90 days prior to the anniversary date of that training license. Training license physical examinations will be at the expense of the pilot candidate ((All training licenses shall be signed by the chairperson or his/her designee and shall have an expiration date. Training licenses shall be surrendered to the board upon completion or termination of the training program.

~~(4) Development.))~~; and

(b) Receive a verified negative drug test from a laboratory specified by the board. Drug tests will be at the expense of the pilot candidate and will be carried out according to a process specified by the board.

(5) Development. As soon as practical after receiving notification of eligibility for entry into a training program as set forth in this section, the pilot candidate shall provide a completed experience questionnaire to the trainee evaluation committee (TEC) (~~(, a committee)~~) created per subsection ~~((11))~~ (1) of this section. ~~((The training program consists of three phases: Observation trips, training trips, and evaluation trips, and such other forms of learning and instruction that may be designated.))~~ The TEC shall recommend a training program for adoption by the board. After adoption by the board, ~~((it))~~ the training program will be presented to the pilot candidate. If the pilot candidate agrees in writing to the training program, the board shall issue a training license to the pilot candidate, which ~~((license))~~ shall authorize the pilot candidate to take such actions as are contained in the training program. If the pilot candidate does not agree to the terms of a training program, in writing, within ~~((fifteen))~~ 15 business days of it being received by certified mail return receipt, or by email read receipt requested, that pilot candidate shall no longer be eligible for entry into that pilotage district's training program and the board may give notice to the next available pilot candidate that ~~((he/she is))~~ they are eligible for entry into a training program pursuant to the terms in subsections ~~((1))~~ (2) and ~~((2))~~ (3) of this section.

~~((5) Initial assigned route.))~~

(6) Length of training program. For the Puget Sound district, the length of the program shall not exceed 36 months.

For the Grays Harbor district, the length of the program shall not exceed 30 months.

(7) Familiarization program in the Puget Sound pilotage district.

(a) The TEC shall assign ~~((an initial route))~~ familiarization observations to each trainee at the beginning of ~~((his/her))~~ their training program between ~~((a))~~ commonly navigated ports or terminals and the seaward boundary of the pilotage district.

(b) Unless an extension of time is granted by the board, within eight months of the beginning of the training program if the trainee is continuously on stipend, plus an additional month for every month a trainee is off stipend (up to a maximum of ~~((fifteen))~~ 15 months), the trainee must:

(i) Possess a first class pilotage endorsement without tonnage or other restrictions on their United States Coast Guard license to pilot on six federal pilotage chartlets.

(ii) Take ~~((and pass with a minimum score of eighty percent))~~ all conning and familiarization quizzes provided by the board ~~((applicable to the initial assigned route as described))~~ as outlined in subsection ~~((8))~~ (9) of this section and pass with a minimum score of 80 percent; and

(iii) Take all local knowledge examination(s) provided by the board and pass with a minimum score of 85 percent.

(8) Specification of requirements. To the extent possible, a training program shall provide a wide variety of assigned requirements consisting of observation, training, and evaluation. A training program may contain deadlines for achieving full or partial completion of certain necessary actions. Where relevant, it may specify such factors

as route, weather conditions, day or night, stern or bow first, draft, size of ship, and any other relevant factors. The board may designate specific shipboard requirements that shall be accomplished with supervising pilots or with the pilot members of the TEC or with pilots designated by the TEC. The total number of requirements in a training program shall be established by the board based on the recommendation of the TEC. The TEC shall design a training program and assign requirements based on factors including, but not limited to, the availability of vessels and timelines for pilot trainees to complete the program. The board will ensure that during a training program, the pilot trainee will get significant review by supervising pilots and the pilot members of the TEC or with pilots designated by the TEC. The TEC, at the discretion of the board, may assign or specify training program requirements among multiple pilot trainees. Generally, the pilot trainee who entered their training program earlier has the right of first refusal of training program requirements provided that the TEC may, with approval by the board, allocate or assign training requirements differently as follows:

(a) When it is necessary to equalize training opportunities; or

(b) When it is necessary to spread hard-to-get requirements among pilot trainees so that as many trainees as possible complete requirements on time.

(9) Local knowledge conning and familiarization quizzes and local knowledge exams.

(a) A training program shall provide opportunities for the education of pilot trainees and shall provide for testing of pilot trainees on the local knowledge necessary to become a pilot. It shall be the responsibility of the pilot trainee to obtain the local knowledge necessary to be licensed as a pilot in the pilotage district for which they are applying.

(b) After a trainee has successfully passed a conning or familiarization quiz on a main channel route or a port and approach, they will be eligible to take the conn on that route or approach unless it is a U.S. flag vessel and the required federal pilotage endorsement has not been obtained. These quizzes may be repeated as necessary provided that they may not be taken more than once in any seven-day period, and further provided that they must be successfully passed within the time period specified in subsection (7)(b) of this ((subsection)) section; and

((ii) Take and pass with a minimum score of eighty-five percent the local knowledge examination(s) provided by the board applicable to the initial assigned route as described in subsection (8) of this section. These examinations can be repeated as necessary provided that they may not be taken more than once in any seven-day period, and further provided that they must be successfully passed before the expiration date time period specified in (b) of this subsection; and

(iii) Possess a first class pilotage endorsement without tonnage or other restrictions on his/her United States Coast Guard license to pilot on the initial assigned route.

(6) Specification of trips. To the extent possible, a training program shall provide a wide variety of assigned requirements in three phases: Observation, training, and evaluation trips. A training program may contain deadlines for achieving full or partial completion of certain necessary actions. Where relevant, it may specify such factors as route, sequence of trips, weather conditions, day or night, stern or bow first, draft, size of ship and any other relevant factors. The board may designate specific trips or specific numbers of trips that

shall be made with training pilots or with the pilot members of the TEC or with pilots designated by the TEC. In the Puget Sound pilotage district, pilot trainees shall complete a minimum of one hundred fifty trips. The board shall set from time to time the minimum number of trips for pilot trainees in the Grays Harbor pilotage district. The total number of trips in a training program shall be established by the board based on the recommendation of the TEC. The board will ensure that during a training program the pilot trainee will get significant review by supervising pilots and the pilot members of the TEC or with pilots designated by the TEC.

~~(7) Length of training program. For the Puget Sound district the length of the program shall not exceed thirty-six months. For the Grays Harbor district the length of the program will be determined at the time the training program is written.~~

~~(8) Local knowledge conning quizzes and local knowledge exams. A training program shall provide opportunities for the education of pilot trainees and shall provide for testing of pilot trainees on the local knowledge necessary to become a pilot. It shall be the responsibility of the pilot trainee to obtain the local knowledge necessary to be licensed as a pilot in the pilotage district for which he/she is applying.)~~ (c) Each conning and familiarization quiz will be organized by main channel routes, ports, and approaches. A conning or familiarization quiz is not intended to replace a local knowledge exam as specified in subsection ~~((5)(b)(ii))~~ (7)(b)(iii) of this section, but there will be some overlap of subject matter. ((A)) In order for a pilot trainee to progress into the training section of the training program, the pilot trainee shall pass all familiarization quizzes and/or all associated conning quizzes for all routes, ports, and/or approaches for which the pilot trainee ((shall pass a conning quiz or quizzes related to the route or harbor area to move from the observation phase to the training phase of his/her training program for that route or harbor area. After a trainee has successfully passed a conning quiz on a main channel route or a port and approach, he/she will be eligible to take)) will have the conn ((on that route or approach unless it is a U.S. flag vessel and the required federal pilotage endorsement has not been obtained. The local knowledge exam for the initial route must be completed within eight months of the training start date if the trainee is taking the stipend. For each month the trainee is off stipend, an additional month is added up to a maximum of fifteen months to successfully pass the appropriate local knowledge exam. The final local knowledge exam must be completed before consideration for licensing and must be successfully passed before the expiration date of the training program. The conning)) during any section of the training program.

(d) The conning and familiarization quizzes and local knowledge exams will be administered at the ((offices of)) location and by the method prescribed by the board of pilotage commissioners. ((Eighty percent is the passing grade for conning quizzes, and eighty-five percent is required for the local knowledge exams.)) If a trainee fails a conning or familiarization quiz or local knowledge exam, it may be retaken after seven days, but must be passed within the timing deadlines discussed above.

(e) The local knowledge required of a pilot trainee and the local knowledge familiarization quiz, conning quizzes, and examination(s) may include the following subjects as they pertain to the pilotage district for which the pilot trainee seeks a license:

((a)) (i) Area geography;

- ~~((b))~~ (ii) Waterway configurations including channel depths, widths and other characteristics;
- ~~((e))~~ (iii) Hydrology and hydraulics of large ships in shallow water and narrow channels;
- ~~((d))~~ (iv) Tides and currents;
- ~~((e))~~ (v) Winds and weather;
- ~~((f))~~ (vi) Local aids to navigation;
- ~~((g))~~ (vii) Bottom composition;
- ~~((h))~~ (viii) Local docks, berths and other marine facilities including length, least depths and other characteristics;
- ~~((i))~~ (ix) Mooring line procedures;
- ~~((j))~~ (x) Local traffic operations e.g., fishing, recreational, dredging, military and regattas;
- ~~((k))~~ (xi) Vessel traffic system;
- ~~((l))~~ (xii) Marine VHF usage and phraseology, including bridge-to-bridge communications regulations;
- ~~((m))~~ (xiii) Air draft and keel clearances;
- ~~((n))~~ (xiv) Submerged cable and pipeline areas;
- ~~((o))~~ (xv) Overhead cable areas and clearances;
- ~~((p))~~ (xvi) Bridge transit knowledge - Signals, channel width, regulations, and closed periods;
- ~~((q))~~ (xvii) Lock characteristics, rules and regulations;
- ~~((r))~~ (xviii) Commonly used anchorage areas;
- ~~((s))~~ (xix) Danger zone and restricted area regulations;
- ~~((t))~~ (xx) Regulated navigation areas;
- ~~((u))~~ (xxi) Naval operation area regulations;
- ~~((v))~~ (xxii) Local ship assist and escort tug characteristics;
- ~~((w))~~ (xxiii) Tanker escort rules - State and federal;
- ~~((x))~~ (xxiv) Use of anchors and knowledge of ground tackle;
- ~~((y))~~ (xxv) Applicable federal and state marine and environmental safety law requirements;
- ~~((z))~~ (xxvi) Marine security and safety zone concerns;
- ~~((aa))~~ (xxvii) Harbor safety plan and harbor regulations;
- ~~((bb))~~ (xxviii) Chapters 88.16 RCW and 363-116 WAC, and other relevant state and federal regulations in effect on the date the examination notice is published pursuant to WAC 363-116-076; ~~(and~~
- ~~((ee))~~ (xxix) Courses in degrees true and distances in nautical miles and tenths of miles between points of land, navigational buoys and fixed geographical reference points, and the distance off points of land for such courses as determined by parallel indexing along pilotage routes;
- (xxx) Pilot transfer arrangements;
- (xxxi) Rest rules; and
- (xxxii) Other pertinent information the board deems necessary.
- (f) The TEC will define areas that are considered to be hard-to-get, which may differ for trainees depending on vessel traffic while in the training program. It is the pilot trainee's responsibility to make all available hard-to-get shipboard requirements, as defined and assigned by the TEC.
- ~~((9))~~ (10) Rest. It is the responsibility of the pilot trainee to obtain adequate rest. Pilot trainees shall observe the rest rules for pilots in place by federal or state law or regulation and rules established in the applicable pilotage district in which they will train, ~~((e))~~ in addition to any other rest requirements contained in a training program.
- ~~((10))~~ (11) Stipend.

(a) At the initial meeting with the TEC the pilot trainee shall indicate whether ~~((he/she wishes))~~ they wish to receive a stipend during their training program. ~~((In the Puget Sound pilotage district,))~~ As a condition of receiving such stipend, pilot trainees will agree to forego ~~((during their training program))~~ other full- or part-time employment ~~((which prevents them from devoting themselves on a full-time basis to the completion of their training program. With the consent of the TEC,))~~ during their training program.

(b) Pilot trainees may elect to change from a stipend to nonstipend status, and vice versa, during their training program ~~((provided that)).~~ Any such change request ~~((is))~~ must be provided to the board in writing ~~((from))~~ by the trainee. If ~~((the))~~ a pilot trainee ~~((intends))~~ requests to change to a nonstipend status as provided, such change shall be effective for a minimum nonstipend status of at least for an entire calendar month commencing at the beginning of a month. The requirement for designated hard-to-get requirements is waived during the time the pilot trainee is authorized to be in nonstipend status ~~((more than four)).~~

If the trainee does not complete any shipboard training program requirement as defined in subsection (17)(f) of this section within three consecutive months, ~~((his/her))~~ their particular training program may be constructed to provide recency and/or a change in seniority placement prior to resuming the training program.

(c) In the Puget Sound pilotage district, the stipend paid to pilot trainees shall be a maximum of ~~((six thousand dollars))~~ \$8,000 per month (or such other amount as may be set by the board from time to time), shall be contingent upon the ~~((board's))~~ utilities and transportation commission's setting of a ~~((training))~~ tariff surcharge in the tariffs levied pursuant to ~~((WAC 363-116-300))~~ chapter 81.116 RCW sufficient to cover the expense of the stipend, and shall be paid from a pilot training account as directed by the board. In the Grays Harbor pilotage district, the stipend paid to pilot trainees, if a pilot trainee chooses to take stipend, shall be determined by the board and shall be contingent upon the board's receipt of funds, from any party collecting the tariff or providing funds, sufficient to cover the expense of the stipend and shall be paid from a pilot training account as directed by the board.

(d) Determinations as to stipend entitlement will be made on a full calendar month basis and documentation ~~((of trips))~~ will be submitted to the board by the ~~((third))~~ first day of the following month. ~~((Proration of))~~ The stipend payable under this subsection shall be ~~((allowed at the rate of two hundred dollars per day (or such other amount as may be set by the board from time to time), under the following circumstances:~~

~~((i))~~ prorated on a daily basis for the first and last months of a training program (unless the training program starts on the first or ends on the last day of a month.) ~~((; or~~

~~((ii))~~ For a pilot trainee who is deemed unfit for duty by a board-designated physician during a training month.

~~((b))~~ In the Puget Sound pilotage district a minimum of twelve trips are required each month for eligibility to receive the minimum stipend amount as set by the board, or eighteen trips to receive the maximum stipend amount as set by the board. A trainee may make more than eighteen trips in a calendar month, but no further stipend will be earned for doing so. In the Grays Harbor pilotage district the minimum number of trips each month for eligibility to receive the stipend is seventy percent or such number or percentage of trips that may be

set by the board of the total number of vessel movements occurring in this district during that month. Only trips required by the training program can be used to satisfy these minimums. Trips will be documented at the end of each month.

~~(c) The TEC will define areas that are considered to be hard-to-get, which many differ for trainees depending on their date of entry. It is the pilot trainee's responsibility to make all available hard-to-get trips, as defined and assigned by the TEC. The board may elect not to pay the stipend if the missing trips were available to the pilot trainee but not taken.~~

~~(d) The TEC, with approval by the board may allocate, assign or specify training program trips among multiple pilot trainees. Generally, the pilot trainee who entered his/her training program earlier has the right of first refusal of training program trips provided that the TEC may, with approval by the board, allocate or assign training trips differently as follows:~~

~~(i) When it is necessary to accommodate any pilot trainee's initial route;~~

~~(ii) When it is necessary to spread hard-to-get trips among pilot trainees so that as many as possible complete required trips on time. If a pilot trainee is deprived of a hard-to-get trip by the TEC, that trip will not be considered "available" under (c) of this subsection. However, the pilot trainee will still be required to complete the minimum number of trips for the month in order to receive a stipend, and the minimum number of trips as required to complete his/her training program;~~

~~(e) If a pilot trainee elects to engage in any full or part-time employment, the terms and conditions of such employment must be submitted to the TEC for prior determination by the board of whether such employment complies with the intent of this section prohibiting employment that "prevents (pilot trainees) from devoting themselves on a full-time basis to the completion of the training program."~~

~~(f) If a pilot trainee requests to change to a nonstipend status as provided in this section such change shall be effective for a minimum nonstipend period of thirty days beginning at the beginning of a month, provided that before any change takes effect, a request is made to the TEC in writing. The requirement for designated hard-to-get trips is waived during the time the pilot trainee is authorized to be in nonstipend status.~~

~~(g)) (e) Any approved pilot association or other organization collecting the pilotage tariff levied by ((WAC 363-116-185 or 363-116-300)) the utilities and transportation commission shall transfer the pilot training surcharge receipts to the board at least once a month or otherwise dispose of such funds as directed by the board. In the Grays Harbor pilotage district, if there is no separate training surcharge in the tariff or other arrangement, any organization collecting the pilotage tariff levied by ((WAC 363-116-185)) the utilities and transportation commission shall transfer sufficient funds to pay the stipend to the board at least once a month or otherwise dispose of such funds as directed by the board. The board may set different training stipends for different pilotage districts. Receipts from the training surcharge shall not belong to the pilot providing the service to the ship that generated the surcharge or to the pilot association or other organization collecting the surcharge receipts, but shall be disposed of as directed by the board. Pilot associations or other organizations collecting surcharge receipts shall provide an accounting of such funds to the board on a monthly basis or at such oth-~~



er intervals as may be requested by the board. Any audited financial statements filed by pilot associations or other organizations collecting pilotage tariffs shall include an accounting of the collection and disposition of these surcharges. The board shall direct the disposition of all funds in the account.

~~((11) Trainee evaluation committee. There is hereby created a trainee evaluation committee (TEC) to which members shall be appointed by the board. The TEC shall include at a minimum: Three active licensed Washington state pilots, who, to the extent possible, shall be from the pilotage district in which the pilot trainee seeks a license and at least one of whom shall be a member of the board; one representative of the marine industry (who may be a board member) who holds, or has held, the minimum U.S. Coast Guard license required by RCW 88.16.090; and one other member of the board who is not a pilot. The TEC may include such other persons as may be appointed by the board. The TEC shall be chaired by a pilot member of the board and shall meet as necessary to complete the tasks accorded it. In the event that the TEC cannot reach consensus with regard to any issue it shall report both majority and minority opinions to))~~ With the exception of observation, all trainees shall be under the supervision of a supervising pilot whenever performing a shipboard training requirement as part of a training program under this section. All supervising pilots shall hold a valid Washington state pilotage license and shall follow all applicable state and federal laws and regulations, as well as the directives of the board.

(12) Supervising pilots. The board shall designate as supervising pilots those pilots who are willing to undergo such specialized training as the board may require and provide. Supervising pilots shall receive such training from the board to better enable them to give guidance and training to pilot trainees and to properly evaluate the performance of pilot trainees. The board shall keep a list of supervising pilots available for public inspection at all times. All pilot members of the TEC shall also be supervising pilots.

(a) Volunteer status. Supervising pilots shall be considered as nonemployee volunteers and shall not be entitled to wages or remuneration for their activities in support of the training program, except that supervising pilots may, at the board's discretion, receive reimbursement for actual expenses incurred. Supervising pilots may choose whether to accept any pilot trainees on a given assignment. In no event shall supervising pilots be deemed as, or hold themselves out as employees or representatives of the board or the state.

(b) Role of supervising pilots and pilot trainees. The responsibilities of supervising pilots and pilot trainees shall vary by section of the training program as follows:

(i) During observation, the pilot shall have control of the vessel at all times during any shipboard training requirement. The pilot trainee may observe and interact with the pilot.

(ii) During training, the supervising pilot shall allow the pilot trainee to perform some or all of the tasks required of a pilot under this chapter and chapter 88.16 RCW. The supervising pilot may interact with and coach the pilot trainee by providing guidance and advice. The supervising pilot may, at their discretion, demonstrate certain tasks for the pilot trainee.

(iii) During evaluation, the trainee shall perform all tasks without any guidance or interaction from the supervising pilot, except that a supervising pilot may intervene as provided in subsection (17)(c) of this section. The supervising pilot shall be responsible

for evaluating the performance of the pilot trainee in order to determine if they can pilot a vessel safely and independently and perform other tasks required of a pilot.

(c) Responsibilities and expectations. Supervising pilots, as well as licensed pilots performing shipboard observation training requirements with pilot trainees, shall abide by this chapter, chapter 88.16 RCW, and all other applicable state or federal laws or regulations, as well as the directives of the board. Supervising or licensed pilots shall use those procedures and/or forms prescribed by the board for evaluating pilot trainees.

(13) (~~Training program trip~~) Shipboard reports. After each shipboard training program (~~trip~~) requirement, the licensed or supervising pilot shall complete a (~~training program trip~~) shipboard report form (~~(TPTR)~~) provided by the board. (~~Training program trip~~) Shipboard report forms prepared by licensed pilots who are supervising pilots (~~shall~~) may be used by the TEC and the board for assessing a pilot trainee's progress, providing guidance to the pilot trainee, and for making alterations to a training program. (~~Licensed pilots who are not supervising pilots may only have trainees on board for observation trips. All trip report forms~~) All training and evaluation shipboard reports shall be delivered or mailed by the licensed or supervising pilot to a location as determined by the board. They shall not be given to the pilot trainee. The licensed or supervising pilot may show the contents of the form to the pilot trainee, but the pilot trainee has no right to see the form until it is filed with the board. Observation shipboard reports may be sent directly to the board by the pilot trainee. The TEC shall review these (~~training program trip report~~) shipboard reports forms from time to time, and the chairperson of the TEC shall report the progress of all pilot trainees at each meeting of the board. If it deems it necessary, the TEC may recommend, and the board may make, changes from time to time in the training program requirements applicable to a pilot trainee, including the number of (~~trips~~) assignments in a training program.

(14) Termination of and removal from a training program. A pilot trainee's program may be immediately terminated and the trainee removed from a training program by the board if it finds any of the following:

(a) Failure to maintain the minimum federal license required by RCW 88.16.090 for the duration of the training program;

(b) Conviction of an offense involving drugs (~~or~~), involving the personal consumption of alcohol, or involving sexual abuse or sexual harassment;

(c) Failure to devote full time to training (~~in the Puget Sound pilotage district~~) while receiving a stipend;

(d) The pilot trainee is not physically fit to pilot, as determined by a board-designated physician;

(e) Failure to (~~make satisfactory~~) meet the required progress timelines as determined by the board toward (~~timely~~) completion of the program (~~or timely meeting of interim performance requirements in a training program~~);

(f) Inadequate performance on examinations or other actions required by a training program;

(g) Failure to complete the (~~initial route requirements~~) familiarization program as specified in subsection (~~(5)~~) (7) of this section within the time periods specified;

(h) Inadequate, unsafe, or inconsistent performance in a training program and/or on training program (~~(trips)~~) requirement(s) as determined by the supervising pilots, the TEC, and/or the board; (~~(e#)~~)

(i) Upon the fourth intervention during evaluation; or

(j) Violation of a training program requirement, state or federal law(~~(7)~~) or regulation, or directive of the board.

(15) Completion of a training program shall include the requirements that the pilot trainee:

(a) Successfully complete all requirements set forth in the training program including any addendum(s) to the program;

(b) Possess a valid first class pilotage endorsement without tonnage or other restrictions on (~~(his/her)~~) their United States government license to pilot in all of the waters of the pilotage district in which the pilot candidate seeks a license; and

(c) Complete portable piloting unit (PPU) training as defined by the TEC.

(16) Unanticipated events.

(a) Whenever a local or state government or agency, or the federal government, declares a state of emergency, or if the board determines that there is immediate need to act for the preservation of public health, safety, or general welfare and that there is a threat to trainees, pilots, vessel crews, or members of the public, then notwithstanding the other provisions of this chapter, the board, at its discretion, may suspend or adjust the pilot training program.

(b) The TEC may further consider additional nonshipboard pilot training including, but not limited to, distance learning.

(c) The TEC, with approval by the board, may alter stipend requirements, maximum duration of the training program, or other parts of the training program where, in the board's sole discretion, such alterations are required in order to accommodate such circumstances that render a trainee unable to timely complete any requirement of the training program, and that could not have been reasonably foreseen at the beginning of the training program.

(17) Definitions. The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Chartlet" means a geographic examination subarea as defined by the U.S. Coast Guard for federal first class pilotage within a Washington state pilotage district. Successful completion of a chartlet shall be defined as the endorsement of an individual's master mariner credential for a route within an individual chartlet area. The completion of this requirement may include, but is not limited to, chart sketches, route descriptions, light lists, or any other examination requirements of the U.S. Coast Guard. A qualifying chartlet for this section shall be one within the pilotage district for which a pilot trainee is currently training.

(b) "Examination process" or "pilot examination" means the written examination, simulator evaluation, and any other requirements as determined by the board to evaluate and rank potential applicants for entry into a training program, under RCW 88.16.090.

(c) "Intervention" means when a supervising pilot chooses to interject (including, but not limited to, providing verbal advice or suggestions, or taking control of the vessel from the pilot trainee) during a shipboard requirement in the evaluation section of the training program:

(i) In order to avoid, in the sole opinion of the pilot, an incident as defined in WAC 363-116-200 including, but not limited to, an actual or apparent collision, allision, or grounding; and/or

(ii) In order to avoid, in the sole opinion of the pilot, a navigational or marine safety occurrence which may result in actual or apparent personal injury or property damage or environmental damage as defined in WAC 363-116-200.

(iii) Exception. An intervening pilot assuming control of the vessel for the reasons described in (c)(i) and (ii) of this subsection, where, in the discretion of the supervising pilot and the TEC, the pilot trainee was not at fault for the circumstances requiring the supervising pilot to assume control. A pilot trainee is not at fault where a newly licensed pilot of reasonable skill could not have foreseen or prevented the circumstances requiring the supervising pilot to assume control, such as in the event of an unforeseeable environmental hazard or a mechanical failure. The supervising pilot's action shall be verbalized to the pilot trainee and the bridge team, and noted in the comments section of the shipboard reports.

(d) "Newly licensed" means first year of licensure.

(e) "Requirement" means all items listed in the pilot trainee's training program requirements document and agreement.

(f) "Shipboard" means training program requirements that shall be completed on a vessel.

[Statutory Authority: Chapter 88.16 RCW. WSR 19-03-141, § 363-116-078, filed 1/22/19, effective 2/22/19; WSR 13-08-025, § 363-116-078, filed 3/27/13, effective 4/27/13; WSR 12-05-064, § 363-116-078, filed 2/15/12, effective 3/17/12; WSR 10-04-100, § 363-116-078, filed 2/3/10, effective 3/6/10. Statutory Authority: Chapter 88.16 RCW and 2008 c 128. WSR 08-15-119, § 363-116-078, filed 7/21/08, effective 8/21/08. Statutory Authority: RCW 88.16.105. WSR 06-20-107, § 363-116-078, filed 10/4/06, effective 11/4/06. Statutory Authority: Chapter 88.16 RCW and 2005 c 26. WSR 05-18-021, § 363-116-078, filed 8/29/05, effective 10/1/05.]

**WSR 23-20-039**  
**PERMANENT RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed September 27, 2023, 10:23 a.m., effective October 28, 2023]

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

Purpose: The Washington state liquor and cannabis board (board) has adopted amendments to WAC 314-24-180 and 314-24-190 to align the language in these two regulations to match the new language in RCW 66.20.010(18) and 66.24.200 regarding holders of special permits for short-term rental operators obtaining wine directly from wine distributors.

Citation of Rules Affected by this Order: Amending WAC 314-24-180 and 314-24-190.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 23-16-146 on August 2, 2023.

A final cost-benefit analysis is available by contacting Daniel Jacobs, Rules and Policy Coordinator, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-480-1238, fax 360-664-3208, email rules@lcb.wa.gov, website www.lcb.wa.gov.

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

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

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

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

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

Date Adopted: September 27, 2023.

David Postman  
Chair

**OTS-4828.1**

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

**WAC 314-24-180 Wine distributors, wine importers—Certain rights granted.** (1) Wine distributors may sell to retailers, export wine from the state, and purchase wine from or sell wine to another wine distributor.

(2) Wine distributors must sell and deliver product from their licensed premises.

(3) Wine importers may sell to the board, export wine from the state, or sell to wine distributors, but may not sell to another wine importer or to retailers.

(4) Wine distributors may sell to holders of annual special permits for short-term rental operators under RCW 66.20.010.

[Statutory Authority: RCW 66.08.030 and 66.08.050. WSR 12-17-006, § 314-24-180, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. WSR 98-18-097, § 314-24-180, filed 9/2/98, effective 10/3/98; Order 5, § 314-24-180, filed 8/7/69, effective 9/8/69; Rule 78, filed 6/13/63.]

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

**WAC 314-24-190 Wine suppliers and distributors. (1) Definitions**

- For the purposes of this chapter:

(a) A "wine supplier" means a domestic winery, certificate of approval holder, wine importer, wine distributor acting as the first United States importer, or a distributor selling wine to another distributor.

(b) A "wine distributor" means a distributor selling to a retailer or a holder of an annual special permit for short-term rental owners under RCW 66.20.010, a domestic winery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling wine of its own production to a retailer.

(2) **Products** - All products must be made available to all retail licensees to the extent it is reasonably practical to do so.

(3) **Distributor changes:**

(a) The following guidelines apply when a wine supplier makes a distributor change. The supplier must notify the board in writing that he/she wishes to change his/her current distributor and appoint a new distributor.

(b) A wine supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party.

(4) **Accommodation sales** - The provisions of this rule do not apply when a wine distributor makes an accommodation sale to another wine distributor and this sale is made at a selling price that does not exceed the laid-in cost of the wine being sold. Accommodation sales may only be made when the distributor purchasing the wine is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

[Statutory Authority: RCW 66.24.170, 66.24.640, 66.24.695, and 66.08.030. WSR 18-02-006, § 314-24-190, filed 12/20/17, effective 1/20/18. Statutory Authority: RCW 66.08.030 and 66.08.050. WSR 12-17-006, § 314-24-190, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 66.08.030 and 66.28.320. WSR 10-01-090, § 314-24-190, filed 12/16/09, effective 1/16/10. Statutory Authority: RCW 66.08.030, 66.20.360 through [66.20].380, 66.20.390, 66.24.170, 66.24.206,

66.24.210, 66.24.240, 66.24.244, 66.24.270, 66.24.290, 66.28.170, 66.28.180, and 42.56.270. WSR 07-02-076, § 314-24-190, filed 12/29/06, effective 1/29/07. Statutory Authority: RCW 66.08.030, 66.28.180, and 2004 c 160. WSR 04-19-155, § 314-24-190, filed 9/22/04, effective 10/23/04. Statutory Authority: RCW 66.08.030, 15.88.030, 19.126.020, 66.04.010, 66.08.180, 66.16.100, 66.20.010, 66.20.300, 66.20.310, 66.24.150, 66.24.170, 66.24.185, 66.24.200, 66.24.206, 66.24.210, 66.24.230, 66.24.240, 66.24.244, 66.24.250, 66.24.375, 66.24.380, 66.24.395, 66.24.400, 66.24.420, 66.24.425, 66.24.440, 66.24.450, 66.24.455, 66.24.495, 66.24.540, 66.28.010, 66.28.040, 66.28.050, 66.28.170, 66.28.180, 66.28.190, 66.28.200, 66.28.310, 66.44.190, 66.44.310, 66.98.060 and 82.08.150. WSR 98-18-097, § 314-24-190, filed 9/2/98, effective 10/3/98. Statutory Authority: RCW 66.08.030. WSR 87-15-111 (Order 222, Resolution No. 231), § 314-24-190, filed 7/22/87. Statutory Authority: RCW 66.08.030, 66.98.070 and 66.08.060. WSR 86-16-060 (Order 173, Resolution No. 182), § 314-24-190, filed 8/5/86. Statutory Authority: RCW 66.08.030. WSR 82-16-069 (Order 91, Resolution No. 100), § 314-24-190, filed 8/2/82. Statutory Authority: RCW 66.08.030 and 66.98.070. WSR 81-22-026 (Order 85, Resolution No. 94), § 314-24-190, filed 10/28/81. Statutory Authority: RCW 66.08.030, 66.08.060 and 66.98.070. WSR 78-02-056 (Order 62), § 314-24-190, filed 1/20/78, effective 7/1/78; Order 54, § 314-24-190, filed 5/24/77, effective 7/1/77; Order 51, § 314-24-190, filed 12/15/76; Order 26, § 314-24-190, filed 8/14/73; Order 18, § 314-24-190, filed 1/13/72, effective 2/14/72; Order 15, § 314-24-190, filed 5/13/71, effective 7/1/71; Order 5, § 314-24-190, filed 8/7/69, effective 9/8/69; Rule 81, filed 6/13/63.]

**WSR 23-20-040**  
**PERMANENT RULES**  
**SECRETARY OF STATE**

[Filed September 27, 2023, 11:24 a.m., effective October 28, 2023]

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

Purpose: Risk-limiting audit rule updates.

Citation of Rules Affected by this Order: Amending WAC 434-261-114, 434-261-115, and 434-261-116.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 23-17-126 on August 21, 2023.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: September 27, 2023.

Randy Bolerjack  
Deputy Secretary of State

**OTS-4838.1**

AMENDATORY SECTION (Amending WSR 22-12-035, filed 5/25/22, effective 6/25/22)

**WAC 434-261-114 Definitions.** As used in this rule, unless stated otherwise:

(1) "Audit board" means a team of two people assigned to review voter choices on ballots selected for audit.

(2) "Ballot comparison audit" means a type of risk-limiting audit in which the audit board examines and reports voter markings for a designated contest (or contests) on randomly selected ballots, then compares them to the corresponding cast vote records until the audit results reflect with a strong amount of certainty that the reported tabulation outcome is correct.

(3) "Ballot manifest" means a document that indicates how the ballots are organized and stored, including identification of each batch of ballots by the voting system batch number, as well as the number of ballots in each batch.

(4) "Ballot polling audit" means a type of risk-limiting audit in which the audit board examines and reports voter markings for a designated contest on ballots selected randomly until the audit results reflect with a strong amount of certainty that the reported tabulation outcome is correct.



(5) "Cast vote record" or "CVR" means a record of all voter markings produced by a single voter on a ballot card, presented in electronic form, and is defined as a ballot in accordance with RCW 29A.04.008.

(6) "Random seed" means a number string consisting of at least 20 digits, with each digit selected in order by sequential rolls of a 10-sided die.

(7) "Reported tabulation outcome" means the presumed winning and losing candidates or voting choices of a ballot contest as reflected in preliminary results.

~~((7))~~ (8) "Unofficial results" means the tabulation results produced by the voting system at a specific point in time that will be used for comparison during the audit process.

~~((8))~~ (9) "Risk limit" means the largest statistical probability that an incorrect reported tabulation outcome is not detected in a risk-limiting audit.

~~((9))~~ (10) "Risk-limiting audit" or "RLA" means a post-election audit of votes on paper ballots and voter-verifiable paper audit trail (VVPAT) records that makes use of statistical principles and methods, is designed to limit the risk of certifying an incorrect election outcome, and is conducted in accordance with RCW 29A.60.185.

~~((10))~~ (11) "Risk-limiting audit tool" or "RLA tool" means the software and user interfaces provided by the secretary of state in order to conduct the risk-limiting audit.

~~((11))~~ (12) "Target contest" means a contest selected by the secretary of state or county auditor for a risk-limiting audit that will determine whether the risk limit has been met.

[Statutory Authority: RCW 29A.04.611. WSR 22-12-035, § 434-261-114, filed 5/25/22, effective 6/25/22. Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-114, filed 12/18/18, effective 1/18/19.]

### OTS-4839.3

AMENDATORY SECTION (Amending WSR 22-12-035, filed 5/25/22, effective 6/25/22)

**WAC 434-261-115 (~~(Post-election audits-)~~) Risk-limiting audits for county races and measures.** (1) If the county auditor chooses to conduct a post-election risk-limiting audit under RCW 29A.60.185, the auditor must use one of the types of audits listed in RCW 29A.60.185.

(2) At least 45 days prior to a primary or election, a county intending to conduct a risk-limiting audit must notify the secretary of state.

(3) After receiving notice from a county of the intent to conduct a risk-limiting audit and no later than 30 days prior to the primary or election, the secretary of state will establish and publish the risk limit(s) that will apply in risk-limiting audits for that election. The secretary of state may establish different risk limits for ballot comparison audits and ballot polling audits, and for audits of federal, state, and county contests. In ballot comparison audits, the

risk limit will not exceed five percent for federal and state contests, and 10 percent for county contests.

(4) The county must maintain an accurate ballot manifest in a form approved by the secretary of state and independent of the voting system.

(5) Counties conducting a ballot comparison audit must verify that the number of individual cast vote records in its cast vote record export equals the aggregate number of ballot cards reflected in the county's ballot manifest at the time the unofficial results are produced.

(6) The county must maintain and document uninterrupted chain-of-custody for each ballot storage container.

(7) If no risk-limiting audit is called for by the secretary of state, the county auditor may choose the date and time of the risk-limiting audit, in coordination with the secretary of state, to begin no later than two days prior to county certification.

Each county conducting a county-level risk-limiting audit must submit as directed by the secretary of state:

(a) The verified ballot manifest; and

(b) Either:

(i) The verified cast vote record export, if conducting a ballot comparison audit; or

(ii) The unofficial results report, showing overvotes, undervotes and the number of valid write-in votes, if conducting a ballot polling audit.

The secretary of state may direct counties to submit additional materials as required to conduct the risk-limiting audit.

(8) If no statewide office appears on the ballot, no later than 5:00 p.m. on the Friday after election day, the county auditor will create a list of potential contests wholly contained within that county using the criteria in (a) through (e) of this subsection, and then randomly select a contest from that list. This will be considered the target contest for the risk-limiting audit. The county auditor will inform the secretary of state which contest has been chosen, and the secretary of state will publish online a complete list of all target contests.

The county auditor will consider at least the following factors in selecting the potential target contests:

(a) Contests that contain two or more positions/candidates;

(b) The geographical scope of the contests;

(c) The number of ballots counted in the contests;

(d) The closeness of the reported tabulation outcome of the contests; and

(e) The ability of the county staff to complete the audit before the canvass deadline.

(9) In addition to the randomly selected contest(s) and in coordination with the secretary of state's office, counties may choose to conduct a risk-limiting audit of a shared district if all counties represented by the district agree to participate.

(10) No later than 5:00 p.m. on the Friday after election day, the secretary of state will hold a public event to establish a random seed for use with the risk-limiting audit tool. The secretary of state will publish online the random seed after it is established.

(11) Copies of cast vote records used during the risk-limiting audit will be destroyed no later than 10 days following county certification.

[Statutory Authority: RCW 29A.04.611. WSR 22-12-035, § 434-261-115, filed 5/25/22, effective 6/25/22. Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-115, filed 12/18/18, effective 1/18/19.]

## OTS-4840.2

AMENDATORY SECTION (Amending WSR 22-12-035, filed 5/25/22, effective 6/25/22)

**WAC 434-261-116 ((Preparing for a risk-limiting audit.)) Risk-limiting audits for state races and measures.** (1) At least 45 days ((before)) prior to a primary or election, ((a county intending to conduct a risk-limiting audit must notify the secretary of state. This notification must include information about the districts and offices to be included in)) the secretary of state may call for a risk-limiting audit of an office that files with the secretary of state and/or a state measure. The secretary of state shall determine the date and time of the risk-limiting audit.

(2) ((After receiving notice from a county of the intent to conduct a risk-limiting audit and)) No later than 30 days ((before)) prior to the primary or election, the secretary of state will establish and publish the risk limit(s) that will apply in risk-limiting audits for that election. The secretary of state may establish different risk limits for ballot comparison audits and ballot polling audits, and for audits of ((statewide)) federal, state, and county contests. In ballot comparison audits, the risk limit will not exceed five percent for ((statewide)) federal and state contests, and 10 percent for county contests.

(3) ((Observers are allowed in the same manner as RCW 29A.60.170 and WAC 434-261-020.

~~(4) The county))~~ Counties involved in the audit must maintain an accurate ballot manifest in a form approved by the secretary of state and independent of the voting system.

(4) For a ballot comparison audit, counties must verify that the number of individual cast vote records in its cast vote record export equals the aggregate number of ballot cards reflected in the county's ballot manifest at the time the unofficial results are produced.

(5) ((The county must secure and maintain in sealed ballot containers all tabulated ballots in the batches and order they are scanned. The county)) Counties must maintain and document uninterrupted chain-of-custody for each ballot storage container.

(6) No later than ((the sixth day after election day, the)) 5:00 p.m. on the day prior to the risk-limiting audit, each county must pause or finish tabulating all ballots cast by voters registered in the county received and ready for counting((. The results produced at this time constitute the unofficial results to be used in the risk-limiting audit. The county may, but is not required to, include in the unofficial results any provisional ballots that have been verified and accepted on or before the sixth day after election day. Immediately

after producing the unofficial results, and to the extent permitted by its voting system, the county must also generate and preserve:

~~(a) An unofficial results report, showing overvotes, undervotes, and the number of valid write-in votes, if conducting a ballot polling audit; or~~

~~(b) A cast vote record export, if conducting a ballot comparison audit.~~

~~(7) Counties conducting a ballot comparison audit must verify that the number of individual cast vote records in its cast vote record export equals the aggregate number of ballot cards reflected in the county's ballot manifest at the time the unofficial results are produced.~~

~~(8) Copies of cast vote records used during the risk-limiting audit will be destroyed no later than 10 days following county certification.~~

~~(9) No later than 5:00 p.m. on the sixth day after election day, each county conducting a ballot comparison audit must submit as directed by the secretary of state:~~

~~(a) Its verified ballot manifest; and~~

~~(b) Its verified cast vote record export.~~

~~The secretary of state may direct counties to submit additional materials as required to conduct the risk-limiting audit.~~

~~(10) No later than 5:00 p.m. on the sixth day after election day, each county conducting a ballot polling audit must submit as directed by the secretary of state:~~

~~(a) Its verified ballot manifest; and~~

~~(b) Its unofficial results report, showing overvotes, undervotes, and the number of valid write-in votes.~~

~~The secretary of state may direct counties to submit additional materials as required to conduct the risk-limiting audit.~~

~~(11) The secretary of state will convene a public meeting on the seventh day after election day to establish a random seed for use with the risk-limiting audit tool's pseudorandom number generator.~~

~~The seed is a number consisting of at least 20 digits, and each digit will be selected in order by sequential rolls of a 10-sided die. The secretary of state will designate individuals to take turns rolling the die. The secretary of state will publish online the random seed after it is established.~~

~~(12))~~, and submit as directed by the secretary of state:

~~(a) The verified ballot manifest; and~~

~~(b) Either:~~

~~(i) The verified cast vote record export, if conducting a ballot comparison audit; or~~

~~(ii) The unofficial results report, showing overvotes, undervotes, and the number of valid write-in votes, if conducting a ballot polling audit.~~

~~The secretary of state may direct counties to submit additional materials as required to conduct the risk-limiting audit.~~

~~(7) No later than 5:00 p.m. on the Friday after election day, the secretary of state will create a list of potential statewide contests using the criteria in (a) through (e) of this subsection, and then select by lot a statewide contest from that list. The secretary of state will also create for each county a list of potential contests wholly contained within that county using the criteria in (a) through (e) of this subsection((7)) and select a contest by lot for each county from that list. These will be considered the target contests for the risk-~~

limiting audit. The secretary of state will publish online a complete list of all target contests.

The secretary of state will consider at least the following factors in selecting the potential target contests:

- (a) Contests that contain two or more positions/candidates;
- (b) The geographical scope of the contests;
- (c) The number of ballots counted in the contests;
- (d) The closeness of the reported tabulation outcome of the contests; and
- (e) The ability of the county staff to complete the audit before the canvass deadline.

~~((13) In addition to the randomly selected contest(s) and in coordination with the secretary of state's office, counties may choose to conduct a risk-limiting audit of a congressional or legislative district if all counties represented by the district agree to participate.~~

~~(14) The risk-limiting audit tool will randomly select the individual ballots to audit. The risk-limiting audit tool will use a pseudorandom number generator with the seed established under this section to identify individual ballots as reflected in the county ballot manifests. No later than the seventh day after election day, the secretary of state will notify each county of the randomly selected ballots that each county must audit.)~~ (8) The county auditor may choose to conduct a risk-limiting audit of the county contest selected in subsection (7) of this section or use another audit method listed in RCW 29A.60.185 to satisfy the audit requirement for their county.

(9) No later than 5:00 p.m. on the Friday after election day, the secretary of state will hold a public event to establish a random seed for use with the risk-limiting audit tool. The secretary of state will publish online the random seed after it is established.

(10) Copies of cast vote records used during the risk-limiting audit will be destroyed no later than 10 days following county certification.

[Statutory Authority: RCW 29A.04.611. WSR 22-12-035, § 434-261-116, filed 5/25/22, effective 6/25/22; WSR 19-19-033, § 434-261-116, filed 9/11/19, effective 10/12/19. Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-116, filed 12/18/18, effective 1/18/19.]

**WSR 23-20-042  
PERMANENT RULES  
OLYMPIC REGION  
CLEAN AIR AGENCY**

[Filed September 27, 2023, 1:28 p.m., effective October 28, 2023]

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

Purpose: This action updates the effective date of the state and federal regulations that have been adopted by the agency.

Citation of Rules Affected by this Order: Amending ORCAA Rules 1.11 and 1.12.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 23-16-034 on July 21, 2023.

Date Adopted: September 13, 2023.

Jeff C. Johnston, Ph.D  
Executive Director

**AMENDATORY SECTION**

**RULE 1.11 FEDERAL REGULATION REFERENCE DATE**

Whenever federal regulations are referenced in ORCAA's rules, the effective date shall be July 1, 202(~~2~~)3.

**AMENDATORY SECTION**

**RULE 1.12 STATE REGULATION REFERENCE DATE**

Whenever state regulations are referenced in ORCAA's rules, the effective date shall be July 1, 202(~~2~~)3.

## WSR 23-20-043

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed September 27, 2023, 1:53 p.m., effective October 28, 2023]

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

Purpose: The agency is amending WAC 182-503-0535 and 182-507-0135 to update the parole period for certain Afghan refugees to qualify for refugee medical assistance. This change is required by federal law.

Citation of Rules Affected by this Order: Amending WAC 182-503-0535 and 182-507-0135.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Section 1501, Consolidated Appropriations Act, 2023; P.L. 117-328, div. M, Title V, § 1501.

Adopted under notice filed as WSR 23-17-134 on August 21, 2023.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: September 27, 2023.

Wendy Barcus  
Rules Coordinator

## OTS-4705.2

AMENDATORY SECTION (Amending WSR 22-20-074, filed 9/30/22, effective 10/31/22)

**WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) Definitions.**

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than 21 years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than 21 years of age. In that case, the child retains qualified alien status even after he or she turns 21 years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d) (5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a) (7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b) (3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted one of the following:

(A) Special immigrant status under INA Section 101 (a) (27);

(B) Special immigrant conditional permanent resident; or

(C) Parole under Section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or Section 1059(a) of the National Defense Authorization Act of 2006.

(xii) An Afghan (~~granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022~~) who, under Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021, is evaluated as a qualified alien until March 31, 2023, or the end of their parole term, whichever is later, when granted parole:

(A) Between July 31, 2021, and September 30, 2023; or

(B) After September 30, 2022, and is:

(I) Their spouse or child; or

(II) The parent or guardian of an unaccompanied minor described under this subsection.

(xiii) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA), ~~((was))~~ is evaluated as a qualified alien until the end of their parole term when:

(A) Granted parole into the United States between February 24, 2022, and September 30, 2023; or

(B) Granted parole into the United States after September 30, 2023, and is:

(I) The spouse or child of a person described in (b) (xiii) (A) of this subsection; or

(II) The parent, legal guardian, or primary caregiver of a person described in (b) (xiii) (A) of this subsection who is determined to be



an unaccompanied child under section 462 (g) (2) of the Homeland Security Act of 2002 or section 412 (d) (2) (B) of the Immigration and Nationality Act.

(xiv) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than 21 years of age.

(xv) A person from the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least 50 percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

(2) **Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(d) A nonqualified alien may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(e) An undocumented person may be eligible for:

(i) Alien medical programs;

(ii) State-only funded apple health for kids; or

(iii) State-only funded apple health for pregnant women.

(3) **The five-year bar.**

(a) A qualified alien meets the five-year bar if he or she:

(i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or

(ii) Entered the U.S. before August 22, 1996, and:

(A) Became a qualified alien before August 22, 1996; or

(B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.

(b) A qualified alien is exempt from the five-year bar if he or she is:

(i) A qualified alien as defined in subsection (1)(b)(vi) through (xv) of this section;

(ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(A) An active-duty member of the U.S. military, other than active-duty for training;

(B) An honorably discharged U.S. veteran;

(C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or

(D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

[Statutory Authority: RCW 41.05.021, 41.05.160, and P.L. 117-128. WSR 22-20-074, § 182-503-0535, filed 9/30/22, effective 10/31/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-08-002, § 182-503-0535, filed 3/23/22, effective 4/23/22; WSR 21-19-029, § 182-503-0535, filed 9/9/21, effective 10/10/21; WSR 15-10-002, § 182-503-0535, filed 4/22/15, effective 5/23/15. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-503-0535, filed 7/29/14, effective 8/29/14.]

## OTS-4706.2

AMENDATORY SECTION (Amending WSR 22-20-074, filed 9/30/22, effective 10/31/22)

**WAC 182-507-0135 Immigration status requirement for refugee medical assistance (RMA).** (1) An individual is eligible for refugee medical assistance (RMA) if the individual provides documentation issued by the United States Citizenship and Immigration Services (USCIS) to show that the individual is:

(a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);

(b) Paroled into the United States as a refugee or asylee under section 212 (d) (5) of the INA;

(c) Granted conditional entry under section 203 (a) (7) of the INA;

(d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 continuing resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d) (5) of the INA;

(g) Certified as a victim of human trafficking by the federal Office of Refugee Resettlement (ORR);

(h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 visa; (~~(e)~~)

(i) Admitted as special immigrant from Iraq or Afghanistan under one of the following:

(i) Special immigrant status under section 101 (a) (27) of the INA;

(ii) Special immigrant conditional permanent resident; or

(iii) Parole under section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or section 1059 (a) of the National Defense Authorization Act of 2006(~~(-)~~);

(j) An Afghan granted humanitarian parole between July 31, 2021, and September 30, (~~(2022)~~) 2023, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021; or

(k) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA), (~~(was)~~) is evaluated as a qualified alien when:

(i) Granted parole into the United States between February 24, 2022, and September 30, 2023; or

(ii) Granted parole into the United States after September 30, 2023, and is:

(A) The spouse or child of a person described in (k) (i) of this subsection; or

(B) The parent, legal guardian, or primary caregiver of a person described in (k) (i) of this subsection who is determined to be an unaccompanied child under section 462 (g) (2) of the Homeland Security Act of 2002 or section 412 (d) (2) (B) of the Immigration and Nationality Act.

(2) A permanent resident alien meets the immigration status requirements for RCA and RMA if the individual was previously in one of the statuses described in subsection (1) of this section.

[Statutory Authority: RCW 41.05.021, 41.05.160, and P.L. 117-128. WSR 22-20-074, § 182-507-0135, filed 9/30/22, effective 10/31/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-08-002, § 182-507-0135, filed 3/23/22, effective 4/23/22. Statutory Authority: RCW 41.05.021 and 2011 1st sp.s. c 15. WSR 12-19-001, § 182-507-0135, filed 9/5/12, effective 10/6/12.]

WSR 23-20-044

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed September 27, 2023, 2:14 p.m., effective October 28, 2023]

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

Purpose: The agency is amending this chapter to include program definitions, as well as rules regarding eligible providers and recovery residence referrals.

Citation of Rules Affected by this Order: New WAC 182-135-0110, 182-135-0120 and 182-135-0130; and amending WAC 182-135-0100 and 182-135-0200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-17-111 on August 17, 2023.

Changes Other than Editing from Proposed to Adopted Version:

| Proposed/Adopted        | WAC Subsection   | Reason  |
|-------------------------|--|---|
| <b>WAC 182-135-0110</b> |  |   |
| Proposed                | <b>WAC 182-135-0110 Definitions.</b> The following definitions apply to this chapter:<br>"Accredited" means an organization approved by the National Alliance of Recovery Residences (NAAR).                                   | The agency revised the definition of "accredited." The revision clarifies that the definition only applies to this chapter, as the agency also uses "accredited" in rules for other programs under Title 182 WAC. |
| Adopted                 | <b>WAC 182-135-0110 Definitions.</b> The following definitions apply to this chapter:<br>"Accredited" for the purposes of this chapter, means an organization approved by the National Alliance of Recovery Residences (NAAR). |   |

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 2, Repealed 0.

Date Adopted: September 27, 2023.

Wendy Barcus  
Rules Coordinator

OTS-4766.3

**Chapter 182-135 WAC  
RECOVERY RESIDENCE ( (REVOLVING LOAN) ) PROGRAM**

AMENDATORY SECTION (Amending WSR 21-17-089, filed 8/13/21, effective 9/13/21)

**WAC 182-135-0100 ((General-)) Purpose and scope.** (1) The health care authority operates programs to support people who are in recovery from substance use disorder ((as described in RCW 41.05.760)). Recovery residences provide housing for people in recovery from substance use disorder. These residences are safe, established homes that meet the standards set by the authority for the accreditation process.

(2) This chapter addresses recovery residence referrals, accreditation, and start-up loans.

[Statutory Authority: RCW 41.05.021, 41.05.160, 41.05.762 and 42 U.S.C. § 300x-25(a). WSR 21-17-089, § 182-135-0100, filed 8/13/21, effective 9/13/21.]

NEW SECTION

**WAC 182-135-0110 Definitions.** The following definitions apply to this chapter:

"**Accredited**" for the purposes of this chapter, means an organization approved by the National Alliance of Recovery Residences (NAAR).

"**Appropriate client**" means a person in recovery from substance use disorder who meets the requirements established by a recovery residence on the registry.

"**Approved recovery residence**" means a home-like environment free from alcohol and illicit drug use with a focus on peer support, assistance with obtaining addiction services, and other recovery services and support that:

(a) Is approved through the health care authority's contracted accreditation process; and

(b) Appears on the registry.

"**Licensed or certified service provider**" means a person licensed, certified, registered, or otherwise authorized by the department of health and the relevant health profession, to provide services under Title 18 RCW.

"**Refer**" means providing an appropriate client with option-based information pertaining to potential recovery residences and does not include client placement.

"**Registry**" means a list of recovery residences that are accredited and agency-approved, as described in RCW 41.05.760.

[]

NEW SECTION

**WAC 182-135-0120 Recovery residence referrals.** A licensed or certified service provider may refer an appropriate client only to a recovery residence that is included in the registry, except as provided in WAC 182-135-0130.

[]

NEW SECTION

**WAC 182-135-0130 Approved recovery residences—Exception.** If an approved recovery residence is not located in an appropriate client's desired county, a licensed or certified service provider may refer the client to another suitable placement or service.

[]

AMENDATORY SECTION (Amending WSR 21-17-089, filed 8/13/21, effective 9/13/21)

**WAC 182-135-0200 Operating fund.** (1) **Purpose.** The health care authority has established the recovery residence operating revolving loan to maintain an ongoing revolving fund, as authorized by 42 U.S.C. Sec. 300x-25(a) and as described in RCW 41.05.762.

(2) **Fund.** The fund identified in subsection (1) of this section lends money to pay for the operating start-up costs associated with recovery residence programs. These costs include, but are not limited to:

- (a) One-time rent or mortgage payments;
- (b) Utility security deposits;
- (c) Salaries for on-site staff;
- (d) Minimal maintenance costs; and
- (e) Furnishings purchased for recovery residences.

(3) **Maximum loan amount.** A loan from the fund is for an amount of up to four thousand dollars.

(4) **Eligible recipients.** To be an eligible recovery residence recipient, an entity must:

- (a) Be on the (~~recovery residence~~) registry published on the authority's website or be actively seeking certification and registration under RCW 41.05.760;
- (b) Be a Washington state nonprofit organization;
- (c) Operate a recovery residence for a group of at least six people;
- (d) Prohibit the use of alcohol, marijuana, or any illegal drug in the residence;
- (e) Have a policy in place to address any use of alcohol, marijuana, or an illegal drug by residents; and
- (f) Allow the use of any prescribed medication for physical health, mental health, and substance use disorders.

(5) **Requirements for residents.** Residents must:

- (a) Pay for the cost of recovery residence housing, including any rent or fees; and
- (b) Through a majority vote, establish policies governing residence in the housing, including how residence applications are approved.

(6) **Application requirement.** To be an applicant, an entity that meets the requirements of subsection (4) of this section must apply for a recovery residence operating loan using the application process described on the authority's website.

(7) **Loan repayments.**

(a) Each recovery residence loan made under this section must be repaid by the residents of the recovery residence that received the

funds. The loan must be paid in full within two years from the date the loan was made.

(b) Residents must repay the loan through monthly installments set by the authority.

(8) **Assessment of penalties.** The authority may assess a reasonable penalty for each failure to pay the monthly installment described in subsection (7) of this section by the date specified in the loan agreement between the authority and the recovery residence operator involved in the agreement.

(9) **Appeals.**

(a) An applicant or recipient may appeal an adverse decision notice and request an administrative hearing under chapter 182-526 WAC by following the instructions included in the notice.

(i) An applicant may appeal a denial of a loan request as described in (a) of this subsection.

(ii) A recipient may appeal the following actions including, but not limited to:

(A) Late payment fees;

(B) Default due to nonpayment; or

(C) Default due to losing Washington alliance for quality recovery residences accreditation.

(b) An applicant or recipient of this program has (~~ninety~~) 90 days from the receipt of the adverse decision to appeal and must follow the process contained in the notice.

[Statutory Authority: RCW 41.05.021, 41.05.160, 41.05.762 and 42 U.S.C. § 300x-25(a). WSR 21-17-089, § 182-135-0200, filed 8/13/21, effective 9/13/21.]

## WSR 23-20-048

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed September 28, 2023, 10:10 a.m., effective October 29, 2023]

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

Purpose: Health care authority is amending these rules to update terminology, revise rates approved by the legislature, remove outdated information, and make other general policy changes.

Citation of Rules Affected by this Order: Amending WAC 182-550-2900, 182-550-3800, 182-550-3830, 182-550-4500, 182-550-7200, 182-550-7550, 182-550-8000, and 182-550-8100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-17-014 on August 4, 2023.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: September 27, 2023.

Wendy Barcus  
Rules Coordinator

**OTS-4728.2**

AMENDATORY SECTION (Amending WSR 21-18-059, filed 8/26/21, effective 9/26/21)

**WAC 182-550-2900 Payment limits—Inpatient hospital services.**

(1) **Eligibility for payment.** To be eligible for payment for covered inpatient hospital services, a hospital must:

(a) Have a core-provider agreement with the medicaid agency; and  
(b) Be an in-state hospital, a bordering city hospital, a critical border hospital, or a distinct unit of that hospital, as defined in WAC 182-550-1050; or

(c) Be an out-of-state hospital that meets the conditions in WAC 182-550-6700.

(2) **Exclusions.** The agency does not pay for any of the following:

(a) Inpatient care or services, or both, provided in a hospital or distinct unit to a client when a managed care organization (MCO) plan is contracted to cover those services.

(b) Care or services, or both, provided in a hospital or distinct unit provided to a client enrolled in the hospice program, unless the care or services are completely unrelated to the terminal illness that qualifies the client for the hospice benefit.



(c) Ancillary services provided in a hospital or distinct unit unless explicitly spelled out in this chapter.

(d) Additional days of hospitalization on a non-DRG claim when:

(i) Those days exceed the number of days established by the agency or the agency's designee under WAC 182-550-2600, as the approved length of stay (LOS); and

(ii) The hospital or distinct unit has not received prior authorization for an extended LOS from the agency or the agency's designee as specified in WAC 182-550-4300(4). The agency may perform a prospective, concurrent, or retrospective utilization review as described in WAC 182-550-1700, to evaluate an extended LOS. An agency designee may also perform those utilization reviews to evaluate an extended LOS.

(e) Inpatient hospital services when the agency determines that the client's medical record fails to support the medical necessity and inpatient level of care for the inpatient admission. The agency may perform a retrospective utilization review as described in WAC 182-550-1700, to evaluate if the services are medically necessary and are provided at the appropriate level of care.

(f) Two separate inpatient hospitalizations if a client is readmitted to the same or affiliated hospital or distinct unit within (~~fourteen~~) 14 calendar days of discharge and the agency determines that one inpatient hospitalization does not qualify for a separate payment. See WAC 182-550-3000 (7)(f) for the agency's review of (~~fourteen~~) 14-day readmissions.

(g) Inpatient claims for (~~fourteen~~) 14-day readmissions considered to be provider preventable as described in WAC 182-550-2950.

(h) A client's day(s) of absence from the hospital or distinct unit.

(i) A nonemergency transfer of a client. See WAC 182-550-3600 for hospital transfers.

(j) Charges related to a provider preventable condition (PPC), hospital acquired condition (HAC), serious reportable event (SRE), or a condition not present on admission (POA). See WAC 182-502-0022.

(k) An early elective delivery as defined in WAC 182-500-0030. The agency may pay for a delivery before (~~thirty-nine~~) 39 weeks gestation, including induction and cesarean section, if medically necessary under WAC 182-533-0400(20).

(3) **Interim billed inpatient hospital claims.** This section defines when the agency considers payment for an interim billed inpatient hospital claim.

(a) When the agency is the primary payer, each interim billed nonpsychiatric claim must:

(i) Be submitted in (~~sixty~~) 60-calendar-day intervals, unless the client is discharged before the next (~~sixty~~) 60-calendar-day interval.

(ii) Document the entire date span between the client's date of admission and the current date of services billed, and include the following for that date span:

(A) All inpatient hospital services provided; and

(B) All applicable diagnosis codes and procedure codes.

(iii) Be submitted as an adjustment to the previous interim billed hospital claim.

(b) When the agency is not the primary payer:

(i) The agency pays an interim billed nonpsychiatric claim when the criteria in (a) of this subsection are met; and

(ii) Either of the following:

(A) Sixty calendar days have passed from the date the agency became the primary payer; or

(B) A client is eligible for both medicare and medicaid and has exhausted the medicare lifetime reserve days for inpatient hospital care.

(c) For psychiatric claims, (a) (i) and (b) (i) of this subsection do not apply.

(i) When the agency is the primary payer, each billed psychiatric claim may be submitted in 60-calendar-day intervals unless the client is discharged before the next 60-calendar-day interval.

(ii) If a claim is submitted under (c) (i) of this subsection, the claim must document the current dates of services billed and include the following for that date span:

(A) All inpatient hospital services provided; and

(B) All applicable diagnosis codes and procedure codes.

(d) When the agency is not the primary payer, the agency pays a billed psychiatric claim when:

(i) The criteria in (c) (i) of this subsection are met; and

(ii) Either of the following occur:

(A) Sixty calendar days have passed from the date the agency became the primary payer; or

(B) A client is eligible for both medicare and medicaid and has exhausted the medicare lifetime reserve days for inpatient hospital care.

(4) **Admission period for claims.** The agency considers for payment a hospital claim submitted for a client's continuous inpatient hospital admission of (~~sixty~~) 60 calendar days or less upon the client's formal release from the hospital or distinct unit.

(5) **Billing for hospital claims.** To be eligible for payment, a hospital or distinct unit must bill the agency using an inpatient hospital claim:

(a) Under the current national uniform billing data element specifications:

(i) Developed by the National Uniform Billing Committee (NUBC);

(ii) Approved or modified, or both, by the Washington state payer group or the agency; and

(iii) In effect on the date of the client's admission.

(b) Under the current published international classification of diseases clinical modification coding guidelines;

(c) Subject to the rules in this section and other applicable rules;

(d) Under the agency's published billing instructions and other documents; and

(e) With the date span that covers the client's entire hospitalization. See subsection (3) of this section for when the agency considers and pays an initial interim billed hospital claim and any subsequent interim billed hospital claims;

(f) That requires an adjustment due to, but not limited to, charges that were not billed on the original paid claim (e.g., late charges), through submission of an adjusted hospital claim. Each adjustment to a paid hospital claim must provide complete documentation for the entire date span between the client's admission date and discharge date, and include the following for that date span:

(i) All inpatient hospital services provided; and

(ii) All applicable diagnosis codes and procedure codes; and

(g) With the appropriate NUBC revenue code specific to the service or treatment provided to the client.

(6) **Multiple hospital rates.** When a hospital charges multiple rates for an accommodation room and board revenue code, the agency pays the hospital's lowest room and board rate for that revenue code. The agency may request the hospital's charge master. Room charges must not exceed the hospital's usual and customary charges to the general public, as required by 42 C.F.R. Sec. 447.271.

(7) **Administrative day rate.** The agency allows hospitals an administrative day rate for those days of a hospital stay in which a client no longer meets criteria for the acute inpatient level of care, as provided in WAC 182-550-4550.

(8) **Payment for observation services.** The agency pays for observation services according to WAC 182-550-6000, 182-550-7200, and other applicable rules.

(9) **Required adjustments.** The agency determines its actual payment for an inpatient hospital admission by making any required adjustments from the calculations of the allowed covered charges. Adjustments include:

(a) Client participation (e.g., spenddown);

(b) Any third-party liability amount, including medicare part A and part B; and

(c) Any other adjustments as determined by the agency.

(10) **Clients under state-administered programs.** The agency pays hospitals less for services provided to clients eligible under state-administered programs, as provided in WAC 182-550-4800.

(11) **Final charges.** All hospital providers must present final charges to the agency according to WAC 182-502-0150.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-18-059, § 182-550-2900, filed 8/26/21, effective 9/26/21; WSR 19-18-026, § 182-550-2900, filed 8/28/19, effective 9/28/19; WSR 19-13-006, § 182-550-2900, filed 6/6/19, effective 7/7/19; WSR 18-11-074, § 182-550-2900, filed 5/16/18, effective 7/1/18; WSR 15-24-021, § 182-550-2900, filed 11/19/15, effective 1/1/16. Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-12-047, § 182-550-2900, filed 5/29/14, effective 7/1/14. WSR 11-14-075, recodified as § 182-550-2900, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.09.500. WSR 07-14-055, § 388-550-2900, filed 6/28/07, effective 8/1/07; WSR 04-20-058, § 388-550-2900, filed 10/1/04, effective 11/1/04. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. WSR 01-16-142, § 388-550-2900, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.09.090, 42 U.S.C. 1395x(v) and 1396r-4, 42 C.F.R. 447.271, 11303 and 2652. WSR 99-14-027, § 388-550-2900, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 42 U.S.C. 1395 x(v), 42 C.F.R. 447.271, 447.11303, and 447.2652. WSR 99-06-046, § 388-550-2900, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-2900, filed 12/18/97, effective 1/18/98.]

AMENDATORY SECTION (Amending WSR 22-03-008, filed 1/6/22, effective 2/6/22)

**WAC 182-550-3800 Rebasing.** The medicaid agency redesigns (rebases) the medicaid inpatient payment system as needed. The base

inpatient conversion factor and per diem rates are only updated during a detailed rebasing process, or as directed by the state legislature. Inpatient payment system factors such as the ratio of costs-to-charges (RCC), weighted costs-to-charges (WCC), and administrative day rate are rebased on an annual basis. As part of the rebasing, the agency does all of the following:

(1) Gathers data. The agency uses the following data resources considered to be the most complete and available at the time:

(a) One year of (~~fee-for-service (FFS)~~) paid claim data from the agency's medicaid management information system (MMIS). The agency excludes:

(i) Claims related to state programs and paid at the Title XIX reduced rates from the claim data; and

(ii) Critical access hospital claims paid per WAC 182-550-2598; and

(b) The hospital's most current medicare cost report data from the health care cost report information system (HCRIS) maintained by the Centers for Medicare and Medicaid Services (CMS). If the hospital's medicare cost report from HCRIS is not available, the agency uses the medicare cost report provided by the hospital.

(c) FFS and managed care encounter data.

(2) Estimates costs. The agency uses one of two methods to estimate costs. The agency may perform an aggregate cost determination by multiplying the ratio of costs-to-charges (RCC) by the total billed charges, or the agency may use the following detailed costing method:

(a) The agency identifies routine and ancillary cost for operating capital, and direct medical education cost components using different worksheets from the hospital's medicare cost report;

(b) The agency estimates costs for each claim in the dataset as follows:

(i) Accommodation services. The agency multiplies the average hospital cost per day reported in the medicare cost report data for each type of accommodation service (e.g., adult and pediatric, intensive care unit, psychiatric, nursery) by the number of days reported at the claim line level by type of service; and

(ii) Ancillary services. The agency multiplies the RCC reported for each ancillary type of services (e.g., operating room, recovery room, radiology, laboratory, pharmacy, or clinic) by the allowed charges reported at the claim line level by type of service; and

(c) The agency uses the following standard cost components for accommodation and ancillary services for estimating costs of claims:

(i) Routine cost components:

(A) Routine care;

(B) Intensive care;

(C) Intensive care-psychiatric;

(D) Coronary care;

(E) Nursery;

(F) Neonatal ICU;

(G) Alcohol/substance abuse;

(H) Psychiatric;

(I) Oncology; and

(J) Rehabilitation.

(ii) Ancillary cost components:

(A) Operating room;

(B) Recovery room;

(C) Delivery/labor room;

(D) Anesthesiology;

- (E) Radio, diagnostic;
- (F) Radio, therapeutic;
- (G) Radioisotope;
- (H) Laboratory;
- (I) Blood administration;
- (J) Intravenous therapy;
- (K) Respiratory therapy;
- (L) Physical therapy;
- (M) Occupational therapy;
- (N) Speech pathology;
- (O) Electrocardiography;
- (P) Electroencephalography;
- (Q) Medical supplies;
- (R) Drugs;
- (S) Renal dialysis/home dialysis;
- (T) Ancillary oncology;
- (U) Cardiology;
- (V) Ambulatory surgery;
- (W) CT scan/MRI;
- (X) Clinic;
- (Y) Emergency;
- (Z) Ultrasound;
- (AA) NICU transportation;
- (BB) GI laboratory;
- (CC) Miscellaneous; and
- (DD) Observation beds.

(3) Specifies resource use with relative weights. The agency uses national relative weights designed by 3M<sup>TM</sup> Corporation as part of its all-patient refined-diagnostic related group (APR-DRG) payment system. The agency periodically reviews and determines the most appropriate APR-DRG grouper version to use.

(4) Calculates base payment factors. The agency calculates the average, or base, DRG conversion factor and per diem rates. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter. The agency models the rebased system to be budget neutral on a prospective basis, including global adjustments to the budget target determined by the agency. The agency ensures that base DRG conversion factors and per diem rates are sufficient to support economy, efficiency, and access to services for medicaid recipients. The agency will publish base rate factors on its website.

(5) To maintain budget neutrality, the agency makes global adjustments as needed.

(a) Claims paid under the DRG, rehab per diem, and withdrawal management per diem payment methods were reduced to support an estimated (~~three million five hundred thousand dollar~~) \$3,500,000 increase in psychiatric payments to acute hospitals.

(b) Claims for acute hospitals paid under the psychiatric per diem method were increased by a factor to inflate estimated system payments by (~~three million five hundred thousand dollars~~) \$3,500,000.

(c) Effective for dates of admission on and after October 1, 2017, the agency increased psychiatric per diem rates as directed by the legislature. The increase applies to any hospital with (~~two hundred~~) 200 or more psychiatric bed days.

(i) The agency prioritized the increase for hospitals not currently paid based on provider-specific costs using a similar methodology to set rates for existing inpatient facilities utilizing cost report information for hospital fiscal years ending in 2016.

(ii) The distribution of funds for each fiscal year is as follows:

(A) Free-standing psychiatric hospitals receive 68.15 percent of the statewide average cost per day.

(B) All other hospitals receive the greater of 78.41 percent of their provider-specific cost, or their current medicaid psychiatric per diem rate.

(iii) The agency set the increased rates to assure that the distribution of funds does not exceed the amounts provided by the legislature.

(iv) The agency conducts annual reviews for updated cost information to determine whether new and existing providers meet the (~~two~~ hundred) 200 or more bed criteria.

(v) The agency will apply the same cost percentage criteria for future rebasing of the psychiatric per diem rates.

(6) Effective July 1, 2020, the agency sets psychiatric per diem rates specific to long-term civil commitments separately from other psychiatric per diem rates.

(a) In order to qualify for a provider-specific long-term civil commitment psychiatric per diem, the provider must be contracted with the agency to provide long-term civil commitment beds.

(b) The agency sets the provider-specific rate at the time of contracting.

(c) The agency sets the rate for acute care hospitals with distinct psychiatric units as follows:

(i) Hospitals that have a 12-month medicare cost report with at least 200 psychiatric bed days on file with the agency receive a long-term psychiatric per diem rate equivalent to the costs documented on the medicare cost report.

(ii) Hospitals that do not have a 12-month cost report with at least 200 bed days on file with the agency receive a long-term psychiatric per diem rate equivalent to the greater of the average of all acute care hospitals providing long-term psychiatric services in-state, provider-specific long-term psychiatric per diem rates, or the current short-term psychiatric per diem. The long-term psychiatric rate is applied to any hospital that accepts patients committed to a psychiatric facility for a period of 90 days or greater. The agency sets the rate so as not to exceed the amount provided by the legislature.

(d) The agency sets the rates for free-standing psychiatric hospitals as follows:

(i) Hospitals without an existing long-term rate receive a per diem rate equivalent to either the greater of the short-term rate or the state-wide average long-term psychiatric rate for free-standing psychiatric hospitals.

(ii) Hospitals that have an existing long-term per diem will continue to receive the \$940 established for July 1, 2021. In addition to the \$940 per diem rate, the hospital may submit supplemental cost data with the cost report to the agency for consideration. If approved, the agency will make appropriate adjustments to the medicaid inpatient psychiatric per diem payment rate of the hospital. Adjustment of costs may include any of the following:

(A) Costs associated with professional services and fees not accounted for in the hospital's medicare cost report or reimbursed separately;

(B) Costs associated with the hospital providing the long-term psychiatric patient access to involuntary treatment court services that are not reimbursed separately;

(C) Other costs associated with caring for long-term psychiatric patients that are not reimbursed separately.

(iii) The agency sets the rate so as to not exceed the amount provided by the legislature.

(7) Determines provider specific adjustments. The following adjustments are applied to the base factor or rate established in subsection (4) of this section:

(a) Wage index adjustments reflect labor costs in the cost-based statistical area (CBSA) where a hospital is located.

(i) The agency determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(ii) The amount in (a)(i) of this subsection is multiplied by the most recent wage index information published by CMS at the time the rates are set; then

(iii) The agency adds the nonlabor portion of the base rate to the amount in (a)(ii) of this subsection to produce a hospital-specific wage adjusted factor.

(b) Indirect medical education factors are applied to the hospital-specific base factor or rate. The agency uses the indirect medical education factor established by medicare on the most currently available medicare cost report that exists at the time the rates are set; and

(c) Direct medical education amounts are applied to the hospital-specific base factor or rate. The agency determines a percentage of direct medical education costs to overall costs using the most currently available medicare cost report that exists at the time the rates are set.

(8) The final, hospital-specific rate is calculated using the base rate established in subsection (4) of this section along with any applicable adjustments in subsections (6) and (7) of this section.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2021 c 334 §§ 211(46) and 215(66). WSR 22-03-008, § 182-550-3800, filed 1/6/22, effective 2/6/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 357 § 215 (24)(b). WSR 21-02-087, § 182-550-3800, filed 1/6/21, effective 2/6/21. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-12-043, § 182-550-3800, filed 5/30/18, effective 7/1/18. Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-12-047, § 182-550-3800, filed 5/29/14, effective 7/1/14. WSR 11-14-075, recodified as § 182-550-3800, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500 and 2005 c 518. WSR 07-14-051, § 388-550-3800, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 05-06-044, § 388-550-3800, filed 2/25/05, effective 7/1/05. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. WSR 01-16-142, § 388-550-3800, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-3800, filed 12/18/97, effective 1/18/98.]

AMENDATORY SECTION (Amending WSR 23-01-013, filed 12/8/22, effective 1/8/23)

**WAC 182-550-3830 Adjustments to inpatient rates.** (1) The medic-aid agency updates all of the following components of a hospital's specific diagnosis-related group (DRG) factor and per diem rates at rebase:

- (a) Wage index adjustment;
- (b) Direct graduate medical education (DGME); and
- (c) Indirect medical education (IME).

(2) Effective January 1, 2015, the agency updates the sole community hospital adjustment.

(3) The agency does not update the statewide average DRG factor between rebasing periods, except:

- (a) To satisfy the budget neutrality conditions in WAC 182-550-3850; and
- (b) When directed by the legislature.

(4) The agency updates the wage index to reflect current labor costs in the core-based statistical area (CBSA) where a hospital is located. The agency:

(a) Determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(b) Multiplies the amount in (a) of this subsection by the most recent wage index information published by the Centers for Medicare and Medicaid Services (CMS) when the rates are set; then

(c) Adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(5) DGME. The agency obtains DGME information from the hospital's most recently filed medicare cost report that is available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of 12 consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) If a hospital has not submitted a CMS medicare cost report in more than 18 months from the end of the hospital's cost reporting period, the agency considers the current DGME costs to be zero.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(6) IME. The agency sets the IME adjustment equal to the "IME adjustment factor for Operating PPS" available in the most recent CMS final rule impact file on CMS's website as of May 1st of the rate-setting year.

(7) Sole community hospitals.

(a) For sole community hospitals' rate enhancements, the agency multiplies an in-state hospital's specific conversion factor and per diem rates by a multiplier if the hospital meets all the following criteria per RCW 74.09.5225:

(i) Be certified by CMS as a sole community hospital as of January 1, 2013;

(ii) Have a level III adult trauma service designation from the Washington state department of health (DOH) as of January 1, 2014;

(iii) Have less than 150 acute care licensed beds in fiscal year 2011;



(iv) Be owned and operated by the state or a political subdivision; and

(v) Not participate in the certified public expenditures (CPE) payment program defined in WAC 182-550-4650.

(b) As of July 1, 2021, through June 30, 2023, an additional increase is applied for hospitals that accept single bed certifications per RCW 71.05.745.

| Enhancement Multiplier by Year                              |                         |            |            |            |            |            |
|---|-------------------------|------------|------------|------------|------------|------------|
| Provider Category   | Effective For the Dates |            |            |            |            |            |
|   | 07/01/2015              | 07/01/2020 | 07/01/2021 | 07/01/2022 | 07/01/2023 | 01/01/2024 |
|   | 06/30/2020              | 06/30/2021 | 06/30/2022 | 06/30/2023 | 12/31/2023 | 06/30/2024 |
| Sole community hospital                                     | 1.25                    | 1.5        | N/A        | 1.25       | 1.25       | 1.5        |
| Sole community hospital accepting single bed certifications | N/A                     | N/A        | 1.5        | 1.5        | N/A        | N/A        |

[Statutory Authority: RCW 41.05.021, 41.05.160, and 2022 c 297 § 211(52). WSR 23-01-013, § 182-550-3830, filed 12/8/22, effective 1/8/23. Statutory Authority: RCW 41.05.021, 41.05.160 and 2021 c 334 §§ 211(46) and 215(66). WSR 22-03-008, § 182-550-3830, filed 1/6/22, effective 2/6/22. Statutory Authority: RCW 41.05.021, 41.05.160, and 2019 c 415 § 211(14). WSR 20-01-075, § 182-550-3830, filed 12/11/19, effective 1/11/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-09-022, § 182-550-3830, filed 4/11/18, effective 5/12/18; WSR 15-10-014, § 182-550-3830, filed 4/23/15, effective 5/24/15; WSR 14-22-003, § 182-550-3830, filed 10/22/14, effective 11/22/14.]

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

**WAC 182-550-4500 Payment method—Ratio of costs-to-charges (RCC).** (1) The medicaid agency pays hospitals using the ratio of costs-to-charges (RCC) payment method for services exempt from the following payment methods:

- (a) Ambulatory payment classification (APC);
- (b) Diagnosis-related group (DRG);
- (c) Enhanced ambulatory patient group (EAPG);
- (d) Per case;
- (e) Per diem; and
- (f) Maximum allowable fee schedule.

(2) The agency:

- (a) Determines the payment for:
  - (i) Inpatient claims by multiplying the hospital's inpatient RCC by the allowed covered charges for medically necessary services; and
  - (ii) Outpatient claims by multiplying the hospital's outpatient RCC by the allowed covered charges for medically necessary services.

(b) Deducts from the amount derived in (a) of this subsection:

- (i) All applicable adjustments for client responsibility;
- (ii) Any third-party liability;
- (iii) Medicare payments; and
- (iv) Any other adjustments as determined by the agency.

(c) Limits the RCC payment to the hospital's usual and customary charges for services allowed by the agency.

(3) The agency uses the RCC payment method to calculate the following:

(a) Payment for the following services:

(i) Organ transplant services (see WAC 182-550-4400 (4) (h));

(ii) Hospital services provided at a long-term acute care (LTAC) facility not covered under the LTAC per diem rate (see WAC 182-550-2596); and

(iii) Any other hospital service identified by the agency as being paid by the RCC payment method; and

(b) Costs for the following:

(i) High outlier qualifying claims (see WAC 182-550-3700); and

(ii) Hospital services provided in hospitals eligible for certified public expenditure (CPE) payments under WAC 182-550-4650(5).

(4) When directed by the legislature to achieve targeted expenditure levels, as described in WAC 182-550-3000(8), the agency may apply an inpatient adjustment factor to the inpatient RCC payments made for the services in subsection (3) of this section.

(5) This section explains how the agency calculates each in-state and critical border hospital's RCC. For noncritical border city hospitals, see WAC 182-550-3900. The agency:

(a) Divides adjusted costs by adjusted patient charges. The agency determines the allowable costs and associated charges.

(b) Excludes agency nonallowed costs and nonallowed charges, such as costs and charges attributable to a change in ownership.

(c) Bases the RCC calculation on data from the hospital's annual medicare cost report (Form 2552) and applicable patient revenue reconciliation data provided by the hospital. The medicare cost report must cover a period of ~~((twelve))~~ 12 consecutive months in its medicare cost report year.

(d) Updates a hospital's inpatient RCC annually after the hospital sends its hospital fiscal year medicare cost report to the centers for medicare and medicaid services (CMS) and the agency. If medicare grants a delay in submission of the CMS medicare cost report to the medicare fiscal intermediary, the agency may determine an alternate method to adjust the RCC.

(e) Limits a noncritical access hospital's RCC to one point zero (1.0).

(6) For a hospital formed as a result of a merger (see WAC 182-550-4200), the agency combines the previous hospital's medicare cost reports and follows the process in subsection (5) of this section. The agency does not use partial year cost reports for this purpose.

(7) For newly constructed hospitals and hospitals not otherwise addressed in this chapter, the agency annually calculates a weighted average in-state RCC by dividing the sum of agency-determined costs for all in-state hospitals with RCCs by the sum of agency-determined charges for all hospitals with RCCs.

~~((8) The agency calculates each hospital's outpatient RCC annually. The agency calculates:~~

~~(a) A hospital's outpatient RCC by multiplying the hospital's inpatient RCC by the outpatient adjustment factor (OAF); and~~

~~(b) The weighted average in-state hospital outpatient RCC by multiplying the in-state weighted average inpatient RCC by the OAF.~~

~~(9) The OAF:~~

~~(a) Is the ratio between the outpatient and inpatient RCC payments;~~

~~(b) Is updated annually to adjust for cost and charge inflation;~~  
 and  
~~(c) Must not exceed one point zero (1.0).)~~

[Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-12-047, § 182-550-4500, filed 5/29/14, effective 7/1/14. WSR 11-14-075, recodified as § 182-550-4500, 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, § 388-550-4500, filed 5/28/09, effective 7/1/09. Statutory Authority: RCW 74.08.090, 74.09.500 and 2005 c 518. WSR 07-14-051, § 388-550-4500, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. WSR 03-13-055, § 388-550-4500, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. WSR 01-16-142, § 388-550-4500, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, 447.11303, and 447.2652. WSR 99-06-046, § 388-550-4500, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-4500, filed 12/18/97, effective 1/18/98.]

AMENDATORY SECTION (Amending WSR 14-14-049, filed 6/25/14, effective 7/26/14)

**WAC 182-550-7200 OPPS—Billing requirements and payment method.**

This section describes hospital provider billing requirements and the payment methods the medicaid agency uses to pay for covered outpatient hospital services provided by hospitals included in the outpatient prospective payment system (OPPS).

(1) Providers must bill according to national correct coding initiative (NCCI) standards maintained by the Centers for Medicare and Medicaid Services (CMS).

**ENHANCED AMBULATORY PATIENT GROUP (EAPG) METHOD**

(2) The agency uses the enhanced ambulatory patient group (EAPG) method as the primary payment method for OPPS. Examples of services paid by the EAPG method include:

- (a) Surgeries;
- (b) Significant procedures;
- (c) Observation services;
- (d) Medical visits;
- (e) Dental procedures; and
- (f) Ancillary services.

**OPPS MAXIMUM ALLOWABLE FEE SCHEDULE**

(3) The agency pays using the outpatient fee schedule for:

- (a) Covered services exempted from the EAPG payment method due to agency policy;
- (b) Covered services for which there are no established relative weights, such as:
  - (i) Durable medical equipment procedures grouped to EAPG type 7;

and

- (ii) Physical therapy procedures grouped to EAPG type 21;
- (c) Corneal tissue acquisition; and
- (d) Other services as identified by the agency and posted on the agency's website.

~~(( HOSPITAL-OUTPATIENT RATIO OF COSTS-TO-CHARGES (RCC)~~

~~(4) The agency uses the hospital outpatient ratio of costs to charges (RCC) in WAC 182-550-3900 and 182-550-4500 to pay for the services listed in subsection (3) of this section for which the agency has not established a maximum allowable fee.)~~

[Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-14-049, § 182-550-7200, filed 6/25/14, effective 7/26/14. WSR 11-14-075, recodified as § 182-550-7200, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.09.500, and 74.09.530. WSR 10-08-023, § 388-550-7200, filed 3/30/10, effective 4/30/10. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 07-13-100, § 388-550-7200, filed 6/20/07, effective 8/1/07; WSR 04-20-061, § 388-550-7200, filed 10/1/04, effective 11/1/04.]

AMENDATORY SECTION (Amending WSR 23-01-014, filed 12/8/22, effective 1/8/23)

**WAC 182-550-7550 OPPTS payment enhancements.** (1) Pediatric adjustment.

(a) The medicaid agency establishes a policy adjustor to be applied to all enhanced ambulatory patient group (EAPG) services for clients under age 18 years.

(b) Effective July 1, 2014, this adjustor equals one point thirty-five (1.35).

(2) Chemotherapy and combined chemotherapy/pharmacotherapy adjustment.

(a) The agency establishes a policy adjustor to be applied to services grouped as chemotherapy drugs or combined chemotherapy and pharmacotherapy drugs.

(b) Effective July 1, 2014, this adjustor equals one point one (1.1).

(3) Sole community hospitals.

(a) For sole community hospital's rate enhancements, the agency multiplies the in-state hospital's specific EAPG conversion factor by a multiplier if the hospital meets all of the following criteria per RCW 74.09.5225:

(i) Be certified by CMS as a sole community hospital as of January 1, 2013;

(ii) Have a level III adult trauma service designation from the Washington state department of health (DOH) as of January 1, 2014;

(iii) Have less than 150 acute care licensed beds in fiscal year 2011; and

(iv) Be owned and operated by the state or a political subdivisions.

(b) As of July 1, 2021, through June 30, 2023, an additional increase may be applied for hospitals that accept single bed certifications per RCW 71.05.745.

| Enhancement Multiplier by Year                              |                         |            |            |            |            |            |
|---|-------------------------|------------|------------|------------|------------|------------|
| Provider Category   | Effective For the Dates |            |            |            |            |            |
|   | 07/01/2015              | 07/01/2020 | 07/01/2021 | 07/01/2022 | 07/01/2023 | 01/01/2024 |
|   | 06/30/2020              | 06/30/2021 | 06/30/2022 | 06/30/2023 | 12/31/2023 | 06/30/2024 |
| Sole community hospital                                     | 1.25                    | 1.5        | N/A        | 1.25       | 1.25       | 1.50       |
| Sole community hospital accepting single bed certifications | N/A                     | N/A        | 1.5        | 1.5        | N/A        | N/A        |

[Statutory Authority: RCW 41.05.021, 41.05.160, and 2022 c 297 § 211(52). WSR 23-01-014, § 182-550-7550, filed 12/8/22, effective 1/8/23. Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-14-049, § 182-550-7550, filed 6/25/14, effective 7/26/14.]

AMENDATORY SECTION (Amending WSR 20-14-054, filed 6/26/20, effective 7/27/20)

**WAC 182-550-8000 Hospital safety net ((assessment (HSNA))) program (HSNP)—Purpose.** Chapter 74.60 RCW establishes the hospital safety net ((assessment (HSNA))) program (HSNP). The ((HSNA program imposes an assessment on certain Washington state hospitals)) HSNP provides funding that is used solely to increase funding from all other sources and support additional payments to hospitals ((for)) as authorized ((medicaid services)) by chapter 74.60 RCW. The medicaid agency has authority to issue rules associated with the ((HSNA program)) HSNP under RCW 41.05.021 (1) (m) (iv) and 74.60.050(1).

[Statutory Authority: RCW 41.05.021, 41.05.160, and 74.60.050. WSR 20-14-054, § 182-550-8000, filed 6/26/20, effective 7/27/20.]

AMENDATORY SECTION (Amending WSR 20-14-054, filed 6/26/20, effective 7/27/20)

**WAC 182-550-8100 Assessment notices—Process and timelines.** (1) **Notification.** The medicaid agency sends hospital safety net ((assessment (HSNA))) program (HSNP) assessment notices on or about ((thirty)) 30 calendar days prior to the end of each quarter as required by RCW 74.60.030 (1) (a).  
 (2) **Payment due date.** Each hospital must pay its assessment in full by the due date listed in the ((HSNA)) HSNP notice.  
 (3) **First past-due notification.** If a hospital does not pay its ((HSNA)) HSNP assessment in full by the due date, the agency sends the hospital a past-due notice. The past-due notice informs the hospital of the actions the agency may take if the hospital's assessment becomes ((ninety)) 60 calendar days past due.  
 (4) **Final past-due notification.** If a hospital does not pay its assessment in full within ((ninety)) 60 calendar days of its due date stated in the ((HSNA)) HSNP notice, the agency sends the hospital a final past-due notice.

(a) The final past-due notice informs the hospital of the actions the agency takes, as required by RCW 74.60.050(2), to offset funds from the agency's scheduled payments to the hospital.

(b) The agency does not offset funds from managed care capitation payments, as described in RCW 74.60.130.

(5) **Appeal.** A hospital may appeal the actions the agency takes to offset funds by following the process outlined in WAC 182-502-0050.

[Statutory Authority: RCW 41.05.021, 41.05.160, and 74.60.050. WSR 20-14-054, § 182-550-8100, filed 6/26/20, effective 7/27/20.]

## WSR 23-20-052

## PERMANENT RULES

## WASHINGTON STATE PATROL

[Filed September 28, 2023, 1:36 p.m., effective October 29, 2023]

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

Purpose: WAC 204-21-120 Cornering lamps, to be amended to allow the original equipment manufacturer the ability to offer a cornering lamp function within a headlamp or at the same height as a headlamp on higher vehicles that is complaint [compliant] with federal rules and allowable in all other states.

Citation of Rules Affected by this Order: Amending WAC 204-21-120.

Statutory Authority for Adoption: RCW 46.37.005 and 46.37.320.

Adopted under notice filed as WSR 23-17-110 on August 17, 2023.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: September 28, 2023.

John R. Batiste  
Chief

## OTS-4632.1

AMENDATORY SECTION (Amending WSR 08-19-104, filed 9/17/08, effective 10/18/08)

**WAC 204-21-120 Cornering lamps.** Cornering lamps:

(1) Must meet SAE Standard ((~~J852a~~)) J852.  
(2) Must be on the front of the vehicle near the side or the side near the front.

(3) (~~Must be mounted no lower than twelve inches nor higher than thirty inches.~~

~~(4))~~ Must, if they have means to adjust and aim the lamp, be mounted so the center of the high intensity portion of the beam is within (~~forty to fifty~~) 40 to 50 degrees from the longitudinal axis of the vertical toward the front. The vertical aim must be within the center of the high intensity zone, (~~ten to fourteen~~) 10 to 14 inches below the level of the lamp center.

((~~5~~)) (4) Must, if they don't have aiming mechanisms, be mounted in a fixed position on the vehicle in accordance with the manufacturer's instructions.

[Statutory Authority: RCW 46.37.005 and 46.37.320. WSR 08-19-104, § 204-21-120, filed 9/17/08, effective 10/18/08.]



## WSR 23-20-053

## PERMANENT RULES

## WASHINGTON STATE PATROL

[Filed September 28, 2023, 1:42 p.m., effective October 29, 2023]

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

Purpose: New chapter 446-09 WAC, Firearms background check, allows any person who is denied the transfer of a firearm based on the results of a firearms background check the right to appeal that denial and to meet the requirements of the Brady Act.

Citation of Rules Affected by this Order: New chapter 446-09 WAC.

Statutory Authority for Adoption: RCW 43.43.580.

Adopted under notice filed as WSR 23-17-109 on August 17, 2023.

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

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

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

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

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

Date Adopted: September 28, 2023.

John R. Batiste  
Chief

OTS-4759.2

**Chapter 446-09 WAC  
FIREARMS BACKGROUND CHECK**

NEW SECTION

**WAC 446-09-010 Right to appeal.** If the appellant believes they have been erroneously denied a firearms transfer due to a determination made by the Washington state patrol firearms background division, they have the right to appeal that determination, within three years of the submission of the original background check.

(1) The appellant may submit their appeal by:

(a) Obtaining an appeal form at [www.wsp.wa.gov/firearms-background-division](http://www.wsp.wa.gov/firearms-background-division).

(b) The appeal document must be notarized to provide proof of identity.

(c) The appellant must submit the appeal form along with an image of the identification to [firearmappeal@wsp.wa.gov](mailto:firearmappeal@wsp.wa.gov) or Washington State

Patrol, Firearms Background Appeals, P.O. Box 42619, Olympia, WA 98503.

(2) The Washington state patrol firearms background research and appeals unit will provide the denial reason to the appellant to the address or via email provided in the appeal form.

(3) If the appellant believes the information used to make the original determination is incomplete or incorrect in any respect, the appellant must make a request for correction directly to the appropriate court of record or provide documents proving the information used was incorrect or not applicable to the appellant.

(4) If the prohibiting factor(s) has been corrected, the appellant must forward the new documentation to [firearmsappeal@wsp.wa.gov](mailto:firearmsappeal@wsp.wa.gov) or Washington State Patrol, Firearms Background Appeals, P.O. Box 42619, Olympia, WA 98503.

(5) Upon receipt of new information from the appellant, the Washington state patrol firearms background division research and appeals unit will review all appeal requests and make a final determination based on all available information, which may include a new denial if other prohibiting information is discovered. This process will be a records review only, not a hearing.

(6) The appellant will be notified of the appeal decision by mail or via email.

[ ]

**WSR 23-20-057**  
**PERMANENT RULES**  
**PUGET SOUND**  
**CLEAN AIR AGENCY**

[Filed September 28, 2023, 2:51 p.m., effective November 1, 2023]

Effective Date of Rule: November 1, 2023.

Purpose: These sections currently reference chapter 70.94 RCW, which was recodified as chapter 70A.15 RCW, pursuant to section 2010, chapter 20, Laws of 2020. Regulation I, Section 1.07 also references chapter 70.98 RCW, which was recodified as chapter 70A.388 RCW, pursuant to section 2025, chapter 20, Laws of 2020.

These actions by the Washington state legislature did not make any material changes to these sections of the RCW. The agency is updating its regulations to reflect the proper RCW references.

Citation of Rules Affected by this Order: Amending Regulation I, Sections 1.01, 1.07, 3.01, 3.03, 3.06, 3.09, 3.13, 3.15, 3.19, 4.01, 5.07, 7.01, 8.05, 13.02, 13.05, 13.07, and Regulation II, Section 1.01.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 23-17-034 on August 9, 2023.

Date Adopted: September 28, 2023.

Christine Cooley  
Executive Director

**REGULATION I ARTICLE I**  
**AMENDATORY SECTION**  
**SECTION 1.01 POLICY**

The Puget Sound Clean Air Agency, consisting of the counties of Pierce, King, Snohomish, and Kitsap, having been activated by the Washington Clean Air Act, RCW ((70.94)) 70A.15, adopts the following Regulation to control the emission of air contaminants from all sources within the jurisdiction of the Agency, to provide for the uniform administration and enforcement of this Regulation, and to carry out the requirements and purposes of the Washington Clean Air Act and the Federal Clean Air Act.

It is hereby declared to be the public policy of the Puget Sound Clean Air Agency to secure and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and to property, foster the comfort and convenience of its inhabitants, seek public participation in policy planning and implementation, promote the economic and social development of the Puget Sound area, and facilitate the enjoyment of the natural attractions of the Puget Sound area.

**AMENDATORY SECTION**  
**SECTION 1.07 DEFINITIONS**

When used herein:

- (a) **AGENCY** means the Puget Sound Clean Air Agency.
- (b) **AIR CONTAMINANT** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.
- (c) **AIR POLLUTION** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. Air pollution shall not

include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

(d) **AMBIENT AIR** means the surrounding outside air.

(e) **BOARD** means the Board of Directors of the Puget Sound Clean Air Agency.

(f) **COMBUSTIBLE REFUSE** means solid or liquid combustible waste material.

(g) **CONTROL EQUIPMENT** means any device which prevents or controls the emission of any air contaminant.

(h) **CONTROL OFFICER** means the Air Pollution Control Officer of the Puget Sound Clean Air Agency.

(i) **EMISSION** means a release of air contaminants into the ambient air.

(j) **EMISSION STANDARD** means a requirement established under the Federal Clean Air Act (FCAA) or chapter ((70.94)) 70A.15 RCW that limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the FCAA or chapter ((70.94)) 70A.15 RCW.

(k) **EQUIPMENT** or **EMISSIONS UNIT** means any part of a stationary source or source that emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act, chapter ((70.94)) 70A.15 or ((70.98)) 70A.388 RCW.

(l) **FUEL BURNING EQUIPMENT** means equipment that produces hot air, hot water, steam, or other heated fluids by external combustion of fuel.

(m) **GASOLINE** means a petroleum distillate that is a liquid at standard conditions and has a true vapor pressure greater than 4 pounds per square inch absolute at 20°C, and is used as a fuel for internal combustion engines. Also any liquid sold as a vehicle fuel with a true vapor pressure greater than 4 pounds per square inch absolute at 20°C shall be considered "gasoline" for purpose of this regulation.

(n) **GASOLINE STATION** means any site dispensing gasoline into motor vehicle, marine vessel, or aircraft fuel tanks from stationary storage tanks.

(o) **HAZARDOUS AIR POLLUTANT** means any air pollutant listed in or pursuant to section 112(b) of the federal Clean Air Act, 42 U.S.C. § 7412.

(p) **MOTOR VEHICLE** means any operating vehicle or one capable of being operated that has its own self-contained sources of motive power, is designed for the transportation of people or property, and is of the type for which a license is required for operation on a highway.

(q) **MULTIPLE CHAMBER INCINERATOR** means a furnace for the destruction of waste consisting of three or more refractory-lined combustion chambers in series, physically separated by refractory walls, interconnected by gas passage ports or ducts, and employing adequate design parameters necessary for maximum combustion of the material to be burned.

(r) **OWNER** or **OPERATOR** means the person who owns, leases, supervises, or operates the equipment or control equipment.

(s) **PERSON** means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

(t) **REASONABLY AVAILABLE CONTROL TECHNOLOGY** or RACT means the lowest emission standard that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source

category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.

(u) **REFUSE BURNING EQUIPMENT** means equipment employed to burn any solid or liquid combustible refuse.

(v) **SOURCE** means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related group of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same 2-digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 supplement.

(w) **TOXIC AIR POLLUTANT (TAP) or "toxic air contaminant"** means any toxic air pollutant listed in WAC 173-460-150. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(x) **TRUE VAPOR PRESSURE** means the equilibrium partial pressure of a petroleum liquid as determined by methods described in American Petroleum Institute Bulletin 2517, "Evaporative Loss from External Floating Roof Tanks", May 1996.

(y) **URBANIZED AREA** means those portions of King, Pierce, Kitsap, and Snohomish Counties designated as urbanized areas by the U.S. Department of Commerce, Bureau of the Census.

(z) **VOLATILE ORGANIC COMPOUND or VOC** means an organic compound that participates in atmospheric photochemical reactions as defined in 40 CFR 51.100(s) in effect as of the federal regulation reference date listed in Section 3.25 of this regulation herein incorporated by reference.

## **REGULATION I ARTICLE 3**

### **AMENDATORY SECTION**

#### **SECTION 3.01 DUTIES AND POWERS OF THE CONTROL OFFICER**

Pursuant to the provisions of the "Washington Clean Air Act" (Chapter ((70-94)) 70A.15 RCW), the Board has appointed a Control Officer whose sole responsibility is to observe and enforce the provisions of the Act and all orders, rules, and regulations pursuant thereto, including but not limited to Regulations I, II, and III of the Puget Sound Clean Air Agency. The Control Officer is empowered by the Board to sign official complaints, issue citations, initiate court suits, or use other legal means to enforce the provisions of the Act.

### **AMENDATORY SECTION**

#### **SECTION 3.03 GENERAL REGULATORY ORDERS**

(a) **Purpose.** The Board may, by regulatory order, apply to a specific source or sources any applicable provision of chapter ((70-94)) 70A.15 RCW or the rules adopted thereunder. In addition, federally enforceable regulatory orders that limit the potential to emit any air contaminant(s) pursuant to WAC 173-400-091 and modifications to such orders are issued under Section 3.03(f) of this regulation.

(b) **Public Involvement Process.** The Board may issue a regulatory order after the following public involvement process has been completed:

(1) Public notice of the proposed regulatory order shall be published in a newspaper of general circulation in the area where the source that is the subject of the order is located. Notice shall also be sent to the U.S. Environmental Protection Agency Regional Administrator. The public notice shall include, at a minimum, the following information:

(A) The name and address of the owner or operator and the source;

(B) A brief description of the purpose of the proposed regulatory order and the requirements included in the proposed regulatory order;

(C) The deadline for submitting written comments to the Agency; and

(D) The opportunity for a public hearing if the Agency determines that there is significant public interest in the proposed regulatory order.

(2) The initial public comment period shall be at least 30 days.

(3) During the initial 30-day public comment period, any person may request a public hearing be held. Any such request shall be submitted in writing to the Agency, shall indicate the interest of the entity filing it, and describe why a hearing is warranted. The Agency may, at its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held before a hearing officer and upon such notice and at a time and place as the Agency deems reasonable. The hearing officer shall hear testimony at the public hearing and prepare a written summary of the testimony received at the hearing. The Agency shall provide at least 30 days prior notice of any hearing. If a public hearing is held, the public comment period shall extend through the hearing date.

(c) **Board Action.** The Board shall only issue a regulatory order under this section after:

(1) The public comment period has ended;

(2) Any public hearing scheduled has been held; and

(3) The Board has considered all information and data related to the proposed regulatory order received by the Agency, including all written comments received and any summary of testimony prepared by the hearing officer.

The Board shall take action on a proposed regulatory order at a Board meeting. Unless otherwise ordered by the Board, a regulatory order issued under this section shall be effective on the date the Board approves the regulatory order.

(d) **Appeals.** Regulatory orders issued by the Board under this section may be appealed to the Pollution Control Hearings Board pursuant to Section 3.17 of Regulation I and RCW 43.21B.310.

(e) **Fees.** When a regulatory order is requested by an applicant, the Agency shall assess a fee of \$4,000 to cover the costs of processing and issuing a regulatory order under this section. The Agency shall also assess a fee equal to the cost of providing public notice in accordance with Section 3.03(b) of this regulation. These fees shall be due and payable within 30 days of the date of the invoice and shall be deemed delinquent if not fully paid within 90 days of the invoice.

(f) When an applicant requests a federally enforceable regulatory order to limit the potential to emit any air contaminant or contaminants pursuant to WAC 173-400-091, or requests a modification to such an order, the Control Officer or a duly authorized representative may

issue such order consistent with the requirements of WAC 173-400-091 and 173-400-171 and Section 3.03(e) above. Regulatory orders issued pursuant to this section are effective the day the Control Officer or representative approves the order and may be appealed to the Pollution Control Hearings Board pursuant to Section 3.17 of Regulation I and RCW 43.21B.310.

#### **AMENDATORY SECTION**

##### **SECTION 3.06 CREDIBLE EVIDENCE**

For the purpose of establishing whether or not a person has violated or is in violation of any provision of chapter (~~(70.94)~~) 70A.15 RCW, any rule enacted pursuant to that chapter, or any permit or order issued thereunder, nothing in this regulation shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test procedures or methods had been performed.

#### **AMENDATORY SECTION**

##### **SECTION 3.09 VIOLATIONS - NOTICE**

(a) At least 30 days prior to the commencement of any formal enforcement action under RCW (~~(70.94.430)~~) 70A.15.3150 or (~~(70.94.431)~~) 70A.15.3160, the Board or Control Officer shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provisions of Chapter (~~(70.94)~~) 70A.15 RCW or the orders, rules, or regulations adopted pursuant thereto, alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the Board or the Control Officer may require that the alleged violator or violators appear before the Board for a hearing. Every notice of violation shall offer to the alleged violator an opportunity to meet with the Agency prior to the commencement of enforcement action.

(b) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation and be subject to the same penalty.

(c) In case of a continuing violation, whether or not knowingly committed, each day's continuance shall be a separate and distinct violation.

#### **AMENDATORY SECTION**

##### **SECTION 3.13 CRIMINAL PENALTIES**

(a) Any person who knowingly violates any of the provisions of Chapter (~~(70.94)~~) 70A.15 RCW or any rules or regulations in force pursuant thereto, shall be guilty of a crime and upon conviction thereof, shall be punished by a fine of not more than \$10,000.00, or by imprisonment in the county jail for not more than 1 year, or by both for each separate violation.

(b) Any person who negligently releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm shall be guilty of a crime and shall, upon conviction, be punished by a fine of not more than \$10,000.00, or by imprisonment for not more than 1 year, or both.

(c) Any person who knowingly releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, shall be guilty of a crime and shall, upon conviction, be punished by a fine of not less than \$50,000.00, or by imprisonment for not more than 5 years, or both.

#### **AMENDATORY SECTION**

##### **SECTION 3.15 ADDITIONAL ENFORCEMENT**

(a) Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of Chapter ((70.94)) 70A.15 RCW, or any order, rule, or regulation issued by the Board or the Control Officer or a duly authorized agent, the Board, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(b) As an additional means of enforcement, the Board or Control Officer may accept an assurance of discontinuance of any act or practice deemed in violation of Chapter ((70.94)) 70A.15 RCW or of any order, rule, or regulation adopted pursuant thereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter or the orders, rules, or regulations issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from the superior court.

#### **AMENDATORY SECTION**

##### **SECTION 3.19 CONFIDENTIAL INFORMATION**

Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Agency, pursuant to any sections in Chapter ((70.94)) 70A.15 RCW, relates to processes or production unique to the owner or operator, or are likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the Agency. Nothing herein shall be construed to prevent the use of records or information by the Agency in compiling or publishing analysis or summaries relating to the general condition of the outdoor atmosphere: Provided, that such analysis or summaries do not reveal any information otherwise confidential under the provisions of this section: Provided further, that emission data furnished to or obtained by the Agency shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the Agency.

#### **REGULATION I ARTICLE 4**

#### **AMENDATORY SECTION**

##### **SECTION 4.01 VARIANCES**



(a) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment including a group of persons who owns or controls like processes or like equipment, or any material subject to Article 8 of this regulation, may apply to the Board for a variance from rules or regulations governing the quality, nature, duration, or extent of discharge of air contaminants. The application shall be accompanied by such information and data as the Board may require. The total time period for a variance and renewal of such variance shall not exceed 1 year. Variances to state rules shall require the approval of the Department of Ecology. The Board may grant such variance, but only after public hearing or due notice, if it finds that:

(1) The emissions occurring or proposed to occur do not endanger public health or safety or the environment; and

(2) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(b) In addition to the requirements of Section 4.01(a) above, applications seeking a variance shall not be considered complete unless the applicant provides:

(1) A list of interested parties and neighbors within 500 feet or more of the property on which the variance is proposed to occur, as deemed necessary by the Air Pollution Control Officer; and

(2) For a variance from Article 8 of this regulation, written estimates of the cost of removing, recycling, or reducing the material in place versus burning the material.

(c) No variance shall be granted pursuant to this section until the Board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public. The Air Pollution Control Officer shall conduct a fact-finding public hearing, upon due notice being published and sent to all interested parties within 500 feet of the property on which the variance is proposed. The Air Pollution Control Officer may require notice to parties beyond 500 feet if deemed necessary. A 30-day advance public notice shall be published in a newspaper of general circulation in the area of the proposed variance and shall include the following information:

(1) The time, date, and place of the hearing;

(2) The name and address of the owner or operator and the source;

(3) A brief description of the variance request; and

(4) The deadline for submitting written comments to the Agency.

(d) After the hearing is held, the Air Pollution Control Officer shall make written findings and forward same with a recommended decision on the variance to the Board. The Board shall take action at a regular board meeting.

(e) Any variance or renewal thereof shall be granted within the requirements of Section 4.01(a) and under conditions consistent with the reasons therefor, and within the following limitations:

(1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the Board may prescribe.

(2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their ex-

tent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the Board is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in Section 4.01 (e) (1) and 4.01 (e) (2), it shall be for not more than 1 year.

(f) In addition to the criteria provided by state and federal statutes, the Air Pollution Control Officer may consider the following factors in making findings regarding requests seeking a variance from Article 8 of this regulation:

(1) Unusual individual sites, such as those that are bisected by the no-burn boundary; and

(2) Unusual economic factors, such as extremely high costs for recycling or hauling, that are attributable to some site-specific condition; and

(3) Whether burning in place would be of lower risk or harm to the environment than either removal or reduction in place (chipping, composting, or decay) in such areas as drainages, steep slopes, beaches, and other inaccessible points.

(g) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the Board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least 60 days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Board shall give public notice of such application in accordance with rules and regulations of the Board.

(h) A variance or renewal shall not be a right of the applicant or holder thereof but shall be granted at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board may obtain judicial review thereof only under the provisions of Chapter 34.05 RCW as now or hereafter amended.

(i) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW ((70.94.710)) 70A.15.6000 through ((70.94.730)) 70A.15.6040 to any person or his or her property.

(j) Variances approved under this section shall not be included in orders or permits provided for in RCW ((70.94.161)) 70A.15.2260 until such time as the variance has been accepted by the United States Environmental Protection Agency as part of an approved State Implementation Plan.

## **REGULATION I ARTICLE 5**

### **AMENDATORY SECTION**

#### **SECTION 5.07 ANNUAL REGISTRATION FEES**

(a) The Agency shall assess annual fees as set forth in Section 5.07(c) of this regulation for services provided in administering the

registration program. Fees received under the registration program shall not exceed the cost of administering the program, which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program. Payment of these fees by the owner or operator of a source shall maintain its active registration status (even if it is not actively operating).

(b) Upon assessment by the Agency, registration fees are due and payable within 45 days of the date of the invoice. Registration fees shall be deemed delinquent if not fully paid within 45 days of the date of the invoice. Persons or sources that under-report emissions, fail to submit other information used to set fees, or fail to pay required fees within 90 days of the date of the invoice, may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter ((70.94)) 70A.15 RCW).

(c) Except as specified in Section 5.07(d) and (e) of this regulation, registered sources shall be assessed a fee of \$1,350, plus the following fees:

(1) Sources subject to a federal emission standard as specified in Section 5.03 (a)(1) of this regulation shall be assessed \$2,450 per subpart of 40 CFR Parts 60-63;

(2) Sources subject to a federally enforceable emission limitation as specified in Section 5.03 (a)(2) or meeting the emission thresholds specified in Section 5.03 (a)(3) of this regulation shall be assessed \$2,670;

(3) Sources subject to the emission reporting requirements under Section 5.05(b) of this regulation shall be assessed \$30 for each ton of CO and \$60 for each ton of NOx, PM10, SOx, HAP, and VOC, based on the emissions reported during the previous calendar year;

(4) Sources with more than one coffee roaster installed on-site that are approved under a Notice of Construction Order of Approval shall be assessed \$2,670;

(5) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of <100,000 tons per year shall be assessed \$6,670; and

(6) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of ≥100,000 tons per year shall be assessed \$26,680.

(d) Gasoline dispensing facilities shall be assessed the following fees based on their gasoline throughput during the previous calendar year (as certified at the time of payment):

- (1) More than 6,000,000 gallons. . . . . \$4,740;
- (2) 3,600,001 to 6,000,000 gallons. . . . . \$2,355;
- (3) 1,200,001 to 3,600,000 gallons. . . . . \$1,565;
- (4) 840,001 to 1,200,000 gallons. . . . . \$785;
- (5) 200,001 to 840,000 gallons. . . . . \$395.

(e) The following registered sources shall be assessed an annual registration fee of \$165, provided that they meet no other criteria listed in Section 5.03(a) of this regulation:

(1) Sources with spray-coating operations subject to Section 9.16 of this regulation that use no more than 4,000 gallons per year of total coatings and solvents;

(2) Gasoline dispensing facilities subject to Section 2.07 of Regulation II with gasoline annual throughput during the previous calendar year (as certified at the time of payment) of no more than 200,000 gallons;

(3) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;

(4) Unvented dry cleaners using perchloroethylene; and

(5) Batch coffee roasters subject to notification under Section 6.03(b)(11) of this regulation.

## **REGULATION I ARTICLE 7**

### **AMENDATORY SECTION**

#### **SECTION 7.01 PURPOSE**

The purpose of this article is to provide for a comprehensive operating permit program consistent with the requirements of Title V of the federal Clean Air Act Amendments of 1990 and its implementing regulation 40 CFR Part 70, and RCW (~~(70.94.161)~~) 70A.15.2260 and its implementing regulation Chapter 173-401 of the Washington Administrative Code.

## **REGULATION I ARTICLE 8**

### **AMENDATORY SECTION**

#### **SECTION 8.05 AGRICULTURAL BURNING PERMITS**

(a) **Applicability.** This section applies to burning permits related to agricultural operations. The definitions and requirements contained in chapter 173-430 WAC also apply to this section; provided that if there is a conflict between this section and chapter 173-430 WAC, this section governs.

(b) **General Requirements.** Agricultural burning will be permitted if the following requirements are met:

(1) The natural vegetation being burned is generated from the property of the commercial agricultural operation; and

(2) Burning is necessary for crop propagation or rotation, disease or pest control; and

(3) Burning is a best management practice as established by the Agricultural Burning Practices and Research Task Force (established in RCW (~~(70.94.6528)~~) 70A.15.5090 as referenced in chapter 173-430 WAC); or the burning practice is approved in writing by the Washington State Cooperative Extension Service or the Washington State Department of Agriculture; or the burning is conducted by a governmental entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards; and

(4) The proposed burning will not cause a violation of any Agency regulation.

(c) **Permit Applications.** Agricultural burning permits shall be approved by the Agency prior to burning.

(1) The permit application shall be submitted on forms provided by the Agency and shall include:

(A) A copy of the applicant's most recent year's Schedule F (as filed with the Internal Revenue Service);

(B) A written review by the local fire district or fire marshal indicating their endorsement that local requirements have been met; and

(C) A permit fee as required below:

| Burn Type  | Minimal Fee                     | Variable Fee                     |
|--|---------------------------------|----------------------------------|
| (i) Field Burning of vegetative residue on an area of land used in an agricultural operation. <i>(does not include pile burning)</i>                 | \$37.50 for the first 10 acres. | \$3.75 for each additional acre. |
| (ii) Spot Burning of an unforeseen and unpredicted small area where burning is reason-ably necessary and no practical alternative to burning exists. | \$37.50 for 10 acres or less.   | None.                            |
| (iii) Pile Burning of stacked vegetative residue from an agricultural operation.   | \$80 for the first 80 tons.     | \$1.00 for each additional ton.  |

(2) Any refunds of the variable fee portion of a permit fee are issued in accordance with chapter 173-430 WAC.

(d) **Permit Action and Content.**

(1) The Agency will act on a complete application within 7 days of receipt.

(2) All agricultural burning permits shall contain conditions that are necessary to minimize emissions.

(3) All permits shall expire 12 months from date of issuance.

(e) **Permit Denial.** All denials shall become final within 15 days unless the applicant petitions the Control Officer for reconsideration, stating the reasons for reconsideration. The Control Officer shall then consider the petition and shall within 30 days issue a permit or notify the applicant in writing of the reason(s) for denial. (For more information on the appeal process, see Section 3.17 of this regulation.)

**REGULATION I ARTICLE 13**

**AMENDATORY SECTION**

**SECTION 13.02 DEFINITIONS**

When used herein:

(a) Adequate Source of Heat means a heating system designed to maintain seventy degrees Fahrenheit at a point three feet above the floor in each normally inhabited room. If any part of the heating system has been disconnected, damaged, or is otherwise nonfunctional, the Agency shall base the assessment of the adequacy of the design on the system's capability prior to the disconnection, damage, improper maintenance, malfunction, or occurrence that rendered the system nonfunctional.

(b) AGENCY means the Puget Sound Clean Air Agency.

(c) Certified Wood Stove means a wood stove that:

(1) has been determined by Ecology to meet Washington emission performance standards, pursuant to RCW (~~(70.94.457)~~) 70A.15.3530 and WAC 173-433-100; or

(2) has been certified and labeled in accordance with procedures and criteria specified in "40 C.F.R. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

(3) meets the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsections (2) and (3) of Section

340-21-115, and is certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984.

(d) Coal-only heater means an enclosed, coal burning appliance capable of and intended for residential space heating, domestic water heating, or indoor cooking and has all of the following characteristics:

(1) An opening for emptying ash which is located near the bottom or the side of the appliance;

(2) A system which admits air primarily up and through the fuel bed;

(3) A grate or other similar device for shaking or disturbing the fuel bed or power driven mechanical stoker; and

(4) The model is listed by a nationally recognized safety testing laboratory for use of coal only, except for coal ignition purposes.

(e) Ecology means the Washington State Department of Ecology.

(f) EPA means the United States Environmental Protection Agency.

(g) Fine particulate or PM2.5 means particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

(h) Fireplace means any permanently installed masonry fireplace or any factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air to fuel ratio.

(i) Nonaffected pellet stove means a pellet stove that has an air-to-fuel ratio equal to or greater than 35.0 to 1.0 when tested by an accredited laboratory in accordance with methods and procedures specified by the EPA in "40 CFR 60 Appendix A, Test Method 28A - Measurement of Air to Fuel Ratio and Minimum Achievable Burn Rates for Wood-Fired Appliances" as amended through July 1, 1990.

(j) Nonattainment area means a geographical area designated by EPA at 40 C.F.R. Part 81 as exceeding a National Ambient Air Quality Standard for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

(k) PM10 means particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

(l) PROPERLY SEASONED FUEL WOOD means untreated wood or untreated lumber with moisture content of 20% or less, wet basis, or 25% or less, dry basis.

(m) Solid Fuel Burning Device or solid fuel heating device means a device that burns wood, coal, or any other nongaseous or nonliquid fuels, and includes any device burning any solid fuel which has a heat input less than one million British thermal units per hour. This includes, but is not limited to, devices used for aesthetic or space-heating purposes in a private residence or commercial establishment.

(n) SUBSTANTIALLY REMODELED means any alteration or restoration of a building exceeding sixty percent of the appraised value of such building within a twelve-month period.

(o) TACOMA, WASHINGTON Fine Particulate Nonattainment Area means the area of Pierce County that is designated by EPA as not meeting the 2006 federal 24-hr fine particulate National Ambient Air Quality Standard and described in 40 CFR 81.348. This area is also known as the Tacoma, Pierce County Nonattainment Area.

(p) Treated wood means wood or lumber of any species that has been chemically impregnated, painted, or similarly modified to prevent weathering and deterioration.

(q) Wood stove or wood heater means an enclosed solid fuel burning device capable of and intended for residential space heating and domestic water heating that meets the following criteria contained in "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990:

(1) An air-to-fuel ratio in the combustion chamber averaging less than 35.0, as determined by EPA Reference Method 28A;

(2) A useable firebox volume of less than twenty cubic feet;

(3) A minimum burn rate less than 5 kg/hr as determined by EPA Reference Method 28; and

(4) A maximum weight of 800 kg, excluding fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components not integral to the appliance.

Any combination of parts, typically consisting of but not limited to: doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.

#### **AMENDATORY SECTION**

#### **SECTION 13.05 RESTRICTIONS ON OPERATION OF SOLID FUEL BURNING DEVICES**

(a) No person in a residence or commercial establishment shall operate a solid fuel burning device under any of the following conditions:

(1) Whenever the Agency has declared the first stage of impaired air quality for a geographical area in accordance with RCW (~~(70.94.473 (1)(b)(i) or (ii))~~), 70A.15.3580 (1)(b)(i) or (ii) unless an exemption for the residence or commercial building has been obtained from the Agency pursuant to subsection (d) of this section or the solid fuel burning device is one of the following:

(A) A nonaffected pellet stove; or

(B) A wood stove certified and labeled by the EPA under "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

(C) A wood stove meeting the "Oregon Department of Environmental Quality Phase 2" emission standards contained in Subsections (2) and (3) of Section 340-21-115, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984; or

(D) A solid fuel burning device approved by Ecology as meeting the standards in RCW (~~(70.94.457 (1)(a)-(b))~~) 70A.15.3530 (1)(a)-(b).

(2) Whenever the Agency has declared the second stage of impaired air quality for a geographical area in accordance with RCW (~~(70.94.473 (1)(c)(i), (ii), or (iii))~~) 70A.15.3580 (1)(c)(i), (ii), or (iii) unless an exemption for the residence or commercial building has been obtained from the Agency pursuant to subsection (d) of this section.

(b) Whenever a first stage of impaired air quality is declared under subsection (a)(1):

(1) New solid fuel shall be withheld from any solid fuel burning device already in operation for the duration of the first stage of impaired air quality if that device is restricted from operating under subsection (a)(1) of this section during the first stage of impaired air quality;

(2) Smoke visible from a chimney, flue, or exhaust duct after three hours has elapsed from the declaration of a first stage of impaired air quality shall constitute prima facie evidence of unlawful operation of a solid fuel burning device if that solid fuel burning

device is restricted from operating during a first stage of impaired air quality. This presumption may be refuted by demonstration that the smoke was not caused by a solid fuel burning device.

(c) Whenever a second stage of impaired air quality is declared under subsection (a)(2):

(1) New solid fuel shall be withheld from any solid fuel burning device already in operation for the duration of the second stage of impaired air quality if that device is restricted from operating under subsection (a)(2) of this section during the second stage of impaired air quality.

(2) Smoke visible from a chimney, flue, or exhaust duct after three hours has elapsed from the declaration of a second stage of impaired air quality shall constitute prima facie evidence of unlawful operation of a solid fuel burning device if that solid fuel burning device is restricted from operating during a second stage of impaired air quality. This presumption may be refuted by demonstration that the smoke was not caused by a solid fuel burning device.

(d) Any person desiring an exemption from the Agency for the purposes of subsections (a)(1) or (2) of this section shall apply to the Agency using procedures specified by the Agency.

(1) The following are eligible for exemption:

(A) A residence or commercial building that has no adequate source of heat other than a solid fuel burning device and the building was neither constructed nor substantially remodeled after July 1, 1992.

(B) A residence or commercial building that has no adequate source of heat other than a solid fuel heating device and the building:

- i. was constructed or substantially remodeled after July 1, 1992; and
- ii. is outside an urban growth area, as defined in RCW 36.70A; and
- iii. is outside an area designated by EPA as a PM2.5 or PM10 particulate nonattainment area.

(2) Exemptions shall be valid for a period determined by the Agency. Exemptions may be renewed using procedures specified by the Agency, provided the applicant meets the applicable requirements at the time of exemption renewal. Exemptions may be revoked if the Agency determines the residence or commercial building for which the exemption was approved no longer qualifies for an exemption.

#### **AMENDATORY SECTION**

#### **SECTION 13.07 PROHIBITIONS ON WOOD STOVES THAT ARE NOT CERTIFIED WOOD STOVES**

(a) Subsections (a)(1) - (a)(4) of this section shall be effective January 1, 2015 and apply only to PM2.5 nonattainment areas or areas where required by EPA.

(1) Any person who owns or is responsible for a wood stove that is both (a) not a certified wood stove and (b) is located in the Tacoma, Washington fine particulate nonattainment area must remove and dispose of it or render it permanently inoperable by September 30, 2015.

(2) Any person who owns or is responsible for a coal-only heater located in the Tacoma, Washington fine particulate nonattainment area must remove and dispose of it or render it permanently inoperable by September 30, 2015.

(3) Subsection (a)(1) of section does not apply to:



(A) A person in a residence or commercial establishment that does not have an adequate source of heat without burning wood; or

(B) A person with a shop or garage that is detached from the main residence or commercial establishment that does not have an adequate source of heat in the detached shop or garage without burning wood.

(4) The owner or person responsible for removing or rendering permanently inoperable a wood stove under subsection (a)(1) of this section or a coal-only heater under subsection (a)(2) of this section must provide documentation of the removal and disposal or rendering permanently inoperable to the Agency using the Agency's procedures within 30 days of the removal or rendering permanently inoperable.

(b) PM10. Subsection (b) of this section is established for the sole purpose of a contingency measure for PM10 nonattainment and maintenance areas. If the EPA makes written findings that: (1) an area has failed to attain or maintain the National Ambient Air Quality Standard for PM10, and (2) in consultation with Ecology and the Agency, finds that the emissions from solid fuel burning devices are a contributing factor to such failure to attain or maintain the standard, the use of wood stoves not meeting the standards set forth in RCW ((70.94.457)) 70A.15.3530 shall be prohibited within the area determined by the Agency to have contributed to the violation. This provision shall take effect one year after such a determination.

## **REGULATION II ARTICLE I**

### **AMENDATORY SECTION**

#### **SECTION 1.01 PURPOSE**

The Puget Sound Clean Air Agency, consisting of the counties of King, Kitsap, Pierce, and Snohomish, having been activated by the Washington Clean Air Act, RCW ((70.94)) 70A.15, adopted Regulation I on March 13, 1968 to control the emission of air contaminants from all sources, to provide for the uniform administration and enforcement of air pollution control in its jurisdiction and to carry out the requirements and purposes of the Washington Clean Air Act.

The Board of Directors of the Puget Sound Clean Air Agency has amended Regulation I from time to time as necessary and now recognizes the need for a special regulation to reduce ozone concentrations as required by the Federal Clean Air Act as amended. Accordingly, the Board has adopted Regulation II to provide for control of photochemically reactive volatile organic compounds (VOC), which are precursors to ozone, to meet the National Ambient Air Quality Standard for ozone.

**WSR 23-20-058**  
**PERMANENT RULES**  
**PUGET SOUND**  
**CLEAN AIR AGENCY**

[Filed September 28, 2023, 3:03 p.m., effective November 1, 2023]

Effective Date of Rule: November 1, 2023.

Purpose: **Section 3.11:** The agency's practice for many years has been to annually adjust the maximum civil penalty amount as allowed by law. The proposed adjustment to the maximum civil penalty amount accounts for inflation, as authorized by RCW 70A.15.3160 (formerly RCW 70.94.431) and as determined by the state office of the economic and revenue forecast council. Without this adjustment, the maximum penalty amount would effectively decrease each year. The consumer price index (CPI) for the Seattle/Tacoma/Bellevue area increased by 7.89 percent for the 2022 calendar year, which amounts to an increase of \$1,776.00 in the maximum civil penalty amount. The agency has used the CPI for wage earners (CPI-W) in the Puget Sound region for many years to make this inflation-based adjustment because it reflects the data of what happened (i.e. not a forecast) and it represents local economic information.

The proposed amendment does not affect the way the agency determines actual civil penalty amounts in individual cases. This continues to be done following civil penalty worksheets previously approved by the board.

**Section 3.11:** This section currently references chapter 70.94 RCW, which was recodified as chapter 70A.15 RCW, pursuant to section 2010, chapter 20, Laws of 2020. These actions by the Washington state legislature did not make any material changes to these sections of the RCW. The agency is updating this section to reflect the proper RCW references.

**Section 3.25:** This section currently provides that whenever federal rules are referenced in agency regulations, the effective date of the federal regulations referred to is July 1, 2022. This provides certainty so that persons affected by the regulations and agency staff know which version of a federal regulation to reference. For many years, the agency's practice has been to update this date annually to stay current with federal regulations. Following this practice, the proposed amendments would change the reference date to July 1, 2023.

Citation of Rules Affected by this Order: Amending Regulation I, Sections 3.11 and 3.25.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 23-17-035 on August 9, 2023.

Date Adopted: September 28, 2023.

Christine Cooley  
Executive Director

**REGULATION I ARTICLE 3**

**AMENDATORY SECTION**

**SECTION 3.11 CIVIL PENALTIES**

(a) Any person who violates any of the provisions of chapter ((70.94 RCW)) 70A.15 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed \$((22,497.00)) 24,273.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter ((70.94)) 70A.15 RCW or Regulations I, II,

and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than \$((~~22,497.00~~)) 24,273.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penal-

ties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

**AMENDATORY SECTION**

**SECTION 3.25 FEDERAL REGULATION REFERENCE DATE**

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, ((2022)) 2023.

**WSR 23-20-064**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Division of Vocational Rehabilitation)

[Filed September 28, 2023, 4:19 p.m., effective October 29, 2023]

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

Purpose: The division of vocational rehabilitation (DVR) received recent guidance from the rehabilitation services administration (RSA) that clarifies RSA's interpretation of when vocational rehabilitation agencies may provide post-employment services under the Rehabilitation Act. RSA's interpretation is inconsistent with how DVR was providing post-employment services prior to filing emergency rule WSR 23-10-044, which modified how the service is defined in WAC. Provision of post-employment services is subject to receipt of federal funding and continuing to apply WAC as it was written will place DVR out of compliance with federal guidance and could jeopardize its ability to receive federal funding. DVR is pursuing a rule change to stay in compliance with RCW 74.29.050. The attorney general's office, client assistance program, and the Washington state rehabilitation council have been consulted and support DVR's reasons for the rule making. When effective, this permanent rule will supersede the emergency rule filed as WSR 23-17-167.

Citation of Rules Affected by this Order: Amending WAC 388-891A-0610 and 388-891A-0890.

Statutory Authority for Adoption: RCW 34.05.350 (1)(b), 74.29.020(8), and 74.29.050.

Other Authority: 34 C.F.R. 361.5 (c)(41).

Adopted under notice filed as WSR 23-15-044 on July 12, 2023.

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

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

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

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

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

Date Adopted: September 28, 2023.

Katherine I. Vasquez  
Rules Coordinator

**SHS-4925.1**

AMENDATORY SECTION (Amending WSR 18-12-035, filed 5/29/18, effective 6/30/18)

**WAC 388-891A-0610 How are individuals selected for services when DVR is operating under an order of selection?** When DVR is operating under an order of selection, individuals are selected for services as follows:

(1) At the time you are determined eligible for VR services, a DVR counselor assigns you to a priority category based on the severity of your disability.

(2) The priority categories are defined in WAC 388-891A-0620 through 388-891A-0660.

(3) As resources become available for DVR to serve additional individuals, DVR selects names from the waiting list in the priority category being served at that time.

(4) Within a priority category, the date you applied for VR services determines the order in which you are selected from the waiting list.

(5) DVR may provide you specific services or equipment without requiring that you wait for services under an order of selection if:

(a) You are at immediate risk of losing your job in a competitive integrated setting for reasons related to your disability; and

(b) You require specific services or equipment in the very near future that will enable you to keep your job.

~~((6) If you have successfully achieved an employment outcome as described in WAC 388-891A-1310, are currently employed, and require post-employment services, you are not required to wait for services under an order of selection.))~~

[Statutory Authority: RCW 74.29.020(8) and 34 C.F.R., Parts 361, 363, 397. WSR 18-12-035, § 388-891A-0610, filed 5/29/18, effective 6/30/18.]

AMENDATORY SECTION (Amending WSR 18-12-035, filed 5/29/18, effective 6/30/18)

**WAC 388-891A-0890 What are post-employment services?** Post-employment services include one or more vocational rehabilitation services provided if:

(1) ~~((Your case was closed because y))~~ You achieved ~~((an))~~ employment ~~((outcome))~~;

(2) Your rehabilitation needs are limited in scope and duration; and

(3) You need post-employment services to maintain, advance in, or regain employment that is consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

[Statutory Authority: RCW 74.29.020(8) and 34 C.F.R., Parts 361, 363, 397. WSR 18-12-035, § 388-891A-0890, filed 5/29/18, effective 6/30/18.]

## WSR 23-20-066

## PERMANENT RULES

## DEPARTMENT OF AGRICULTURE

[Filed September 28, 2023, 4:50 p.m., effective September 28, 2023]

Effective Date of Rule: September 28, 2023.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 34.05.380(3) allows rules to become effective immediately upon filing when such action is required by statute. RCW 15.86.140 requires the department of agriculture (WSDA) to set and collect fees as necessary to cover costs of provision of services. Current fees do not cover the cost of providing services. In order to ensure that WSDA is collecting the fees necessary to cover the cost of continuing to provide these services, the rule must be effective **prior** to sending out renewal notices on September 29, 2023, for expiring registrations.

Purpose: This rule-making order amends chapter 16-160 WAC by restructuring the existing fee schedule to cover the increasing cost of providing services. Under the amended fee schedule, both the new application fee and the renewal fee will be comprised of two components, a company fee that is based on the gross annual income of the business in whole and a product fee that is charged based on the number of products being registered. The amended product fee will be changed from the current rate of \$400-500 per product for initial registration and \$200-300 for renewal registration to a flat \$350 fee for both initial and renewing registrations.

In-state inspection fees will be assessed at \$2,000 per inspection. Out-of-state inspections will be assessed at \$3,000, plus any travel expenses which exceed \$3,000, and the standard inspection fee of \$2,000. Small businesses, as defined by the Regulatory Fairness Act (chapter 19.85 RCW), will receive a \$1,500 discount on the inspection fee.

Late fees will be calculated on a per company basis, rather than a per product basis, which lowers the total potential late fee applicable to most businesses.

In addition to a restructure of the fee schedule, the following additional changes to this chapter include:

1. Updating WSDA's organic input material registration logo to provide consistency, and increase recognition, with WSDA logos allowed for use on organic and transitional crops and products. The use of the logo is optional and not required on approved products;
2. Changing of the expiration dates on registration certificates from October 31 to December 31 to better match production seasons and cycles of the certified businesses sourcing organic compliant inputs;
3. Replacing references to "the National Organic Program" with "USDA organic regulations"; and
4. Minor updates to the application process to improve the implementation of services.

Citation of Rules Affected by this Order: New WAC 16-160-165; and amending WAC 16-160-010, 16-160-120, 16-160-130, 16-160-140, 16-160-150, 16-160-160, 16-160-180, 16-160-190, 16-160-200, 16-160-210, and 16-160-220.

Statutory Authority for Adoption: RCW 15.86.130, 15.86.140.

Adopted under notice filed as WSR 23-17-131 on August 21, 2023.

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

Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 11, Repealed 0.

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

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

Date Adopted: September 28, 2023.

Derek L. Sandison  
Director

## OTS-4882.2

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-010 Purpose of this chapter.** This chapter specifies the process for registering companies and listing materials approved for use in organic production, processing and handling on the department's brand name materials list, also known as the organic input material list. This chapter is promulgated pursuant to chapter 109, Laws of 2010 to implement the brand name materials list.

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-010, filed 9/8/10, effective 10/9/10. Statutory Authority: Chapter 15.86 RCW. WSR 03-03-045, § 16-160-010, filed 1/10/03, effective 2/10/03; WSR 99-16-054, § 16-160-010, filed 7/30/99, effective 8/30/99; WSR 91-05-007, § 16-160-010, filed 2/7/91, effective 3/10/91.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-120 Applications.** (1) Registration with the department and listing of a material on the brand name materials list is voluntary. While registration is not required for a material to be used or sold in this state, registration is necessary for a material to be included on the (~~brand name materials~~) department's organic input material list.

(2) (~~Registration~~) The listing of a material on the (~~brand name materials~~) organic input material list under this chapter does not guarantee acceptance for use in organic production, processing, or handling by organic certifying agents other than the department. The department is not liable for any losses or damage that occurs as a result of use of a material (~~registered on the brand name materials~~) listed on the organic input material list.



[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-120, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-130 General application requirements.** (1) Manufacturers of materials used in organic production, processing or handling may submit an application for registration (~~on the brand name material list to the department.~~

~~(2) Manufacturers may submit applications to the department at:~~

~~Washington State Department of Agriculture  
Organic Food Program  
P.O. Box 42560  
Olympia, WA 98504-2560.~~

~~These forms may also be found on the department's website at:  
<http://agr.wa.gov/foodanimal/organic>~~

~~(3) Applications for registration will not be approved unless the applicant demonstrates that the material meets the requirements and standards of the National Organic Program and is approved for use in organic production, processing, or handling in accordance with the National Organic Program. Specifically, the material may not be a material prohibited for the use in the production or handling of organic products by 7 C.F.R. Section 205.105, and may not be otherwise prohibited for use in organic production and handling by the National Organic Program.) with the department's organic program.~~

(2) Current registrants and potential applicants may submit applications for products to be listed on the organic input material list.

(3) The department approves product applications when the applicant demonstrates the material meets the requirements for products as outlined in WAC 16-160-165.

(4) All registrations and product listings expire on ((October)) December 31st of the registration year.

(5) During the term of registration, if at any time the registrant has no approved or pending product listings, the registration will be canceled.

(6) Requests for expedited review must be submitted on a form provided by the department. If approved, expedited review is billed as provided under WAC 16-160-200.

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-130, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-140 Initial application requirements.** (1) (~~Applications must be submitted on the form provided by the department, and must include:~~

~~(a-))~~ To have products listed on the organic input material list, manufacturers must register with the department. To apply for registration, applicants must submit:

(a) An application form.

(b) A material registrant agreement in which the registrant agrees to comply with chapter 16-160 WAC.

~~((b-))~~ (c) The name and address of the registrant.

~~((e-))~~ (d) A product application for each product to be listed on the organic input material list.

(2) Each product application must include:

(a) The brand name the material is sold under.

(b) Manufacturer information:

(i) Name and address of the manufacturer;

(ii) Contact information, including the name and phone number of the authorized representative of the registrant; and

(iii) List of all material manufactured at the same facility as the ~~((registered))~~ brand name material.

~~((d-))~~ The brand name that the material is sold under.

~~(e-))~~ (c) A copy of the label or bill of lading accompanying the material and a statement of all claims made for it, including directions and precautions for use.

~~((f-))~~ (d) The complete formula or any alternate formulations for the material, including active and inert ingredients:

(i) Supplier of each ingredient;

(ii) Percentage of ingredient in the final formula; and

(iii) Purpose of each ingredient in the formula.

~~((g-))~~ (e) Ingredient information for each ingredient listed in the formula (including alternate formulas) sufficient to demonstrate compliance with ~~((the standards of the National Organic Program))~~ USDA organic regulations (7 C.F.R. Part 205):

(i) Manufacturing process; and

(ii) Formulation, including active and inert ingredients.

~~((h-))~~ (f) A description of the manufacturing process for the material, including all substances used for the extraction and synthesis process, if appropriate. If the manufacturing facility manufactures materials other than the material listed in the application, the application must include a plan to prevent the contamination or commingling of materials allowed or prohibited in organic agriculture.

~~((i-))~~ (g) A flow chart, indicating movement of material from incoming ingredient to outgoing final material. The flow chart may include, but is not limited to:

(i) Storage facilities;

(ii) Equipment location; and

(iii) Shipping facilities.

~~((j-))~~ (h) The intended use of the material.

~~((k-))~~ (i) The required fee for registration.

~~((l-))~~ Signature by authorized representative.

~~(m-))~~ (j) Applicants seeking to list fertilizers and pesticides must submit verification of a valid registration from the department's pesticide management division. This requirement may be waived if the applicant verifies the product will not be sold or distributed in Washington state.

(k) The department may request additional information related to the items above as necessary to demonstrate that the material meets ~~((the standards of the National Organic Program.~~

~~(2) Applications for fertilizers and pesticides must submit verification of a valid registration from the WSDA pesticide management division.~~

~~(3) In addition to the information required in this section, a registrant who is packaging or distributing a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must submit a statement from the manufacturer of the material granting the department)) USDA organic regulations (7 C.F.R. Part 205).~~

(3) Registrants packaging or distributing materials manufactured by another person or manufacturer must submit a statement from the person or manufacturer granting access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180.

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-140, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-150 Renewal application requirements.** (1) ~~((Renewal applications must be submitted on the form provided by the department, and must include the following:~~

~~(a-)) To renew a registration, registrants must submit:~~

~~(a) An application form;~~

~~(b) A material registrant agreement in which the registrant agrees to comply with chapter 16-160 WAC;~~

~~((b-)) (c) The name(s) of the material(s) seeking renewal;~~

~~((c) Name and address of the manufacturing facility(ies) for each registered material;)~~

~~(d) Notification of any unreported changes to the ((original application)) company or product information; and~~

~~(e) (Signature of authorized representative; and~~

~~(f-)) The required fee for renewal. Renewal applications post-marked after October 31st must include the appropriate late fee as listed under WAC 16-160-200.~~

~~(2) Registrants ((who package or distribute a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must annually submit a statement from the manufacturer of the material granting the department access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180.)) packaging or distributing materials manufactured by another person or manufacturer must submit a statement from the person or manufacturer granting access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180 every five years.~~

~~(3) Full disclosure of the complete formula of the material, including active and inert ingredients, and any other information necessary to demonstrate compliance is required every five years.~~

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-150, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-160 Updating an application.** If any changes to the information provided in an initial or renewal application occurs at any time after the application is submitted, the registrant must immediately submit the corrected information to the department for review. This information includes, but is not limited to, changes in material formulation, ingredient suppliers, manufacturing facilities or processes, labels or other production or marketing processes. The corrected information must be provided in writing. Failure by the registrant to provide correction to the information provided in an application may result in suspension or revocation of the registration, either in part or in full.

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-160, filed 9/8/10, effective 10/9/10.]

NEW SECTION

**WAC 16-160-165 Product requirements.** Products listed on the organic input material list must meet all requirements in this section. If at any time a listed product or product application is found to be in violation of one or more of these requirements, the company's registration may be denied, suspended, or revoked as provided under WAC 16-160-220. Products must:

(1) Meet the requirements of the USDA organic regulations (7 C.F.R. Part 205) and be approved for use in organic production, processing, or handling in accordance with the USDA organic regulations (7 C.F.R. Part 205). Materials may not be prohibited for use in the production or handling of organics per section 205.105 of the USDA organic regulations, and may not be otherwise prohibited for use in organic production and handling by the National Organic Program.

(2) Be clearly distinguishable from other products.

[]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-180 Inspections.** (1) By applying for registration on the brand name materials list, the registrant expressly grants to jurisdiction of the state of Washington in all matters related to the registration.

(2) By applying for registration on the brand name materials list, the registrant expressly grants the department or other organic certifying agent or inspection agent approved by the National Organic Program the right to enter the registrant's premises during normal business hours or at other reasonable times to:

(a) Inspect the portion of the premises where the materials, inputs or ingredients are stored, produced, manufactured, packaged or labeled;

(b) Inspect records related to the sales, storage, production, manufacture, packaging or labeling of the material, inputs or ingredients; and

(c) Obtain samples of materials, inputs or ingredients.

(3) Inspections may be conducted as a condition of ongoing compliance, after receiving an initial or a renewal application, notification of a change to an application, upon receipt of a complaint, or as required by the National Organic Program. Inspections may be announced or unannounced.

~~(4) ((Registrants who package or distribute a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must annually submit a statement from the manufacturer of the material granting the department access to the manufacturing facility and authorizing inspections. The signed consent must be on a form provided by the department.~~

~~(5)) Should the registrant or manufacturer refuse to allow inspection of the premises or records or fail to provide samples, the registration on the brand name materials list is canceled as provided under WAC 16-160-220. The department shall deny applications for registration where the registrant refuses to allow the inspection of the premises or records, or fails to provide samples as provided in this section ((, or fails to provide the department with the consent described in subsection (4) of this section)).~~

~~((6)) (5) Inspections must be documented on a form approved by the department. Inspections conducted by an inspection body other than the department will be accepted when a review determines that the inspection document is sufficient to demonstrate compliance with the ((standards of the National Organic Program)) USDA organic regulations (7 C.F.R. Part 205).~~

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-180, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-190 Recordkeeping requirements.** (1) Registrants must maintain records sufficient to verify that the materials are approved for use in organic production, processing, or handling and comply with the ~~((standards of the National Organic Program))~~ USDA organic regulations (7 C.F.R. Part 205). These records may include:

(a) Records pertaining to incoming raw materials:

- (i) Invoices/bills of lading;
- (ii) Transportation documentation;
- (iii) Material safety data sheets;
- (iv) Storage documentation.

(b) Production records:

- (i) Material formulations;
- (ii) Dates of production;
- (iii) Amount of ingredients used in each batch;
- (iv) Amount of final materials;
- (v) Sampling and/or laboratory analyses;
- (vi) Lot identification and tracking;
- (vii) Other records maintained during manufacturing.

- (c) Finished material records:
  - (i) Packaging documentation;
  - (ii) Sales documentation;
    - Purchase orders;
    - Receipts;
    - Shipping documents;
  - (iii) Storage documentation.
- (2) Records shall be maintained for six years.

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-190, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-200 Fees.** ((The following fees apply to applicants and registrants to the brand name materials list.

~~(1) Initial material registration:~~

~~(a) The application fee for initial registration of a pesticide, spray adjuvant, processing aid, livestock production aid or postharvest material is five hundred dollars per material.~~

~~(b) The application fee for initial registration of a fertilizer, soil amendment, organic waste derived material, compost, animal manure or crop production aid is four hundred dollars per material.~~

~~(2) Renewal registration:~~ The application fee for renewing a registration for a pesticide, spray adjuvant, processing aid, livestock production aid or postharvest material is three hundred dollars per material. The application fee for renewing a registration for a fertilizer, soil amendment, organic waste derived material, compost, animal manure or crop production aid is two hundred dollars per material.

~~(3) Late fees:~~ Renewal applications postmarked after October 31st must include a late fee in addition to the renewal fee. Renewal applications received after February 2nd will not be accepted.

| If your application is postmarked after October 31st but before: | Then the late fee is: |
|--|-----------------------|
| December 1   | \$100                 |
| January 1  | \$200                 |
| February 1   | \$300                 |

~~(4) Inspections:~~ Inspections conducted by the department, including report writing, will be billed at forty dollars per hour plus travel costs and mileage which shall be charged at the rate established by the state office of financial management. Fees assessed for inspections conducted by third-party inspection agencies are established by that agency. Registrants may contact the inspection agency to determine the applicable fee for those inspections.

~~(5) Samples:~~ Chemical analysis of samples, if required for registration or renewal, or obtained during an inspection, will be charged to the applicant at a rate established by the department of agriculture or at the cost for analyses performed by another laboratory.

~~(6) Expedited evaluation fees:~~ Requests for expedited reviews may be submitted and, if approved, are billed at the rate of forty dollars

per hour.) To receive or maintain registration, businesses must submit an application packet and fees to the department each year.

(1) **New application fee:** A new application fee is due with each annual application for registration.

(a) A new application fee includes a company fee which is assessed based on the operation's total gross annual income from the previous year. Total gross annual income is not limited to the sales or distribution of registered products.

| <u>Total gross annual income in previous calendar year</u> | <u>New company fee due</u> |
|--|----------------------------|
| \$0 - \$249,999  | \$125.00                   |
| \$250,000 - \$999,999                                      | \$250.00                   |
| \$1,000,000 - \$4,999,999                                  | \$500.00                   |
| \$5,000,000 - \$19,999,999                                 | \$1,000.00                 |
| \$20,000,000 - \$49,999,999                                | \$1,750.00                 |
| \$50,000,000 - and up                                      | \$2,400.00                 |

(b) Businesses who do not wish to disclose their gross annual income may instead choose to pay the maximum company fee of \$2,400.

(c) A new application fee includes a product fee which is assessed based on the total number of products included in the application. The product fee is \$350 per product application.

(d) While a registrant's account is active, with either listed products or products pending evaluation, companies may submit applications for new products without incurring a company fee. The product fee is \$350 per product included in subsequent applications.

(2) **Renewal fee:** A renewal fee must be submitted annually by October 31st with each renewal application.

(a) A renewal fee includes a company fee which is assessed based on the operation's total gross annual income from the previous year. Total gross annual income is not limited to the sales or distribution of registered products.

| <u>Total gross annual income in previous calendar year</u> | <u>Renewing company fee due</u> |
|--|---------------------------------|
| \$0 - \$249,999  | \$125.00                        |
| \$250,000 - \$999,999                                      | \$250.00                        |
| \$1,000,000 - \$4,999,999                                  | \$500.00                        |
| \$5,000,000 - \$19,999,999                                 | \$1,000.00                      |
| \$20,000,000 - \$49,999,999                                | \$1,750.00                      |
| \$50,000,000 - and up                                      | \$2,400.00                      |

(b) Companies who do not wish to disclose their gross annual income may instead choose to pay the maximum company fee of \$2,400.

(c) A renewal fee includes a product fee which is assessed based on the total number of products being renewed. The product fee is \$350 per renewing product.

(d) Renewal applications and fees submitted after October 31st must include a late fee in addition to the appropriate company and product fees. Renewal applications submitted after February 2nd will not be accepted, and applicants must reapply as new applicants.

| <u>If a renewal application is submitted after:</u> | <u>Late fee due</u> |
|---|---------------------|
| <u>October 31st</u>                                 | <u>\$100.00</u>     |
| <u>November 30th</u>                                | <u>\$200.00</u>     |
| <u>December 31st</u>                                | <u>\$300.00</u>     |

(3) **Inspection fee:** An inspection fee must be submitted after each inspection conducted by the department. The inspection fee is \$2,000.

(a) Small businesses, as defined by the Regulatory Fairness Act (chapter 19.85 RCW), qualify for a \$1,500 discount to their inspection fee.

(b) Out-of-state inspections, if necessary to determine compliance or requested by the operation, shall be charged to the operation at a rate of \$3,000 and include any travel expenses in excess of \$3,000. Out-of-state inspection fees do not replace, and are in addition to, the standard inspection fee as outlined under this section.

(4) **Samples:** Chemical analysis of samples, if required for registration or renewal, or obtained during an inspection, will be charged to the applicant at a rate established by the department or at the cost for analyses performed by another laboratory.

(5) **Expedited services:** New and renewing applicants may request expedited services. Expedited services are defined as inspections and reviews conducted outside of the normal timelines and may be provided by the department if sufficient capacity is available to expedite the work. Fees for expedited services do not replace, and are in addition to, any other required fees as outlined in this section.

(a) Expedited services not requiring an inspection are charged a rate of \$500 to receive an evaluation and certification decision within five business days from the acceptance of the request.

(b) Expedited services requiring an inspection prior to a certification decision are charged a rate of \$750. Expedited services under this subsection take production or handling dates into consideration. The review of the inspection report will be completed within five business days from the date of the inspection.

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-200, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-210 Labels and logos.** (1) A person whose material is registered under this chapter may use the words "approved material under Washington state department of agriculture organic food program" and may use the logo specified in this section in the labeling of the material.

The logos found in this section may be printed in black and white as displayed in this chapter. Alternatively, a color version with blue leaves, circle and background may be used. Electronic copies of the logos are available by request from the department.

(2) Registered materials are not certified as organic by the department and are prohibited from making claims indicating products are "certified organic" or similar term.



(3) Materials that are not registered under this chapter are prohibited from using the statement or the logo in this section in the labeling of the material.

(4) In addition to the other limitations expressed in this chapter and chapter 15.86 RCW, registration does not imply the Washington department of agriculture endorses the use of the product, does not make any guarantee that the material performs as represented by the registrant, and does not guarantee acceptance for use in organic production by certifying agents other than the department.



[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-210, filed 9/8/10, effective 10/9/10.]

AMENDATORY SECTION (Amending WSR 10-19-018, filed 9/8/10, effective 10/9/10)

**WAC 16-160-220 Suspension, revocation, cancellation, and denial of registrations.** (1) Registrations (~~((on the brand name materials list))~~) with the department's organic program, and applications for registration, are governed by chapter 34.05 RCW. The director may deny, suspend, cancel, or revoke a registration (~~((on the brand name materials list))~~) with the department, in part or in full, if the director determines that a registrant has failed to meet the registration criteria established under chapter 15.86 RCW or chapter 16-160 WAC, or violated any other provision under chapter 15.86 RCW or chapter 16-160 WAC.

(2) (~~(Application or registrations)~~) Product applications or listings will be revoked, canceled, or denied if a material fails to meet the standards for approval or is no longer approved for use in organic production, processing, or handling by the National Organic Program.

[Statutory Authority: RCW 15.86.060, 15.86.130, and chapter 34.05 RCW. WSR 10-19-018, § 16-160-220, filed 9/8/10, effective 10/9/10.]

## WSR 23-20-070

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed September 29, 2023, 8:44 a.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 82.49.040 requires the department of revenue (department) to prepare a depreciation schedule (at minimum annually) for use in the determination of the fair market value for watercrafts, which is the basis for measuring the watercraft excise tax. The annual update to this rule takes effect every January 1.

Purpose: RCW 82.49.040 requires the department to prepare a depreciation schedule (at minimum annually) for use in the determination of the fair market value for watercrafts, which is the basis for measuring the watercraft excise tax. The purpose of this rule-making effort is to adopt watercraft excise tax depreciation values for the 2024 calendar year based on watercraft valuation, sales, and registration data.

Citation of Rules Affected by this Order: Amending WAC 458-20-23801 Watercraft excise tax—Watercraft depreciation schedule.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 82.49.040.

Adopted under notice filed as WSR 23-16-144 on August 2, 2023.

A final cost-benefit analysis is available by contacting Ryan Becklean, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1576, fax 360-534-1606, TTY 1-800-451-7985, email RyanBe@dor.wa.gov, website dor.wa.gov.

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

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

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

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

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

Date Adopted: September 29, 2023.

Atif Aziz  
Rules Coordinator

**OTS-4649.1**

AMENDATORY SECTION (Amending WSR 22-24-056, filed 12/1/22, effective 1/1/23)

**WAC 458-20-23801 Watercraft excise tax—Watercraft depreciation schedule.** (1) **Introduction.** This rule addresses the watercraft excise tax, including an overview of the tax, exemptions from the tax, and the watercraft depreciation schedule used to determine a watercraft's fair market value. The rule also addresses administrative issues including payment, interest, and penalties.

(2) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(3) **Definitions and terms.** The following definitions and terms apply throughout this rule.

(a) **"Dealer"** means a person, partnership, association, or corporation engaged in the business of selling vessels at wholesale or retail in this state. RCW 88.02.310.

(b) **"Fair market value."**

(i) In cases where the most recent purchase price of a vessel is known to the vessel owner, "fair market value" means the purchase price of the vessel in the year it was purchased. For subsequent years, "fair market value" means the purchase price of the vessel depreciated according to the schedule in subsection (6) of this rule. RCW 82.49.040.

(ii) In cases where a vessel has been acquired by lease or gift, or the most recent purchase price of the vessel is not known to the vessel owner, "fair market value" means the appraised value of the vessel determined according to subsection (7) of this rule. RCW 82.49.050(1).

(iii) In cases where the department determines that the purchase price stated by the owner is not a reasonable representation of the true "fair market value" of the vessel, the department must appraise the vessel according to subsection (7) of this rule. RCW 82.49.050(2).

(c) **"Owner"** means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest, and means registered owner where the reference to owner may be construed as either to registered or legal owner. RCW 88.02.310.

(d) **"Vessel"** means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. RCW 88.02.310.

(e) **"Waters of this state"** means any waters within the territorial limits of this state as described in 43 U.S.C. Sec. 1312. RCW 88.02.310.

(4) **Overview of the watercraft excise tax.**

(a) The watercraft excise tax generally applies to vessels measuring 16 feet or more in overall length. The tax is imposed for the privilege of using a vessel upon the waters of this state, except those vessels which are exempt from the tax under subsection (5) of this rule and under RCW 82.49.020. The tax is imposed on an annual basis and is equal to the greater of five dollars or one-half of one percent of a vessel's fair market value.

(b) Persons required to register a vessel with this state under chapter 88.02 RCW who fail to register their vessel and avoid paying the watercraft excise tax are guilty of a gross misdemeanor and are

liable for any unpaid excise tax. The department must also impose the penalties authorized under subsection (9) of this rule and under RCW 82.49.080 and chapter 82.32 RCW.

(c) When a person first registers a vessel in this state, the watercraft excise tax is imposed beginning with the month in which the vessel is registered through the following June 30th. In cases where the initial registration period is less than 12 months, the watercraft excise tax is prorated according to the number of months covered by the registration period. The initial registration is valid from the month of registration through the following June 30th.

(i) The department of licensing may extend or diminish the initial registration period for purposes of staggered renewal periods under RCW 88.02.560.

(ii) A vessel is considered first registered in this state if in the immediately preceding 12 month period the vessel was not registered in this state or was registered in another jurisdiction during the same period.

(iii) **Example 1. Watercraft excise tax computation - Initial vessel registration.**

**Facts:** Dan Carter purchases a 20 foot powerboat from a Washington dealer in April 2022. The purchase price is \$20,000. Dan is a resident of Washington. Dan registers the vessel with the department of licensing shortly after his purchase, in April 2022.

**Result:** The department of licensing will issue a registration decal for the vessel covering the registration period of July 2021 through June 2022 and collect the annual watercraft excise tax liability for this registration period in the amount of \$25 ( $\$20,000$  (purchase price)  $\times$  .005 (watercraft excise tax rate)  $\times$  .25 (3 month prorated period April - June 2022)).

(5) **Exemptions.** The following types of vessels are exempt from watercraft excise tax:

(a) Those exempt from vessel registration under RCW 88.02.570;

(b) Those used exclusively for commercial fishing purposes;

(c) Those measuring less than 16 feet in overall length, including personal watercraft;

(d) Those owned and operated by the United States, another state, or any municipality or subdivision thereof;

(e) Those owned by a nonprofit organization or association engaged in character building of children under 18 years of age and solely used for such purposes;

(f) Those held for sale by a dealer, but not rented on a regular commercial basis; and

(g) Those owned by Indian tribes and tribal members, used in the exercise of treaty fishing rights, and exempt under WAC 308-93-720.

(6) **Depreciation schedule.**

(a) RCW 82.49.040 requires the department to prepare a depreciation schedule annually, for use in determining the fair market value of vessels, which is the measure of the watercraft excise tax. The following schedule includes separate depreciation rates for two categories of vessels, including a column for the vessel's year of ownership and columns for the depreciated percentage of the vessel's value by vessel length. First, vessel owners must determine the appropriate column to use, depending on the length of the vessel they own. Second, vessel owners must identify the depreciated percentage of value for their vessel according to the row which corresponds to the number of years they have owned the vessel.

| Year of Ownership | Vessels less than 30 feet       | Vessels 30 feet or more         |
|-------------------|---------------------------------|---------------------------------|
| 1                 | 1.00                            | 1.00                            |
| 2                 | <del>((0.85))</del> <u>0.86</u> | <del>((0.83))</del> <u>0.84</u> |
| 3                 | <del>((0.76))</del> <u>0.79</u> | <del>((0.75))</del> <u>0.77</u> |
| 4                 | <del>((0.70))</del> <u>0.73</u> | <del>((0.68))</del> <u>0.70</u> |
| 5                 | <del>((0.65))</del> <u>0.68</u> | <del>((0.63))</del> <u>0.66</u> |
| 6                 | <del>((0.61))</del> <u>0.64</u> | <del>((0.59))</del> <u>0.62</u> |
| 7                 | <del>((0.57))</del> <u>0.60</u> | <del>((0.55))</del> <u>0.59</u> |
| 8                 | <del>((0.54))</del> <u>0.57</u> | <del>((0.53))</del> <u>0.56</u> |
| 9                 | <del>((0.51))</del> <u>0.55</u> | <del>((0.50))</del> <u>0.53</u> |
| 10                | <del>((0.49))</del> <u>0.52</u> | <del>((0.48))</del> <u>0.52</u> |
| 11                | <del>((0.47))</del> <u>0.50</u> | <del>((0.46))</del> <u>0.50</u> |
| 12                | <del>((0.45))</del> <u>0.47</u> | <del>((0.45))</del> <u>0.47</u> |
| 13                | <del>((0.43))</del> <u>0.45</u> | <del>((0.43))</del> <u>0.45</u> |
| 14                | <del>((0.42))</del> <u>0.44</u> | <del>((0.42))</del> <u>0.44</u> |
| 15                | <del>((0.40))</del> <u>0.42</u> | <del>((0.42))</del> <u>0.43</u> |
| 16                | <del>((0.39))</del> <u>0.40</u> | <del>((0.41))</del> <u>0.42</u> |
| 17                | <del>((0.37))</del> <u>0.39</u> | <del>((0.41))</del> <u>0.42</u> |
| 18                | <del>((0.35))</del> <u>0.37</u> | <del>((0.40))</del> <u>0.41</u> |
| 19                | <del>((0.34))</del> <u>0.36</u> | <del>((0.39))</del> <u>0.40</u> |
| 20                | <del>((0.33))</del> <u>0.35</u> | 0.39                            |
| 21                | <del>((0.32))</del> <u>0.34</u> | <del>((0.38))</del> <u>0.39</u> |
| 22                | <del>((0.31))</del> <u>0.33</u> | <del>((0.37))</del> <u>0.38</u> |
| 23                | <del>((0.30))</del> <u>0.32</u> | <del>((0.36))</del> <u>0.37</u> |
| 24                | <del>((0.29))</del> <u>0.32</u> | <del>((0.35))</del> <u>0.36</u> |
| 25 or more        | <del>((0.28))</del> <u>0.32</u> | <del>((0.34))</del> <u>0.36</u> |

(b) **Example 2. Standard vessel registration renewal.**

**Facts:** Deborah Peters purchased a 28-foot sailboat in September 2017. The purchase price of the sailboat was \$40,000. Deborah is a Washington resident and the sailboat is used exclusively upon Washington waters. In June 2022, Deborah renews the vessel's registration for the upcoming annual period of July 2022 through June 2023.

**Result:** Deborah will use the column titled "Vessels less than 30 feet" to determine the fair market value of her sailboat. Since Deborah bought the sailboat within the annual period of July 2017 through June 2018, that period is considered Year 1 for purposes of ownership. Accordingly, the period of July 2022 through June 2023 is considered Year 6 for purposes of ownership. The depreciated value of the sailboat in Year 6 is equal to 61 percent of Deborah's initial purchase price of \$40,000, or \$24,400. Deborah is subject to watercraft excise tax in the amount of \$122 ( $\$24,400$  (fair market value)  $\times$  .005 (watercraft excise tax rate)).

(7) **Vessel appraisal.**

(a) If a vessel has been acquired by lease or gift, or the most recent purchase price of a vessel is not known to the owner, the department must appraise the vessel before it can be registered for use upon the waters of this state.

(b) If the department determines the purchase price of a vessel reported by the vessel's owner at the time of its registration is not

representative of its fair market value, the department must appraise the vessel to determine its fair market value. If the appraised value is less than the reported purchase price, the department will issue a refund of the overpaid tax. If the appraised value is greater than the reported purchase price, the department will notify the vessel owner of the additional tax liability, which must be paid within 30 days of the department's notice.

(c) If a vessel is homemade, the vessel's owner must make a notarized declaration of its value. See RCW 82.49.050(3) for more information.

(d) For purposes of this subsection, "appraisal" includes the use of industry pricing guides, other evaluation tools, and independent appraisals in order to ascertain the fair market value of a vessel.

**(8) Disputes related to a vessel's appraised value or taxability.**

(a) Any vessel owner who disputes a vessel's appraised value under RCW 82.49.050, or taxable status, may request a review of a tax assessment by filing a petition with the department as provided in WAC 458-20-100 (Informal administrative reviews).

(b) If the vessel owner's petition is denied, the vessel owner may appeal to the board of tax appeals as provided in RCW 82.03.190. In deciding the case, the board of tax appeals may require an independent appraisal of the vessel, the cost of which must be shared between the vessel owner and the department.

**(9) Administration.**

(a) **Payment of tax.** The watercraft excise tax is due and payable to the department of licensing, county auditor, or other appointed agent at the time the vessel is registered. A registration will not be issued or renewed until the watercraft excise tax is paid in full. For previously registered vessels, watercraft excise tax is due at the time of the vessel's registration renewal and must be paid prior to the start of the vessel registration period, which covers the period of July 1st through June 30th of the following year.

(b) **Refunds.** Taxpayers who overpay the watercraft excise tax in full or in part at the time of a vessel's registration are eligible for a refund of the overpaid tax. Taxpayers are also entitled to receive interest according to RCW 82.32.060. See RCW 82.49.065 for more information regarding refunds.

(c) **Penalties and interest.** An owner of a vessel that is not registered as required under chapter 88.02 RCW and that avoided payment of the watercraft excise tax is liable for the following penalties and interest:

- (i) One hundred dollars for the owner's first violation;
- (ii) Two hundred dollars for the owner's second violation;
- (iii) Four hundred dollars for the owner's third violation and any successive violations;
- (iv) The penalties prescribed under chapter 82.32 RCW; and
- (v) The interest prescribed under chapter 82.32 RCW.

[Statutory Authority: RCW 82.01.060(2), 82.32.300, and 82.49.040. WSR 22-24-056, § 458-20-23801, filed 12/1/22, effective 1/1/23; WSR 21-22-009, § 458-20-23801, filed 10/21/21, effective 1/1/22.]

WSR 23-20-103

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 3, 2023, 9:42 a.m., effective November 3, 2023]

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

Purpose: The department of licensing is modifying the existing abandoned RV standardized reimbursement schedule and increasing the current reimbursement rates and caps.

Citation of Rules Affected by this Order: Amending WAC 308-61-215 Abandoned recreational vehicle—Rates and caps. At what rates will reimbursements be for?

Statutory Authority for Adoption: RCW 46.53.010 Registered tow truck operators, vehicle wreckers, scrap processors, and scrap metal business may apply for cost reimbursement for towing, transporting, storing, dismantling, and disposing abandoned recreational vehicles—Department to develop rules—Stakeholder work group, and 46.55.190 Rules.

Adopted under notice filed as WSR 23-17-162 on August 23, 2023.

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

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

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

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

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

Date Adopted: October 3, 2023.

Ellis Starrett  
Rules and Policy Manager

OTS-4883.1

AMENDATORY SECTION (Amending WSR 19-11-007, filed 5/2/19, effective 6/1/19)

**WAC 308-61-215 Abandoned recreational vehicle—Rates and caps.**

**At what rates will reimbursements be (~~for~~) made?**

(1) The costs will be reimbursed at a standardized scheduled rate:

| <b>((Item</b>   | <b>Standard Rate</b> | <b>Cap</b>      |
|---|----------------------|-----------------|
| <b>Towing and Transport (Increment Per Hour—Maximum Three Hours Total for Identified Class)</b> |                      |                 |
| <b>Class A Tow Vehicle (including D and E)</b>  | <b>\$105.00/hr.</b>  | <b>\$315.00</b> |
| <b>Class B Tow Vehicle</b>  | <b>\$120.00/hr.</b>  | <b>\$360.00</b> |



| <b>((Item</b>  | <b>Standard Rate</b> | <b>Cap</b>        |
|--|----------------------|-------------------|
| Class C Tow Vehicle (including B2 and S1)  | \$175.00/hr.         | <b>\$525.00</b>   |
| <b>Storage (Increment Per Day - Maximum 10 Days Total)</b>                                     |                      |                   |
| Standard Storage   | \$35.00/day          | <b>\$350.00</b>   |
| <b>Dismantling and Disposal (Increment Per Foot - Maximum per Identified Vehicle Category)</b> |                      |                   |
| Motor Homes (Up to 35')  | \$70.00/ft.          | <b>\$2,450.00</b> |
| Travel Trailers (Up to 25')  | \$70.00/ft.          | <b>\$1,750.00</b> |
| Campers (Up to 15')  | \$70.00/ft.          | <b>\$1,050.00</b> |

~~(2) Standard rates apply to:~~

~~(a) Hourly increment of towing and transport by tow vehicle class (i.e., a class 'B' tow vehicle used for two hours is two hundred forty dollars; a class 'C' tow vehicle used for four hours is capped at five hundred twenty dollars).~~

~~(b) Days of storage incurred (i.e., a vehicle stored for eight days is two hundred eighty dollars; a vehicle stored for twenty-five days is capped at three hundred fifty dollars).~~

~~(c) Classification of abandoned recreational vehicle dismantled and disposed up to the cap for that item (i.e., dismantling and disposal of a twenty-seven foot motor home is one thousand eight hundred ninety dollars; dismantling and disposal of a thirty foot travel trailer is capped at one thousand seven hundred fifty dollars).~~

~~(d))~~

| <b>Item</b>   | <b>Standard Rate</b> | <b>Cap</b>               |
|---|----------------------|--------------------------|
| <b><u>Towing and Transport (Increment per Hour - Maximum Four Hours Total for Identified RV Length)</u></b>   |                      |                          |
| <u>Towing up to 29'</u>   | <u>\$150.00/hr.</u>  | <u><b>\$600.00</b></u>   |
| <u>Towing 30' and Over</u>  | <u>\$220.00/hr.</u>  | <u><b>\$888.00</b></u>   |
| <u>Ferry Fees</u>   | <u>As Incurred</u>   | <u><b>\$350.00</b></u>   |
| <b><u>Storage (Increment per Day per RV Length - Maximum 20 Days Total) (*May Excludes Junk Vehicles)</u></b> |                      |                          |
| <u>Standard Storage up to 29'</u>   | <u>\$40.00/day</u>   | <u><b>\$800.00</b></u>   |
| <u>Storage 30' and Over</u>   | <u>\$60.00/day</u>   | <u><b>\$1,200.00</b></u> |
| <b><u>Dismantling and Disposal (Increment per RV Length)</u></b>  |                      |                          |
| <u>30' to 46'</u>   | <u>\$80.00/ft.</u>   | <u><b>\$3,680.00</b></u> |
| <u>20' to 29'</u>   | <u>\$75.00/ft.</u>   | <u><b>\$2,175.00</b></u> |
| <u>Up to 19'</u>  | <u>\$70.00/ft.</u>   | <u><b>\$1,330.00</b></u> |

(2) Abandoned recreational vehicle length must be indicated by an annotation on the signed tow authorization, junk vehicle affidavit, affidavit of sale, or a certificate of fact.

(3) Total length of the recreational vehicle shall be determined by measuring the vehicle type as follows:

((i)) (a) Motor homes: Measured in feet of total length from the front bumper to the rear bumper, excluding attached storage boxes or trailer or tow hitches.

((ii)) (b) Travel trailers: Measured in feet of total length from the front of the box to the rear bumper, excluding the front trailer tongue, attached storage boxes or any additional trailer or

tow hitches from rear bumper. Fifth-wheel trailers may include the front-cap.

~~((iii))~~ (c) Campers: Measured in feet of total length from the front of the cab-over box to the rear of the box, excluding any attached storage boxes or other accessories.

(4) Adjustments made to rates and caps may not be applied to previously submitted claims which already received a disbursement from the department.

[Statutory Authority: RCW 46.55.190 and 46.53.010. WSR 19-11-007, § 308-61-215, filed 5/2/19, effective 6/1/19.]

## WSR 23-20-114

## PERMANENT RULES

## DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed October 3, 2023, 4:36 p.m., effective November 3, 2023]

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

Purpose: Chiropractic health equity continuing education. The chiropractic quality assurance commission (commission) is adopting the department of health (department) health equity model rules in amended WAC 246-808-150 to implement ESSB 5229 (chapter 276, Laws of 2021). The adopted rule establishes minimum standards for chiropractors of two hours of health equity continuing education (CE) every four years. The rule as adopted does not change the total number of 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 chiropractors.

Citation of Rules Affected by this Order: Amending WAC 246-808-150.

Statutory Authority for Adoption: RCW 18.130.040 and 43.70.613.

Adopted under notice filed as WSR 23-15-083 on July 18, 2023.

A final cost-benefit analysis is available by contacting Betty J. Moe, Regulatory Analyst, Chiropractic Quality Assurance Commission, P.O. Box 47858, Olympia, WA 98504-7858, phone 360-236-2868, fax 360-236-2360, TTY 711, email cqac@doh.wa.gov, website www.doh.wa.gov.

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

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

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

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

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

Date Adopted: September 14, 2023.

Robert Nicoloff  
Executive Director

**OTS-4622.3**

AMENDATORY SECTION (Amending WSR 17-07-096, filed 3/20/17, effective 4/20/17)

**WAC 246-808-150 Commission approved continuing education.** (1) A chiropractor must demonstrate completion of (~~(twenty-five)~~) 25 hours of continuing education each annual renewal cycle as required by RCW 18.25.070 and (~~(chapter 246-12 WAC, Part 7)~~) WAC 246-12-170 through

246-12-240. The required continuing education must be obtained during the period between renewals.

(2) A chiropractor must attest to completion of the continuing education requirement upon renewal. If the first renewal period is less than one full year from the date of licensure, no continuing education will be due for the first renewal period.

(3) A chiropractor in active status who resides and practices outside Washington must meet all the requirements.

(4) A chiropractor is not required to obtain prior approval of any continuing education.

(5) The commission approves the following subject material within the scope of practice for continuing chiropractic education credit:

(a) Diagnosis and treatment of the spine or extremity articulations within the scope of practice;

(b) X-ray/diagnostic imaging;

(c) Adjustive technique;

(d) Detection of a subluxation;

(e) Physical examination;

(f) Hygiene;

(g) Symptomatology;

(h) Neurology;

(i) Pathology;

(j) Orthopedics;

(k) Patient/case management, documentation, coding;

(l) Impairment within the scope of practice;

(m) CPR (not to exceed a total of four hours);

(n) Dietary and nutrition advice;

(o) Chiropractic philosophy; and

(p) Governmental regulations relevant to chiropractic and public health (not to exceed a total of ~~((twelve))~~ 12 hours).

(6) Suicide screening and referral.

(a) As part of the continuing education requirements, a chiropractor must obtain a one-time, three-hour training in suicide screening and referral from a qualified suicide prevention training program. The training must be completed during the first full reporting period after initial licensure.

~~((a))~~ (b) A qualified training program is empirically supported training in suicide screening and referral that is at least three hours in length and may be provided in one or more sessions.

~~((b))~~ (c) The hours spent completing a training program in suicide screening and referral under this section count toward meeting any applicable continuing education requirements.

~~((c) Effective July 1, 2017,)~~ (d) In order to meet the suicide screening and referral training requirements, a chiropractor must obtain the three-hour training in suicide screening and referral from a qualified suicide prevention training program identified on the department of health's model list as required under RCW 43.70.442.

~~((d))~~ (e) Nothing in this subsection is intended to expand or limit the chiropractic scope of practice.

(7) Health equity requirements.

(a) Beginning January 1, 2024, as part of the continuing education requirements, a chiropractor must complete a minimum of two hours of training in health equity every four years in accordance with WAC 246-12-800 through 246-12-830.

(b) Hours spent completing health equity continuing education under this section count toward meeting the continuing education requirement(s) for chiropractors for renewal.

(8) Subject matter not approved for continuing education credit:

(a) Subject matter not directly relating to the chiropractic clinical scope of practice; and

(b) Conduct prohibited by Washington state statutes or rules governing chiropractic practice.

~~((8))~~ (9) A chiropractor may earn a maximum of ~~((twelve))~~ 12 hours for:

(a) Completing a multimedia chiropractic education program, which includes, but is not limited to, the internet, teleseminars, employer led training, live remote webinars, and audio or video presentations.

(b) Serving as teachers or lecturers in continuing education programs approved under subsection (5) of this section. A chiropractor may receive credit on the same basis as those attending the program.

~~((9))~~ (10) The commission may randomly audit license holders for compliance. A chiropractor must provide acceptable documentation of attendance upon commission request or audit. Acceptable forms of documentation include:

(a) Transcripts;

(b) Written documentation from the course instructors;

(c) Certificate of completion indicating the name of the course, date(s) of the course, and the number of credit hours completed; or

(d) Other formal documentation which includes:

(i) Participant's name;

(ii) Course title;

(iii) Course content;

(iv) Date(s) of course;

(v) Number of credit hours completed;

(vi) Instructor's name(s); and

(vii) Signature of the program sponsor or course instructor. Multimedia courses are exempt from the signature requirement.

~~((10))~~ (11) A sponsor offering a continuing chiropractic education program does not need prior commission approval for a formal continuing education program. The number of creditable hours may be determined by counting the contact hours of instruction. A credit hour for time actually spent in a course cannot be less than ~~((fifty))~~ 50 minutes as required in ~~((chapter 246-12 WAC, Part 7))~~ WAC 246-12-220.

~~((11))~~ (12) The commission may grant exemptions or time extensions on an individual basis~~((7))~~ if a licensee fails to meet continuing education requirements due to illness, retirement, or other extenuating circumstances.

[Statutory Authority: RCW 18.25.0171, 18.130.050, 18.25.070, and 43.70.442. WSR 17-07-096, § 246-808-150, filed 3/20/17, effective 4/20/17. Statutory Authority: RCW 18.25.0171, 18.25.070, and 2014 c 71. WSR 15-07-005, § 246-808-150, filed 3/6/15, effective 4/6/15. Statutory Authority: RCW 18.25.0171 and 18.25.070. WSR 06-03-057, § 246-808-150, filed 1/11/06, effective 2/11/06. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-808-150, filed 2/13/98, effective 3/16/98. Statutory Authority: Chapter 18.25 RCW. WSR 96-16-074, § 246-808-150, filed 8/6/96, effective 9/6/96.]

**WSR 23-20-117**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**  
(Board of Nursing)

[Filed October 3, 2023, 5:07 p.m., effective November 3, 2023]

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

Purpose: Nursing assistant rule updates. Creating new chapter 246-841A WAC, Nursing assistants; and repealing chapters 246-841 WAC, Nursing assistants, and 246-842 WAC, Nursing assistants—Nursing homes—Nursing assistants training program. The new chapter represents a collaboration between the board of nursing (board), formerly known as the nursing care quality assurance commission, and the department of health (department) to address necessary changes in the nursing assistant rules. The board and department identified that chapter 246-841 WAC needed updating to reflect best practices, and chapter 246-842 WAC needed to be repealed to eliminate redundancy. Chapter 246-841 WAC also needed to be repealed and rewritten as chapter 246-841A WAC. WAC 246-841-520 Expired license, 246-841-720 Mandatory reporting, and 246-841-990 Nursing assistant—Fees and renewal cycle, are under the authority of the department and are repealed and consolidated in chapter 246-841A WAC, Nursing assistants. WAC 246-841-520 has been renumbered to WAC 246-841A-980 for more logical placement in the chapter and the title was changed to "expired credential." WAC 246-841-720 is rewritten as WAC 246-841A-720 to reflect current practice and WAC 246-841-990 is rewritten as WAC 246-841A-990 with no other changes.

Citation of Rules Affected by this Order: New WAC 246-841A-390, 246-841A-400, 246-841A-403, 246-841A-405, 246-841A-407, 246-841A-409, 246-841A-410, 246-841A-420, 246-841A-423, 246-841A-425, 246-841A-427, 246-841A-430, 246-841A-440, 246-841A-450, 246-841A-455, 246-841A-460, 246-841A-463, 246-841A-465, 246-841A-470, 246-841A-475, 246-841A-483, 246-841A-485, 246-841A-490, 246-841A-530, 246-841A-535, 246-841A-545, 246-841A-550, 246-841A-555, 246-841A-578, 246-841A-585, 246-841A-586, 246-841A-589, 246-841A-590, 246-841A-595, 246-841A-600, 246-841A-720, 246-841A-980 and 246-841A-990; and repealing WAC 246-841-400, 246-841-405, 246-841-410, 246-841-420, 246-841-430, 246-841-440, 246-841-450, 246-841-460, 246-841-470, 246-841-490, 246-841-500, 246-841-510, 246-841-520, 246-841-530, 246-841-535, 246-841-545, 246-841-550, 246-841-555, 246-841-560, 246-841-570, 246-841-573, 246-841-575, 246-841-578, 246-841-585, 246-841-586, 246-841-587, 246-841-588, 246-841-589, 246-841-590, 246-841-591, 246-841-592, 246-841-593, 246-841-594, 246-841-595, 246-841-720, 246-841-990, 246-842-100, 246-842-110, 246-842-120, 246-842-130, 246-842-140, 246-842-150, 246-842-160, 246-842-170, 246-842-180, 246-842-190, 246-842-200, and 246-842-210.

Statutory Authority for Adoption: RCW 18.79.110, 18.79.260, 18.88A.030, 18.88A.060, 18.88A.090, 18.88A.082, 18.88A.087, 43.70.040, 43.70.250, and 43.70.280.

Adopted under notice filed as WSR 23-15-091 on July 18, 2023.

Changes Other than Editing from Proposed to Adopted Version: Proposed WAC 246-841A-405 was amended at the public hearing with nonsubstantive technical changes:

In (2) (b) (i) "only for the specific patient receiving delegation" is moved to become part of the subsection (2) (b) sentence. It now reads:

(2) General requirements for registered nursing delegation that apply in all care settings include:

(a) In accordance with RCW 18.79.260 (3)(f), registered nurse delegation may include glucose monitoring and testing as a general allowance, including in hospitals and nursing homes.

(b) Delegated nursing care tasks described in this section are only for the specific patient receiving delegation.

The reference to WAC 246-840-910 through WAC 246-840-970 were misplaced in subsection (2). They are not part of general requirements. They apply specifically to nurse delegation in community-based or in-home settings which is covered in subsection (3). The reference has been moved to subsection (3), which now reads:

(3) RCW 18.79.260 (3)(e) defines specific requirements for registered nurse delegation in community-based or in-home care settings. WAC 246-840-910 through WAC 246-840-970 provide additional applicable requirements for compliance.

A clerical error correction is necessary in subsections (2)(d)(iv) and (v) so WAC language aligns properly with RCW 18.79.260. The rule now reads:

(2) General requirements for registered nursing delegation that apply in all care settings include: ...

(d) Nursing assistants shall not accept delegation of, or perform, the following nursing care tasks: ...

(iv) Except as authorized in RCW 18.79.260 (3)(e) and (f), piercing or severing of tissues and acts requiring substantial skill; and

(v) Acts requiring nursing judgment.

A final cost-benefit analysis is available by contacting Jessilyn Dagum, P.O. Box 47864, Olympia, WA 98504-7864, phone 360-236-3538, fax 360-236-4738, TTY 711, email [ncqac.rules@doh.wa.gov](mailto:ncqac.rules@doh.wa.gov), website [www.nursing.wa.gov](http://www.nursing.wa.gov).

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

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

Number of Sections Adopted on the Agency's own Initiative: New 38, Amended 0, Repealed 48.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 38, Amended 0, Repealed 48.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 38, Amended 0, Repealed 48.

Date Adopted: October 3, 2023.

Alison Bradywood DNP, MN/MPH, RN, NEA-BC  
Executive Director  
Washington State Board of Nursing  
and Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

OTS-4365.7

**Chapter 246-841A WAC  
NURSING ASSISTANTS**

**DEFINITIONS**

NEW SECTION

**WAC 246-841A-390 Definitions.** The definitions in RCW 18.88A.020 and in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Asynchronous" means online learning of classroom or theory content that allows students to view and participate with online instructional materials within a flexible, but defined time period and does not include a live video lecture component.

(2) "Clinical" means students' in-facility experiences providing care in accordance with the nursing assistant scope of practice under the supervision of an approved instructor for the training program. Students who opt to complete clinical requirements through the nursing assistant-registered work pathway may be supervised by a licensed nurse as described in subsection (8)(b) of this section.

(3) "Commission" means the Washington state nursing care quality assurance commission.

(4) "Common curriculum" means the curriculum framework provided by the commission for use by all programs. The curriculum framework includes materials for nine basic units and integrates three specialty trainings (developmental disabilities, mental health, and dementia) as directed by the legislature. The common curriculum supports students' development of a holistic, person-centered care approach.

(5) "Competency evaluation" means the measurement of an individual's knowledge and skills as related to safe, competent performance of one's professional role. A formal, state-required competency evaluation is required for certification as a nursing assistant or for a certification endorsement as a medication assistant.

(6) "Corrective action" means the necessary steps a nursing assistant training program must take to address identified deficiencies in or violations of program standards.

(7) "Corrective action designation" means a classification added by the commission to a nursing assistant training program's approval status when deficiencies in or violations of program standards exist. Corrective action designations are described in WAC 246-841A-470 and include: Full approval with plan of correction; full approval with plan of correction and technical assistance; and conditional approval.

(8) "Direct patient care" means implementing all aspects of the nursing process with patients through hands-on, face-to-face contact by a licensed nurse. The nursing process consists of assessment, diagnosis, planning, implementation, and evaluation.

(9) "Direct supervision" means:



(a) For nursing assistant and medication assistant students in clinical: An approved instructor is always on-site to ensure appropriate care assignments, supervise, teach, and evaluate performance while the students are providing care.

(b) For nursing assistant-registered employees using the nursing assistant-registered work pathway for clinical credit in a nursing assistant training program: A licensed nurse is always on-site to supervise and evaluate competency for all tasks assigned and care to be provided.

(c) For medication assistants employed in a nursing home: The licensed registered nurse who directs medication administration and commission-approved treatments to a medication assistant is on-site, immediately accessible in person, and has assessed the residents prior to performance of these duties.

(10) "Good standing" means:

(a) For a nursing assistant training program: The program has operated for at least one year and has full approval status with no corrective action designation as identified in WAC 246-841A-470.

(b) Regarding the status of an individual's license or credential: The license or credential is not currently subject to any sanction, terms, conditions or restrictions required by formal or informal discipline or an agreement to practice with conditions under chapter 18.130 RCW, the Uniform Disciplinary Act.

(11) "Holistic care" means care of the whole person by supporting the person's human needs within one's professional scope of practice. Human needs include physiological, safety, love and belonging, self-esteem, and self-actualization needs.

(12) "Home care aide-certified" means any person certified under chapter 18.88B RCW.

(13) "Hybrid program" means online learning replaces a portion of face-to-face classroom or theory instruction with web-based online learning (e.g., video lectures, online discussions, or activities).

(14) "Learning management system" means a software application for the administration, documentation, tracking, reporting, automation and delivery of educational courses, training programs, or learning and development programs.

(15) "Live online" (also called "synchronous") means online classroom theory learning where students are required to log in at a specific time and participate in real-time activities in the virtual classroom with a live instructor.

(16) "Medical assistant-certified" means a person certified under chapter 18.360 RCW.

(17) "Medication assistant" means a nursing assistant-certified with a medication assistant endorsement issued under chapter 18.88A RCW who is authorized to administer certain medications and perform certain treatments in a nursing home under the supervision of a registered nurse.

(18) "Nursing assistant(s)" includes both nursing assistants-registered and nursing assistants-certified.

(19) "Nursing assistant-certified" means any person certified under chapter 18.88A RCW.

(20) "Nursing assistant-registered" means any person registered under chapter 18.88A RCW.

(21) "Nursing home" means any facility licensed under chapter 18.51 RCW.

(22) "Pass rates" means the averaged percentage of students who successfully meet the standard for the state certification examination

on their first attempt, measured annually for all programs individually and in aggregate.

(23) "Prescriber-ordered treatments" means drugs or care tasks ordered by a practitioner who is authorized by law or rule in the state of Washington to prescribe drugs or treatments.

(24) "Program standards" means:

(a) Requirements as stated in this chapter;

(b) Policies, procedures, and program materials and forms developed by the commission in support of implementation and compliance with this chapter and state and federal laws;

(c) Demonstration of current and accurate information in program teaching, materials, and communications regarding federal and state laws and regulations pertaining to:

(i) Nursing assistant training, testing, and certification requirements;

(ii) Nursing assistant scope of practice and practice standards; and

(iii) Nursing assistant professional conduct requirements; and

(d) Compliance with applicable state and federal laws.

(25) "Technical assistance" means aid by the commission to support the program in its efforts to meet program standards. Technical assistance sessions are scheduled for a designated time period. They may occur by phone, virtual meeting, or in-person. As examples, technical assistance may include:

(a) Review of program activities and processes in relation to program standards;

(b) Review of program standards with explanations and examples relevant to the program;

(c) Introduction to approaches or resources that may be helpful to the program; or

(d) A written summary of technical assistance provided and requirements for the program to meet program standards.

(26) "Technical support" relates to students in hybrid programs with asynchronous online elements and means timely assistance by the training program to correct technical difficulties with access to on-line training program materials or use of those materials. Technical support is provided as part of the overall training program with no additional costs to students for technical support needs.

[]

## NURSING ASSISTANT SCOPE AND STANDARDS OF PRACTICE

### NEW SECTION

**WAC 246-841A-400 Standards of practice and competencies for nursing assistants.** Competencies and standards of practice are statements of knowledge, skills, and behaviors. They are written as descriptions of observable, measurable actions. All nursing assistant

competencies are performed under the direction and supervision of a licensed registered nurse or licensed practical nurse as required by RCW 18.88A.030. The following competencies are considered standards of practice for both nursing assistant-certified and nursing assistant-registered:

(1) The nursing assistant role and knowledge of rules and regulations.

(a) A nursing assistant demonstrates competency in providing holistic, person-centered care that supports the human needs of diverse individuals. The nursing assistant:

(i) Identifies the holistic needs of clients or residents.

(ii) Provides care to support holistic needs in accordance with nursing assistant competencies and clients' or residents' plans of care.

(iii) Provides person-centered care by adjusting care approaches to accommodate the unique needs and preferences of clients or residents.

(b) A nursing assistant demonstrates knowledge of and can explain the practical implications of the laws and regulations which affect nursing assistant practice including, but not limited to:

(i) Mandatory reporting procedures related to client or resident abuse, neglect, abandonment, and exploitation (chapters 74.34 RCW and 246-16 WAC, and WAC 246-841A-720);

(ii) Scope of practice;

(iii) Opportunities for expanding scope:

(A) Nurse delegation; and

(B) Medication assistant certification endorsement;

(iv) Workers right to know (chapter 49.70 RCW);

(v) The Uniform Disciplinary Act (chapter 18.130 RCW);

(vi) Omnibus Budget Reconciliation Act (OBRA);

(vii) Medicare and medicaid.

(2) Client or resident rights and promotion of independence. A nursing assistant demonstrates behavior which maintains and respects clients' or residents' rights and promotes independence, regardless of race, religion, lifestyle, sexual orientation, gender identity, disease process, or ability to pay. A nursing assistant:

(a) Recognizes that clients or residents have the right to participate in decisions about their care.

(b) Recognizes and respects each client's or resident's need for privacy and confidentiality.

(c) Promotes and respects clients' or residents' rights to make personal choices to accommodate their needs.

(d) Reports clients' or residents' concerns and gives assistance with resolving grievances and disputes.

(e) Provides assistance to clients or residents in getting to and participating in activities.

(f) Respects the property of clients or residents and employer and does not take equipment, material, property, or medications for the nursing assistant's or another's use or benefit. A nursing assistant may not solicit, accept or borrow money, material, or property from a client or resident for the nursing assistant's or another's use or benefit.

(g) Promotes clients' or residents' right to be free from abuse, mistreatment, and neglect.

(h) Intervenes appropriately on a client's or resident's behalf when abuse, mistreatment, or neglect is observed.

(i) Complies with mandatory reporting requirements by reporting to the department of health and the department of social and health services instances of neglect, abuse, exploitation, or abandonment.

(j) Participates in the plan of care regarding the use of restraints in accordance with current professional standards.

(3) Communication and interpersonal skills. A nursing assistant uses communication and interpersonal skills effectively to function as a member of the nursing team. A nursing assistant:

(a) Reads, writes, speaks, and understands English at the level necessary for performing duties of the nursing assistant.

(b) Listens and responds to verbal and nonverbal communication in an appropriate manner.

(c) Recognizes how one's own behavior influences a client's or resident's behavior and uses resources for obtaining assistance in understanding the client's or resident's behavior.

(d) Adjusts one's own behavior to accommodate clients' or residents' physical or mental limitations.

(e) Uses terminology accepted in the health care setting to appropriately record and report observations, actions, and pertinent information accurately and timely.

(f) Is able to explain policies and procedures before and during care of clients or residents.

(4) Infection control. A nursing assistant uses standard and transmission-based precautions to prevent the spread of microorganisms. A nursing assistant:

(a) Uses principles of medical asepsis and demonstrates infection control techniques and standard and transmission-based precautions including, but not limited to:

(i) Demonstrates effective handwashing methods.

(ii) Identifies different types of personal protective equipment (PPE) and demonstrates how and when to use each.

(b) Explains how disease-causing microorganisms are spread.

(c) Explains transmission of bloodborne pathogens.

(d) Demonstrates knowledge of cleaning agents and methods which destroy microorganisms on surfaces.

(5) Safety and emergency procedures. A nursing assistant demonstrates the ability to identify and implement safety and emergency procedures, including the Heimlich maneuver. A nursing assistant:

(a) Provides an environment with adequate ventilation, warmth, light, and quiet.

(b) Promotes a clean, orderly, and safe environment including equipment for a client or resident.

(c) Identifies and uses measures for accident prevention.

(d) Demonstrates principles of good body mechanics for self and clients or residents, using the safest and most efficient methods to lift and move clients, residents, and heavy items.

(e) Demonstrates proper use of protective devices in the care of clients or residents.

(f) Demonstrates knowledge of and follows fire and disaster procedures.

(g) Identifies and demonstrates principles of health and sanitation in food service.

(h) Demonstrates the proper use and storage of cleaning agents and other potentially hazardous materials.

(6) Basic nursing skills. A nursing assistant demonstrates basic technical skills which facilitate an optimal level of functioning for

clients or residents, recognizing individual, cultural, and religious diversity. A nursing assistant:

- (a) Demonstrates proficiency in cardiopulmonary resuscitation (CPR) and can perform CPR independently.
- (b) Takes and records vital signs.
- (c) Measures and records height and weight.
- (d) Measures and records fluid and food intake and output.
- (e) Recognizes normal body functions, deviations from normal body functions and the importance of reporting deviations in a timely manner to a supervising nurse.
- (f) Recognizes, responds to, and reports clients' or residents' emotional, social, cultural, and mental health needs.
- (g) Recognizes, responds to, and reports problems in clients' or residents' environment to ensure safety and comfort of clients.
- (h) Participates in care planning and the nursing reporting process.

(7) Basic restorative services. The nursing assistant incorporates principles and skills in providing restorative care. A nursing assistant:

- (a) Demonstrates knowledge and skill in using assistive devices in ambulation, transferring, eating, and dressing.
  - (b) Demonstrates knowledge and skill in the maintenance of range of motion.
  - (c) Demonstrates proper techniques for turning, positioning, and repositioning clients or residents in a bed and chair.
  - (d) Demonstrates proper techniques for transferring and ambulating clients or residents.
  - (e) Demonstrates knowledge about methods for meeting the elimination needs of clients or residents.
  - (f) Demonstrates knowledge and skill for the use and care of prosthetic devices by clients or residents.
  - (g) Uses basic restorative services by training clients or residents in self-care according to their capabilities.
- (8) Personal care. A nursing assistant demonstrates basic personal care skills. A nursing assistant:

- (a) Assists clients or residents with bathing, oral care, and skin care.
  - (b) Assists clients or residents with grooming and dressing.
  - (c) Provides toileting assistance to clients or residents.
  - (d) Assists clients or residents with eating and hydration.
  - (e) Uses proper oral feeding techniques.
- (9) Life transitions. A nursing assistant demonstrates the ability to support the care needs of clients or residents during life transitions with competency in the following areas:
- (a) Uses basic procedures for admitting, transferring, and discharging clients or residents and maintains professional boundaries.
  - (b) Applies knowledge of psychosocial and mental health considerations during life transitions. Examples include, but are not limited to:
    - (i) Human responses to stress and stressors;
    - (ii) Stages of psychosocial development across the lifespan; and
    - (iii) Human responses to grief and loss.
  - (c) Demonstrates ability to support clients' or residents' holistic needs at the end of life.

(d) Demonstrates knowledge of legal documents affecting care and the nursing assistant role in using the documents:

- (i) Advance directives (living wills, durable power of attorney);

(ii) Portable orders for life sustaining treatment (POLST);

(iii) Do not resuscitate (DNR).

(e) Demonstrates the ability to provide postmortem care with respect for clients' or residents' rights and sensitivity to the grieving process of their loved ones.

(f) Demonstrates awareness of the need for self-care and support in response to grief and loss.

(10) Care of clients or residents with developmental disabilities. A nursing assistant demonstrates basic care of clients or residents with developmental disabilities. In accordance with developmental disability specialty training (WAC 388-112A-0430), a nursing assistant:

(a) Demonstrates a basic understanding of developmental disabilities and awareness of the unique needs of residents with developmental disabilities.

(b) Promotes and supports a resident's self-determination.

(c) Provides culturally compassionate and individualized care by utilizing a basic understanding of each client or resident and each client's or resident's history, experience, and cultural beliefs.

(d) Uses person-centered and interactive planning when working with clients or residents with developmental disabilities.

(e) Uses a problem-solving approach and positive support principles when dealing with challenging behaviors.

(f) Supports clients or residents experiencing a crisis and gets assistance when needed.

(g) Promotes and protects the legal and resident rights of clients or residents with developmental disabilities.

(11) Mental health and social service needs. A nursing assistant demonstrates the ability to identify psychosocial needs of clients or residents based upon awareness of the developmental and age specific processes. A nursing assistant:

(a) Addresses individual behavioral needs of the client or resident.

(b) Knows the developmental tasks associated with the developmental and age specific processes.

(c) Allows the client or resident to make personal choices but provides and reinforces behaviors consistent with the client's or resident's dignity.

(d) Is sensitive and supportive and responds to the emotional needs of the clients or residents and their sources of emotional support.

(e) Applies the knowledge, skills, and behaviors from mental health specialty training in the care of residents and clients (WAC 388-112A-0450).

(12) Care of clients or residents with cognitive impairment. A nursing assistant demonstrates basic care of clients or residents with cognitive impairment. A nursing assistant:

(a) Uses techniques for addressing the unique needs and behaviors of individuals with cognitive impairment including Alzheimer's, dementia, delirium, developmental disabilities, mental illnesses, and other conditions.

(b) Communicates with clients or residents with cognitive impairment in a manner appropriate to their needs.

(c) Demonstrates sensitivity to the behavior of clients or residents with cognitive impairment.

(d) Appropriately responds to the behavior of clients or residents with cognitive impairment.

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NEW SECTION**WAC 246-841A-403 Care settings where nursing assistants may work and registration and certification requirements of students.** (1)

Nursing assistants work in health care facilities as identified in RCW 18.88A.020. These include nursing homes, hospitals, hospice care facilities, and agencies and home health agencies.

(2) In addition, nursing assistants may work for other entities delivering health care services where licensed nurses supervise nursing assistants performing within the nursing assistant scope. Examples include, but are not limited to: Adult family homes, assisted living communities, residential treatment facilities, and correctional facilities.

(3) Nursing assistant students shall apply for a nursing assistant registration within three days of hire at a nursing home. Students working as nursing assistants-registered in a nursing home must become certified within the timeline required by federal regulations.

(4) Nursing assistant students shall meet other registration and certification timelines as required by the care setting.

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NEW SECTION**WAC 246-841A-405 Registered nurse delegation to nursing assistants.** In addition to the competencies identified in WAC

246-841A-400, nursing assistants may perform additional delegated tasks under the supervision of a registered nurse in accordance with RCW 18.79.260.

(1) RCW 18.79.260 addresses general requirements for registered nurse delegation as well as requirements specific to certain care entities and settings, including home health or hospice agencies and community-based or in-home care settings, as defined in the statute.

(2) General requirements for registered nursing delegation that apply in all care settings include:

(a) In accordance with RCW 18.79.260 (3) (f), registered nurse delegation may include glucose monitoring and testing as a general allowance, including in hospitals and nursing homes.

(b) Delegated nursing care tasks described in this section are only for the specific patient receiving delegation.

(c) A nursing assistant may consent or refuse to consent to perform a delegated nursing care task. The nursing assistant is responsible for their own actions with the decision to consent or refuse to consent and the performance of the delegated nursing care task.

(d) Nursing assistants shall not accept delegation of, or perform, the following nursing care tasks:

(i) Administration of medication by injection, except for insulin injections as authorized in RCW 18.79.260 (3) (e);

(ii) Sterile procedures;

(iii) Central line maintenance;

(iv) Except as authorized in RCW 18.79.260 (3) (e) and (f), piercing or severing of tissues and acts requiring substantial skill; and  
(v) Acts requiring nursing judgment.

(3) RCW 18.79.260 (3) (e) defines specific requirements for registered nurse delegation in community-based or in-home care settings. WAC 246-840-910 through 246-840-970 provide additional applicable requirements for compliance. Before performing any delegated task in these care settings:

(a) Nursing assistants-registered must show evidence as required by the department of social and health services of successful completion of both the basic caregiver training and designated nurse delegation core training from the department of social and health services to the registered nurse delegator.

(b) Nursing assistants-certified must show the registered nurse delegator evidence as required by the department of social and health services of successful completion of required nurse delegation core training. The training is provided by the department of social and health services.

(c) All nursing assistants registered and certified who may be completing insulin injections must show to the registered nurse delegator evidence as required by the department of social and health services of successful completion of nurse delegation special focus on diabetes training.

(d) All nursing assistants must meet any additional training requirements identified by the commission. Any exceptions to additional training requirements must comply with RCW 18.79.260 (3) (e) (v).

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#### NEW SECTION

##### **WAC 246-841A-407 Medication assistant certification endorsement.**

Nursing assistants-certified with the required experience, training, and successful completion of competency evaluation as described in WAC 246-841A-586 through 246-841A-595 may apply for a medication assistant certification endorsement.

This endorsement expands the scope of the nursing assistant-certified working in a nursing home setting, allowing the nursing assistant-certified to perform certain medication administration tasks and prescriber ordered treatments under the direct supervision of a designated registered nurse.

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#### **INITIAL AND ONGOING APPROVAL OF NURSING ASSISTANT TRAINING PROGRAMS**



NEW SECTION**WAC 246-841A-409 Types of nursing assistant training programs.**

(1) This chapter addresses four types of nursing assistant training programs:

(a) Traditional nursing assistant training programs, which provide the complete training required for competency evaluation and career entry as a nursing assistant-certified.

(b) Home care aide-certified alternative training programs, which recognize prior training and certification as a home care aide and provide the additional education required to qualify for competency evaluation and career progression to a nursing assistant-certified.

(c) Medical assistant-certified alternative training programs, which recognize prior training and certification as a medical assistant and provide the additional education required to qualify for competency evaluation and career progression to a nursing assistant-certified.

(d) Medication assistant certification endorsement training, which provides the additional education required of experienced nursing assistants-certified to qualify for competency evaluation to earn a medication assistant endorsement.

(2) The requirements for initial and ongoing approval of nursing assistant training programs (described in WAC 246-841A-420 through 246-841A-460) and for corrective actions for nursing assistant training programs (described in WAC 246-841A-465 through 246-841A-490) apply to all training program types unless exceptions are specifically noted in this chapter:

(a) Exceptions for home care aide-certified alternative programs are noted in WAC 246-841A-545.

(b) Exceptions for medical assistant-certified alternative programs are noted in WAC 246-841A-550.

(c) Exceptions for medication assistant certification endorsement programs are noted in WAC 246-841A-590.

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NEW SECTION

**WAC 246-841A-410 Purpose of the review and approval of nursing assistant training programs.** The commission reviews and approves nursing assistant training programs to ensure preparation for safe practice of nursing assistants by requiring nursing assistant training programs to meet minimum standards.

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NEW SECTION

**WAC 246-841A-420 Requirements for approval of nursing assistant training programs.** To qualify as a nursing assistant training program for initial and ongoing approval, an applicant must:

(1) Attend an online orientation provided by the commission prior to submission of an application;

(2) Submit a completed application packet provided by the commission. The completed packet will reflect how the training program will meet program standards on an ongoing basis. The packet will include forms and instructions for submitting required materials which include, but are not limited to:

(a) Owner identification and contact information, business name, and physical address;

(b) Documentation demonstrating the program director and instructor(s) meet all qualifying criteria as stated in WAC 246-841A-430. Required documentation includes:

(i) Verification that the program director and instructor(s) have successfully completed a course in adult instruction as required by WAC 246-841A-430 (2)(a) or have demonstrated one year of experience teaching adults.

(ii) Verification that the program director and instructor(s) who teach the specialty class units (mental health, dementia, and developmental disabilities) have successfully completed coursework in the subjects prior to instructing students as required by WAC 246-841A-430 (6)(g);

(c) Contractual agreements related to providing training. For any program that uses another facility to provide clinical training, contractual agreements include an affiliation agreement between the training program and the facility. The affiliation agreement must describe how the program will provide clinical experience in the facility, making it clear that students will be supervised at all times, taught, and evaluated by an approved instructor who meets the requirements under this chapter. The agreement must specify the rights and responsibilities of both parties, students, and clients or residents;

(d) A student enrollment agreement that the training program will provide to each student for review, discussion, and signature prior to beginning the course. The training program retains a signed copy in each student's file. The student agreement must include:

(i) A statement that specifies the student's rights and responsibilities, including those listed in the clinical affiliation agreement;

(ii) A general description of the program and the program components (classroom, skills lab, and clinical), including the number of hours and length of time required to complete the program;

(iii) The program's policies relevant to students, including all criteria required to pass the course and criteria that may be cause for immediate dismissal or failure;

(iv) A statement that the student has received the class schedule and access to common curriculum materials for students as provided by the commission;

(v) The following statement regarding the right to file a complaint with the commission with concerns about the training program: "Student complaints about this nursing assistant training program can be filed with the nursing care quality assurance commission." The current web page link for filing a complaint must be included with the statement;

(e) An implementation plan for teaching the common curriculum using a format and instructions provided by the commission. Implementation information must include:

(i) The outline of materials for assigned study for each unit, including text readings, videos, and other resources. The main text resource must have a publication date within the last five years;

(ii) Presentations and active discussion of content;

- (iii) A variety of activities to reinforce and apply knowledge and concepts, including activities provided in the common curriculum;
- (iv) Skills practice to integrate theory with skills, including use of skills checklists which match the state exam;
- (v) Plans for evaluation to measure student learning and competency; and
- (vi) Plans for conducting and supervising clinical experiences;
- (f) A description of classroom and skills lab facilities with photographs demonstrating adequate space, equipment, and supplies available to provide the training program in accordance with this chapter;
- (g) Verification that the nursing assistant training program or school is approved to operate in the state of Washington by:
  - (i) The state board for community and technical colleges for college programs;
  - (ii) The superintendent of public instruction for high schools and skills center programs;
  - (iii) The workforce training and education coordinating board for private vocational schools; or
  - (iv) The department of social and health services for nursing home programs. For purposes of this chapter: Lack of a department of social and health services sanction signifies department of social and health services approval; a current sanction with no department of social and health services waiver to conduct training signifies nonapproval;
- (h) A declaration of compliance with all program standards signed by:
  - (i) Program owner or administrator; and
  - (ii) Program director, if different from owner or administrator;
- (3) Submit all application items in one submission and respond to requests for more information or clarification regarding the program's application submission. Failure to submit a completed application packet or respond to request for more information or clarification within 90 days may result in closure of the application;
- (4) Agree to in-person or online site visits by the commission on request or, when applicable per WAC 246-841A-465(2) and 246-841A-470(2)(c)(v), unannounced site visits by the commission. Examples of activities a site visit may include are:
  - (a) Observation of classroom, skills lab, and clinical teaching;
  - (b) A review of the program facilities, equipment, supplies, documentation, and files related to the program with the potential need to make copies or take photos of them;
  - (c) Access to student names and contact information;
  - (d) Interviews with the program owner(s), program director, instructor(s), other support staff, clinical site personnel, and students;
  - (e) A review of facilities, equipment, supplies, and staff at clinical affiliation sites;
- (5) Comply with all program standards;
- (6) For each class taught, implement the common curriculum as developed and described in materials provided by the commission;
- (7) Submit all program change requests on forms provided by the commission and receive approval prior to implementation of the change. Notify other approving agencies of changes prior to implementing the change(s). Program changes include, but are not limited to:
  - (a) Program owner(s);
  - (b) Program director;

- (c) Instructor(s);
- (d) Program location;
- (e) Program curriculum plan as approved;
- (f) Program curriculum hours; and
- (g) Program schedule pattern;
- (8) Comply with changes in program standards;
- (9) Participate in and complete the program renewal process every two years. Failure to renew by the designated deadline results in lapse of approval.

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NEW SECTION

**WAC 246-841A-423 Initial approval of nursing assistant training programs.** The commission will grant initial approval status for one year to a nursing assistant training program applicant demonstrating the ability to meet program standards.

(1) The commission will monitor the nursing assistant training program for the first year and then complete a program evaluation to verify the program has continued to meet program standards. Following the program evaluation, the commission may:

(a) Change the program's status to full approval if program standards have been met consistently; or

(b) Extend a program's initial approval for up to one additional year with an evaluation at the end of the second year to verify program standards have been met consistently; or

(c) Withdraw initial approval if a nursing assistant training program demonstrates deficiencies in or violations of program standards.

(2) A nursing assistant training program with initial approval status is subject to announced and unannounced site visits by the commission.

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NEW SECTION

**WAC 246-841A-425 Full approval of nursing assistant training programs.** The commission will grant full approval status to initially approved nursing assistant training programs demonstrating they have consistently met program standards during the initial approval period.

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NEW SECTION

**WAC 246-841A-427 Approval status of existing programs on the effective date of these rules.** (1) Existing nursing assistant training programs with full approval status retain full approval status on the date these rules take effect.

(2) Existing nursing assistant training programs with conditional approval status retain conditional approval status on the date these rules take effect.

(3) Existing nursing assistant training programs are subject to approval status changes under the rules of this chapter upon the effective date.

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#### NEW SECTION

**WAC 246-841A-430 Program directors and instructors in approved nursing assistant training programs.** (1) The program director must hold an active license in good standing as a registered nurse (RN) in the state of Washington.

(a) The commission may deny or withdraw a program director's approval if there is or has been any action taken against the director which disqualifies them from working with vulnerable populations.

(b) Directing a nursing assistant training program constitutes the practice of nursing. Any unprofessional conduct by a program director, as defined in the Uniform Disciplinary Act, chapter 18.130 RCW, may subject the program director to license discipline under that act.

(2) (a) The program director must have completed a training course on adult instruction or have demonstrated one year of experience teaching adults. Acceptable experience does not include teaching patients. A program director working exclusively in a secondary or post-secondary educational setting is exempt from this requirement.

(b) The training course on adult instruction must provide instruction in:

- (i) Understanding the adult learner;
- (ii) Techniques for teaching adults;
- (iii) Classroom methods for teaching adults;
- (iv) Audio visual techniques for teaching adults.

(3) The program director must attend an online orientation provided by the commission within 30 days of approval as program director.

(4) The program director will have a minimum of three years of experience as an RN, of which at least one year will be in direct patient care.

(5) If the program director will also be acting as an instructor, the program director must meet the requirements for instructional staff.

(6) Program director responsibilities:

(a) Implement the common curriculum as developed and described in materials provided by the commission and in accordance with the requirements of WAC 246-841A-440. The program director is responsible for all classroom and clinical training content and instruction;

(b) Ensure compliance with and assume responsibility for meeting the training program requirements of this chapter;

(c) Ensure that all student clinical training is directly supervised:

(i) For instructor-led clinical training provided by the program, direct supervision means that an approved instructor is always on-site to supervise, teach, and evaluate performance while the students are providing care.

(ii) For clinical training provided through the nursing assistant-registered work pathway described in WAC 246-841A-440(8), direct supervision means the program director requires the student to provide verifiable documentation of supervision and competency evaluation by a supervising licensed nurse prior to awarding clinical training credit. To receive clinical training credit, students must provide documentation on the verification form provided by the commission. The student must also provide evidence of at least 40 hours of work in the role of a nursing assistant;

(d) Ensure that the clinical instructor has no concurrent duties during the time he or she is instructing students;

(e) Create and maintain an environment conducive to teaching and learning;

(f) Select and supervise all instructors involved in the course, including clinical instructors and guest lecturers;

(g) Ensure the instructor(s) teaching specialty units on the topics of mental health, dementia, and developmental disabilities are approved to teach the units prior to teaching them. For the instructor to receive approval, the program director will:

(i) Verify the instructor has completed a class on adult instruction as identified in subsection (2)(b) of this section. Acceptable experience does not include teaching patients. An instructor working exclusively in a secondary or postsecondary educational setting is exempt from this requirement.

(ii) Verify the instructor(s) has completed the corresponding specialty class(es) for the unit(s) they will teach. The mental health and dementia specialty classes must be the complete curriculum approved by the department of social and health services; the developmental disabilities specialty class must be the complete curriculum provided by the developmental disabilities administration of the department of social and health services.

(iii) Submit documentation with an instructor application to the commission;

(h) Ensure teaching of specialty units on mental health, dementia, and developmental disabilities occurs only as components of the complete nursing assistant training program. Unless expressly approved by the department of social and health services to provide stand-alone specialty classes on the specialty topics, a nursing assistant training program is only authorized to provide specialty units as components of the overall nursing assistant training program;

(i) Ensure that students are not asked to, nor allowed to, perform any clinical skill with residents or clients until first demonstrating the skill satisfactorily to an instructor;

(j) Provide students with instruction regarding the nursing assistant-registered work pathway as described in WAC 246-841A-440(8), including supervision and documentation requirements;

(k) Ensure evaluation of professional knowledge, skills, and behaviors of students before verifying completion of the course;

(l) Without delay upon successful completion of course requirements:

(i) Provide students a certificate of completion on a form provided by the commission.

(ii) Provide verification of each student's eligibility to take the state exam. Verification is to be provided in accordance with the established procedure provided to program directors by the commission;

(m) Communicate directly with the commission in all matters regarding the program.

(7) The program director may select instructional staff to assist in the teaching of the course.

(a) Instructional staff must teach in their area of expertise.

(b) Instructional staff must have a minimum of:

(i) One year of verifiable paid or unpaid work experience as a licensed nurse within the past three years providing direct patient care for the elderly or chronically ill of any age; or

(ii) Three years of verifiable paid experience as a licensed nurse at any time providing direct patient care for the elderly or chronically ill of any age and verifiable paid or unpaid work experience as a licensed nurse in any role for at least one of the last three years.

(c) A clinical instructor providing care to patients with staff or students is considered a provider of direct patient care.

(d) Instructional staff must complete a training course on adult instruction as described in subsection (2)(b) of this section or have demonstrated one year of experience teaching adults. Instructional staff working exclusively in a secondary or postsecondary educational setting are exempt from this requirement.

(i) Instructional staff who will teach the specialty units of curriculum on the topics of mental health, dementia, or developmental disabilities, must also demonstrate successful completion of those courses described in (g) of this subsection prior to teaching them.

(ii) Instructional staff must hold an active Washington state license to practice as a registered or licensed practical nurse, in good standing. The commission may deny or withdraw an instructor's approval if there is or has been any action taken against the instructor which disqualifies them from working with vulnerable populations.

(iii) Instructional staff may assist the program director in development of curricula, teaching modalities, and evaluation.

(iv) Instructional staff will always be under the supervision of the program director.

(v) A guest lecturer or individual with expertise in a specific course unit may be used in the classroom setting for teaching within that unit without commission approval, following the program director's review of the currency and relevance of content in relation to unit objectives. Guest lecturers must hold a license, certificate, or registration in good standing in their field of expertise. The allowance for a guest lecturer does not apply to the specialty units of the common curriculum on the topics of mental health, dementia, or developmental disabilities. The specialty units must be taught by a program instructor specifically approved by the commission to teach the specialty units as described in subsection (6)(g) of this section.

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#### NEW SECTION

**WAC 246-841A-440 Common curriculum in approved nursing assistant training programs.** (1) Common curriculum. Approved programs must implement the common curriculum as developed and described in materials provided by the commission in accordance with the transition timelines established by the commission in (a) through (c) of this subsection. The common curriculum includes the complete specialty curricula on the

topics of developmental disabilities, mental health, and dementia as developed by the department of social and health services.

(a) Approved programs must apply for approval to implement the first nine units of the common curriculum within six months of the effective date of these rules and begin implementation by September 1, 2024.

(b) Until they transition to the common curriculum, approved programs may continue to implement their existing curriculum as approved under previous rules; however, subsections (5) through (8) of this section are effective with the effective date of these rules.

(c) Approved programs must implement the specialty curricula as units 10, 11, and 12 of the common curriculum for all students graduating on or after September 1, 2025.

(2) Implementing the common curriculum. Implementing the common curriculum as developed and described in materials provided by the commission includes, but is not limited to:

(a) Interactive presentation and discussion of content for each unit and activity that provides students with an opportunity to reinforce learning and apply knowledge. The program will demonstrate use of a variety of activities across units. Examples include, but are not limited to:

- (i) Written assignments;
- (ii) Responding to videos shown or assigned;
- (iii) Small group exercises;
- (iv) Role play;
- (v) Student presentations; and
- (vi) Team or game-type learning activities.

(b) Instructor demonstration of each unit's lab skills followed by students' practice of the skills under the supervision of an approved instructor who provides guidance and evaluation in real time.

(c) A clinical training opportunity for students to successfully demonstrate the core competencies of a nursing assistant through integration of professional knowledge, skills, and behaviors gained in class and skills lab.

(d) Evaluation to measure each student's level of competency achievement in each part of the training program (classroom theory, skills lab, and clinical) and overall.

(3) Correlation of classroom and clinical teaching. When implementing the common curriculum, programs will ensure clinical teaching is closely correlated with classroom theory teaching to support students' integration of professional knowledge and behaviors with manual skills.

(a) For skills lab training, close correlation means skills included in each unit of the common curriculum are taught together with the unit's classroom theory.

(b) For clinical training, close correlation means clinical training occurs as part of the planned, continuous flow of the class immediately following completion of classroom theory and skills lab. When there are delays in the start of clinical training, as allowed by the program's policies, the program will reverify and document student competency to participate safely in clinical training prior to a student's participation.

(4) Program hours. The program director will determine the amount of time required in the curriculum to achieve the objectives. The time designated may vary with characteristics of the learners and teaching or learning variables, but the program must provide a minimum of 138 training hours total, with a minimum of 66 hours of classroom theory,



a minimum of 32 hours of skills lab, and a minimum of 40 hours of clinical training.

(a) These hours include 32 hours of classroom training on the specialty topics of developmental disabilities (16 hours), mental health (eight hours), and dementia (eight hours). Training programs must incorporate the complete curriculum for each specialty topic as developed by department of social and health services. Requirements for providing and instructing specialty curricula as part of a nursing assistant training program are found in WAC 246-841A-430 (g) and (h).

(i) If a student has already taken one or more of the specialty topics, the program director may excuse the student from repeating the topic(s) when they provide documentation of successful completion.

(ii) Only the specialty classes developed specifically by the department of social and health services qualify for acceptable training to excuse students from specialty topic(s).

(iii) For students who are excused, programs must retain documentation of a student's previous specialty training in the student's file.

(b) Training to orient the student to the health care facility and facility policies and procedures is required, but must not be included in the minimum clinical training hours required.

(5) Classroom theory teaching and learning. Classroom theory teaching and learning may be conducted through the following modalities:

(a) An in-person format in a classroom space approved by the commission;

(b) A live online format.

(i) Prior to implementation, the program must apply to the commission for approval to use a live online format on a form provided by the commission.

(ii) At no time will the ratio of students to instructor exceed 20 students to one instructor in a live online class;

(c) An online or hybrid format that includes asynchronous online elements.

(i) Prior to implementation, the program must apply to the commission for approval to use this online format on a form provided by the commission.

(ii) The program must provide the commission with access to all online programming from both the instructor and the student user views including, but not limited to: Lessons, assignments, quizzes and tests, discussion boards, tools for instructor monitoring of student progress and interacting with students, evaluation mechanisms, and electronic gradebook.

(iii) The student-to-instructor ratio for an online or hybrid program with asynchronous learning elements must not exceed one instructor to 30 students.

(iv) Except for high school programs with a 10-month calendar, the entire program must be completed by students within three months.

(v) For initial and ongoing approval, the program must demonstrate how it meets the standards for online education as established by the commission. The standards require the program to demonstrate:

(A) Evidence of ability to provide online training or online educational programs successfully (i.e., a history of success, institutional support, external review, and certification by a commission-approved quality assurance organization).

(B) Correlation between the curriculum and text readings for the course.

(C) Instructor interaction with and support of students during the classroom theory portion of the class and throughout the entire class.

(D) Close correlation of the teaching and learning of classroom theory with teaching and learning in skills lab and clinical.

(E) The direct supervision role of an approved instructor in the classroom theory, skills lab, and clinical portions of the class.

(F) Student selection process, including entry requirements for the program.

(G) Provision of a live online or in-person orientation for all students prior to beginning the program. The orientation will include information about program requirements and policies, time schedule, appropriate online conduct, and how to navigate the learning management system and program content. The orientation hours may not be included in the minimum required program hours.

(H) An academic-based assignment related to the course outcome in the first week of class for the purpose of reporting attendance.

(I) For each unit, at least one asynchronous online discussion related to a unit outcome that allows instructor feedback, student interaction, and a rubric for grading participation.

(J) Facilitation of students' ability to meet independently in a study group.

(K) The opportunity for robust and individualized instructor feedback for students needing to improve grades or requiring further instruction. This does not include computer-generated feedback.

(L) An organized schedule of classroom theory, skills lab, and clinical activities with paced deadlines to support time management and successful course completion provided to the students.

(M) Ensuring the identity of each student completing online examinations and security measures throughout the examination.

(N) Adequate technical support to the website and to students, including provisions for: Reliability; privacy; security; addressing technical difficulties; assuring back-up of data; services and training for students to use the website and program; and student technical support services.

(O) Evidence of meeting requirements for all nursing assistant training programs as described in this chapter.

(6) Skills lab teaching and learning. Skills lab teaching and learning will be conducted in-person in a commission-approved skills lab.

(7) Clinical teaching and learning: Instructor-led clinical in a care facility. The program shall provide instructor-led clinical training in a care facility for all students completing the program. Instructor-led clinical training means the program must provide a commission-approved instructor who conducts and supervises a coordinated clinical training experience in a nursing home or other care facility where students have an opportunity to safely demonstrate competency in the role of a nursing assistant caring for a variety of individuals with diverse care needs.

(a) The clinical instructor must be on-site with students at all times to supervise, teach, and evaluate performance.

(b) The clinical instructor must have no concurrent duties during the student clinical experience.

(c) The ratio of students to instructor must not exceed 10 students to one instructor in the clinical setting.

(d) Students cannot perform any clinical skill with clients or residents until first satisfactorily demonstrating the skill to an approved instructor.

(e) Students must wear name tags clearly identifying them as students at all times.

(8) Clinical teaching and learning: Nursing assistant-registered work pathway. In accordance with the program's established policies, the program retains authority to allow students who choose to do so, on a case-by-case basis, to complete their clinical training hours by working as a nursing assistant-registered in a care facility under the supervision of a licensed nurse. To meet qualifying standards to count as clinical hours' credit, the nursing assistant-registered employment experience must:

(a) Be completed following successful completion of required classroom theory and skills lab hours;

(b) Be completed in a time frame comparable to that of classmates who complete through instructor-led clinical training as established by the program's schedule and completion policies;

(c) Be performed under a pending or active nursing assistant-registered credential during enrollment in the class;

(d) Include a background check prior to contact with clients or residents;

(e) Occur in a care facility where a licensed nurse is present to provide direct supervision and verify competency for care provided throughout the clinical experience; the supervising nurse may not be a friend or relative;

(f) Include opportunities for the student to successfully demonstrate the competencies of a nursing assistant as identified in WAC 246-841A-400;

(g) Include care of clients or residents who are not friends or relatives;

(h) Be documented on a form provided by the commission and available on file at the training program along with formal documentation of the number of hours worked; and

(i) Be verifiable with the care facility.

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#### NEW SECTION

**WAC 246-841A-450 Physical and electronic resources required for approved nursing assistant training programs.** (1) Classroom, skills lab, and clinical facilities used by the program must provide adequate space, lighting, comfort, privacy, safety, and cleanliness for effective teaching and learning.

(2) Adequate classroom resources, such as a white board or other writing device, audio-visual materials, and written materials must be available. Audio-visual materials include a computer with internet and projection capability in order to access and implement the common curriculum.

(3) Online classrooms used by the program must provide browser-based platforms and mixed media capability such as captioning, video, and audio-text to enhance accessibility. Online classrooms must have a method for providing private and secure methods of evaluation, submitting grades, and providing feedback.

(4) The program must provide the equipment and supplies necessary to teach skills lab and allow students to practice and gain competency as nursing assistants in accordance with WAC 246-841A-400.

(a) A list of required equipment and supplies for all nursing assistant training programs is provided by the commission.

(b) The program will maintain the safety and proper working condition of equipment and supplies.

(c) The program will ensure that equipment and supplies used by the program reflect current practice and are sufficient in quantity for effective teaching and learning for students.

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#### NEW SECTION

**WAC 246-841A-455 Administrative procedures for approved nursing assistant training programs.** (1) The program must establish and maintain a file for each student enrolled and demonstrate measures for safe, secure storage of all paper and electronic files. Each student's file must include:

(a) Dates of enrollment, attendance, and completion of the program, including multiple attempts to successfully complete the program;

(b) A record of the student's performance in relationship to all passing criteria for the class, including: Quizzes, tests, and other required assignments; evaluation of skills lab performance; and evaluation of clinical performance.

(i) Skills lab evaluations use a checklist that shows the skills evaluated, the date(s) of skills evaluation, the printed name(s), signature(s), and date(s) of evaluating instructor(s);

(ii) Clinical evaluations document performance in relation to each student's competency as a nursing assistant as identified in WAC 246-841A-400;

(c) Documentation of successful completion of the course, or documentation of the course outcome.

(2) Each student file must be maintained by the program for a period of five years. The program must provide copies of each student's file documents to the student on request, within two business days.

(3) The program director will provide verification of students' successful completion of the training program for testing and certification without delay once requirements are met. Verification is to be provided in accordance with the established procedures and format provided to program directors by the commission.

(4) For programs based in a health care facility, verification of program completion and the application for state testing will not be withheld from a student who has successfully met the requirements of the program. Successful completion will be determined by the training program director separately from other employer issues.

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NEW SECTION

**WAC 246-841A-460 Competency evaluation and pass rates.** Students who successfully complete an approved nursing assistant training program or the equivalent in an approved nursing education program may apply to take the state certification exam (also called competency evaluation). The competency evaluation includes a knowledge exam and a skills exam. Students must pass both exams before their certification application can be processed.

(1) Training programs will communicate accurate information about the state certification exam to students and share written and video resources including, but not limited to:

(a) Testing service provider's website and how to access it. This includes the testing handbook, practice tests, and steps to register for the exam.

(b) The commission's website and how to access it. This includes information to help students navigate through training, testing, and certification.

(c) The department of health website and how to access it. This includes steps to apply for nursing assistant registration and certification.

(2) The commission will monitor all training programs' pass rates on the state certification exam. The program standard for pass rates is:

(a) At least 80 percent of first-time test-takers pass the knowledge portion of the examination; and

(b) At least 80 percent of first-time test-takers pass the skills portion of the examination.

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NEW SECTION

**WAC 246-841A-463 Traditional program and nursing education program students—Application requirements for nursing assistant certification.** (1) To be eligible to apply for nursing assistant-certified, a traditional program or nursing education program student must:

(a) Have successfully completed a Washington state-approved training program as outlined in WAC 246-841A-440 or the equivalent in an approved nursing education program; and

(b) Have successfully completed a competency evaluation.

(2) An applicant for nursing assistant-certified must submit to the department:

(a) A completed application for nursing assistant-certified;

(b) Proof of training from an approved traditional nursing assistant training program or an approved nursing education program; and

(c) Applicable fees as required in WAC 246-841A-990.

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**CORRECTIVE ACTION FOR NURSING ASSISTANT TRAINING PROGRAMS**NEW SECTION

**WAC 246-841A-465 Complaint investigations.** The commission may investigate complaints of alleged deficiencies or violations relating to this chapter. The commission:

- (1) Will notify the program director in writing within 10 business days when a complaint investigation is opened.
  - (a) Failure by the program director to cooperate with an investigation may result in disciplinary action against the program director's license as a registered nurse in the state of Washington in accordance with the Uniform Disciplinary Act, chapter 18.130 RCW.
  - (b) Failure to cooperate with an investigation may result in withdrawal of program approval by the commission.
- (2) May conduct announced or unannounced site visits to training programs in the course of investigating complaints. Site visits may include, but are not limited to:
  - (a) Observation of classroom, skills lab, and clinical teaching;
  - (b) A review of the program facilities, equipment, supplies, documentation, and files related to the program. The commission may make copies of documentation or take photos;
  - (c) Access to student names and contact information;
  - (d) Interviews with the program owner(s), program director, instructor(s), other support staff, clinical site personnel, and students;
  - (e) A review of facilities, equipment, supplies, and staff at clinical affiliation sites.
- (3) Will notify the program director of the outcome in writing when the complaint investigation process is complete. Outcomes may include:
  - (a) Closing the complaint with no action; or
  - (b) Specifying deficiencies or violations and, as applicable, providing notification of the commission's intent to add a corrective action designation to the program's full approval status or change the program's approval status which may include:
    - (i) Requirements for corrective action steps by the program;
    - (ii) Withdrawal of program approval; or
    - (iii) Immediate suspension of program approval for immediate threat to public health and safety.

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NEW SECTION

**WAC 246-841A-470 Corrective action designations for nursing assistant training programs.** (1) The commission may add a corrective action designation to a training program's full approval status when deficiencies in or violations of program standards exist. Corrective

action designations are organized to provide progressive steps for corrective action to meet program standards and restore full approval status.

(2) Corrective action designations include:

(a) Full approval with plan of correction:

(i) The program develops, implements, and evaluates an initial plan of correction using a format provided by the commission.

(ii) The commission staff may provide one formal technical assistance session to a program on request.

(b) Full approval with plan of correction and technical assistance:

(i) The program develops, implements, and evaluates an adjusted plan of correction when program standards are not met or violations persist after implementation of the first plan of correction or if the first plan of correction was not fully implemented.

(ii) The commission may require the program to participate in one technical assistance session as part of the plan of correction.

(iii) The commission may require a directed plan of correction, which means the commission stipulates some or all aspects of the plan of correction.

(c) Conditional approval:

(i) The commission may change a program's approval status to conditional if the program fails to fully implement the plan of correction or if deficiencies in or violations of program standards persist with implementation of plans of correction.

(ii) The commission will establish in writing additional specific conditions with which the program must comply.

(iii) The commission may require the program to participate in one technical assistance session with commission staff as a condition.

(iv) The program has a responsibility to seek external sources of technical assistance other than commission staff if additional support is needed to meet conditions.

(v) The commission may conduct announced or unannounced site visits to monitor a program on conditional approval. Failure to cooperate with site visits may result in withdrawal of approval by the commission.

(3) The commission will reevaluate a program's corrective action designation in accordance with a timeline established and provided by the commission at the time the program is notified in writing of the designation.

(4) With reevaluation, the commission may:

(a) Remove a corrective action designation if program standards are consistently met;

(b) Change the corrective action designation to a higher designation with improvement toward meeting standards;

(c) Change the corrective action designation to lower designation if standards are not met; for programs with a conditional approval designation, this means withdrawal of approval in accordance with WAC 246-841A-475;

(d) Extend a corrective action designation if more time and evaluation are needed to determine program standards are being met consistently.

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NEW SECTION

**WAC 246-841A-475 Withdrawal of approval for nursing assistant training programs.** (1) The commission may withdraw a program's approval status when any condition of the program's conditional approval status is not met or the program's deficiencies in or violations of program standards persist with implementation of corrective efforts. When a program's approval status is withdrawn, the program shall submit an action plan for closure to the commission providing options for current students to complete the program. The action plan must be submitted within 10 business days of the withdrawal of approval. The commission must review and act on the action plan within 10 business days of receipt of the action plan.

(2) Program approval may be immediately suspended and withdrawn when continued operation of the program presents an immediate danger to the public health, safety, or welfare in accordance with the Administrative Procedure Act (APA), RCW 34.05.479, and chapter 246-11 WAC. If students are in progress to complete the program at time of suspension, the commission will coordinate with the dual approving agency and other training programs to identify options to support students' training completion.

(3) Program approval may be withdrawn if the program:

- (a) Has no approved program director at the time of program renewal; or
- (b) Has no first-time test-takers for a period of two years; or
- (c) Is no longer approved by the appropriate agency providing dual approval. Agencies providing dual approval include:
  - (i) The office of the superintendent of public instruction for high school and skill center programs;
  - (ii) The state board of community and technical colleges for college programs;
  - (iii) The workforce training and education coordinating board for private vocational schools; or
  - (iv) The department of social and health services for nursing home programs.

A current department of social and health services sanction on a nursing home with no waiver granted by the department of social and health services to conduct training means the nursing home training program is no longer approved by the department of social and health services.

[ ]

NEW SECTION

**WAC 246-841A-483 Appeal rights of a nursing assistant training program.** When a nursing assistant training program's approval has been denied or withdrawn or had its approval status changed to conditional by the commission, the program shall have the right to a hearing to appeal the commission's decision according to the provisions of: Chapters 18.88A and 34.05 RCW, the Administrative Procedure Act; and chapter 246-11 WAC.

[ ]



NEW SECTION

**WAC 246-841A-485 Voluntary closure of an approved nursing assistant training program.** When an approved program plans to close, it shall notify the commission in writing, stating the reason and the date of intended closing.

(1) The program shall notify the commission in writing at least 30 days in advance and complete all current class(es) in session prior to closing.

(2) In the event of an emergency or unexpected event which renders the program inoperable, the program will ensure a transition plan for students to complete their training.

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NEW SECTION

**WAC 246-841A-490 Reapplication timelines when program approval is withdrawn.** After a program's approval is withdrawn, the program may be eligible to reapply for initial approval in accordance with certain timelines:

(1) The commission will withdraw approval when the training program loses approval by the office of the superintendent of public instruction, state board of community and technical colleges, workforce training board, or department of social and health services. The program may reapply immediately for initial approval upon regaining approval by the office of the superintendent of public instruction, state board of community and technical colleges, workforce training board, or department of social and health services.

(2) When approval lapses for failure to renew, the program may reapply for initial approval after 90 days. If the program reapplies, receives initial approval, and does not renew a second time, the program may not reapply for initial approval for at least one year.

(3) When approval is withdrawn due to no first-time test-takers within a period of two years, the program may reapply for initial approval six months after notification of withdrawal. If the program reapplies, receives initial approval and has no first-time test-takers again at its one-year program evaluation, the commission may withdraw program approval, and the program may not reapply for initial approval for at least one year after notification of withdrawal.

(4) If the commission withdraws a program's initial or conditional status, the program may reapply for initial approval after one year if it can demonstrate meeting program standards and evidence that the basis for the commission's withdrawal of approval no longer exists.

(5) A program with initial or conditional approval status withdrawn twice by the commission may not reapply for initial approval for at least two years after the date of the second withdrawal.

(6) A program application that includes the same program owner, program director, or instructor(s) from a previous program which had approval withdrawn may be considered by the commission as a reapplication from the previous program, subject to the regulations in this chapter; this applies even if the program has a new name or is operated by a different corporate entity.

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**ALTERNATIVE TRAINING PROGRAMS**NEW SECTION

**WAC 246-841A-530 Alternative training programs—Purpose.** Alternative training programs for home care aide-certified and medical assistant-certified recognize relevant training; provide opportunity for recruitment and career progression in nursing; and maintain a single standard for competency as a nursing assistant.

(1) The alternative program provides additional training, including clinical training, on topics not addressed in the specified training for certification as a home care aide or medical assistant, that will meet the requirements necessary to take the nursing assistant-certified competency evaluation.

(2) Successful completion of an approved alternative program may allow the home care aide-certified and medical assistant-certified to meet requirements to complete a competency evaluation. Successful completion of the competency evaluation may allow an applicant who is a home care aide-certified or medical assistant-certified to become a nursing assistant-certified.

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NEW SECTION

**WAC 246-841A-535 Alternative training programs—Student certification requirement.** (1) A student who takes a home care aide-certified alternative program must be a home care aide-certified prior to beginning the program. Home care aide-certified means any person certified under chapter 18.88B RCW.

(2) A student who takes a medical assistant-certified alternative program must be a medical assistant-certified prior to beginning the program and hold a current certification from one of the certifying organizations in WAC 246-827-0200(2), as defined in chapter 18.88A RCW.

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NEW SECTION

**WAC 246-841A-545 Home care aide-certified alternative program requirements.** The commission approves home care aide-certified alternative training programs that meet approval requirements. These programs may enroll individuals credentialed as home care aides-certified under chapter 18.88B RCW. Successful completion allows them to apply

to take the state exam evaluating competency for nursing assistant certification.

(1) An alternative program shall:

(a) Meet the requirements for initial and ongoing approval of nursing assistant training programs in this chapter except for the following differences:

(i) The program must implement the common curriculum designed specifically for home care aide-certified alternative programs, as developed and described in materials provided by the commission in accordance with the transition timelines established by the commission in WAC 246-841A-440 (1)(a) through (c).

(ii) The program must provide the minimum required training hours designed specifically for home care aide-certified alternative programs.

(A) The minimum required training hours are: Sixty-eight hours total, with a minimum of 49 hours of classroom theory, a minimum of 13 hours of skills lab, and a minimum of six hours of clinical training.

(B) The minimum program hours include 32 hours of classroom theory training on the specialty topics of: Developmental disabilities (16 hours); mental health (eight hours); and dementia (eight hours).

(b) Be subject to corrective actions for nursing assistant training programs as described in WAC 246-841A-465 through 246-841A-490, when requirements are not met for initial and ongoing approval of nursing assistant training programs (WAC 246-841A-420 through 246-841A-460), including those specific to home care aide-certified alternative programs (WAC 246-841A-530 through 246-841A-555).

(c) Provide a subset of the content for traditional nursing assistant programs as identified in the common curriculum for the alternative program and reflecting the following competency areas found in WAC 246-841A-400:

(i) The nursing assistant role and knowledge of rules and regulations;

(ii) Resident rights and promotion of independence;

(iii) Communication and interpersonal skills;

(iv) Infection control;

(v) Safety and emergency procedures;

(vi) Basic nursing skills;

(vii) Basic restorative services;

(viii) Personal care;

(ix) Life transitions;

(x) Care of clients or residents with developmental disabilities (specialty curriculum);

(xi) Mental health and social service needs (specialty curriculum);

(xii) Care of clients or residents with cognitive impairment (specialty curriculum).

(2) The common curriculum for home care aide-certified alternative programs includes the complete specialty curricula on the topics of developmental disabilities, mental health, and dementia developed by the department of social and health services.

(a) For students who have not already taken the specialty classes, the training program must provide them as part of the class.

(b) For students who have already taken one or more of the specialty topics, the training program may excuse them from repeating the topic(s) when they provide documentation of successful completion.

(i) Only the specialty classes developed specifically by the department of social and health services qualify for acceptable training to excuse students from specialty topic(s).

(ii) For students who are excused, programs must retain a copy of documentation of a student's previous specialty training in the student's file.

(3) Training to orient the student to the health care facility and facility policies and procedures is required, but is not included in the minimum clinical training hours required.

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#### NEW SECTION

**WAC 246-841A-550 Medical assistant-certified alternative program requirements.** The commission approves medical assistant-certified alternative training programs that meet approval requirements. These programs serve individuals credentialed as medical assistants-certified as defined in WAC 246-841A-535(2). Successful completion allows them to apply to take the state exam evaluating competency for nursing assistant certification.

(1) An alternative program shall:

(a) Meet the requirements for initial and ongoing approval of nursing assistant training programs in this chapter, except for the following differences:

(i) The program must implement the common curriculum designed specifically for medical assistant-certified alternative programs, as developed and described in materials provided by the commission in accordance with the transition timelines established by the commission in WAC 246-841A-440 (1)(a) through (c).

(ii) The program must provide the minimum required training hours designed specifically for medical assistant-certified alternative programs.

(A) The minimum required training hours are: Sixty-eight hours total, with a minimum of 48 hours of classroom theory, a minimum of 14 hours of skills lab, and a minimum of six hours of clinical training.

(B) The minimum program hours include 32 hours of classroom theory training on the specialty topics of: Developmental disabilities (16 hours); mental health (eight hours); and dementia (eight hours).

(b) Be subject to corrective actions for nursing assistant training programs as described in WAC 246-841A-465 through 246-841A-490, when requirements are not met for initial and ongoing approval of nursing assistant training programs (WAC 246-841A-420 through 246-841A-460), including those specific to medical assistant-certified alternative programs (WAC 246-841A-530 through 246-841A-555).

(c) Provide a subset of the content for traditional nursing assistant programs as identified in the common curriculum for the alternative program and reflecting the following competency areas found in WAC 246-841A-400:

(i) The nursing assistant role and knowledge of rules and regulations;

(ii) Resident rights and promotion of independence;

(iii) Communication and interpersonal skills;

(iv) Infection control;

(v) Safety and emergency procedures;

- (vi) Basic nursing skills;
- (vii) Basic restorative services;
- (viii) Personal care;
- (ix) Life transitions;
- (x) Care of clients or residents with developmental disabilities (specialty curriculum);
- (xi) Mental health and social service needs (specialty curriculum);
- (xii) Care of clients or residents with cognitive impairment (specialty curriculum).

(2) The common curriculum for medical assistant-certified alternative programs includes the complete specialty curricula on the topics of developmental disabilities, mental health, and dementia developed by the department of social and health services.

(a) For students who have not already taken the specialty classes, the training program must provide them as part of the class.

(b) Training programs must follow the regulations in WAC 246-841A-430 and 246-841A-440 for incorporating and teaching specialty curricula.

(c) For students who have already taken one or more of the specialty topics, the training program may excuse them from repeating the topic(s) when they provide documentation of successful completion.

(i) Only the specialty classes developed specifically by the department of social and health services qualify for acceptable training to excuse students from specialty topic(s).

(ii) For students who are excused, programs must retain a copy of documentation of a student's previous specialty training in the student's file.

(3) Training to orient the student to the health care facility and facility policies and procedures is required, but is not included in the minimum clinical training hours required.

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#### NEW SECTION

**WAC 246-841A-555 Responsibilities of the program director in alternative programs.** The program director of an alternative program is responsible for:

(1) Verifying home care aides-certified have an active home care aide-certified credential before admission to the alternative program.

(2) Verifying medical assistants have certification before admission to the alternative program.

(3) Assuring the alternative program meets program standards, including the requirements of this chapter and the requirements specific to home care aide-certified alternative programs in WAC 246-841A-545 and to medical assistant-certified programs in WAC 246-841A-550.

[]

NEW SECTION

**WAC 246-841A-578 Alternative program graduates—Eligibility to apply for nursing assistant certification.** To be eligible to apply for nursing assistant certification, a graduate from an alternative program must:

- (1) Be currently credentialed as a home care aide-certified under chapter 18.88B RCW; or
- (2) Be a medical assistant-certified as defined in WAC 246-841A-535(2);
- (3) Have completed a cardiopulmonary resuscitation course; and
- (4) Have successfully completed the competency evaluation.

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NEW SECTION

**WAC 246-841A-585 Alternative program graduates—Application requirements for nursing assistant certification.** (1) An applicant for nursing assistant-certified who has successfully completed an approved alternative program as a home care aide-certified must submit to the department:

- (a) A completed application for nursing assistant-certified;
  - (b) A copy of the certificate of completion from an approved alternative program for home care aides-certified;
  - (c) Documentation verifying current certification as a home care aide;
  - (d) Evidence of completion of a cardiopulmonary resuscitation course; and
  - (e) Applicable fees as required in WAC 246-841A-990.
- (2) An applicant for nursing assistant-certified who successfully completed an approved alternative program as a medical assistant-certified must submit to the department:
- (a) A completed application for nursing assistant-certified;
  - (b) A copy of certificate of completion from an approved alternative program for medical assistants-certified;
  - (c) An official transcript from the nationally accredited medical assistant program;
  - (d) Evidence of completion of an adult cardiopulmonary resuscitation course; and
  - (e) Applicable fees as required in WAC 246-841A-990.

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**MEDICATION ASSISTANT ENDORSEMENT**

NEW SECTION

**WAC 246-841A-586 Applicability.** WAC 246-841A-589 through 246-841A-595 apply to the endorsement of a nursing assistant-certified as a medication assistant. A nursing assistant-certified with a medication assistant endorsement administers medications and commission-approved treatments to residents in nursing homes under the direct supervision of a designated registered nurse.

Nothing in these rules requires a nursing home to employ a nursing assistant-certified with a medication assistant endorsement. A medication assistant's employer may limit or restrict the range of their employee's functions permitted in these rules, but may not expand those functions.

WAC 246-841A-589 through 246-841A-595 also apply to the approval of education and training programs and the competency evaluation for medication assistants.

Medication assistants are responsible and accountable for their specific functions.

[ ]

NEW SECTION

**WAC 246-841A-589 Medication administration and performing prescriber ordered treatments.** (1) A medication assistant working in a nursing home shall only accept direction to perform medication administration and prescriber-ordered treatments from a designated registered nurse. A medication assistant may only administer medications or perform prescriber-ordered treatments that fall within the medication assistant's scope of practice, education, and demonstrated competency.

(2) It is the responsibility of the designated registered nurse to assess the individual needs of each resident and determine that the direction of medication administration or selected treatment tasks poses minimal risks to each resident. The designated registered nurse determines the frequency of resident assessments and decides the number and types of medications to be administered.

(3) The medication assistant under the direct supervision of a registered nurse in a nursing home, may:

- (a) Administer over-the-counter medications;
- (b) Administer legend drugs, except for chemotherapeutic agents and experimental drugs;
- (c) Administer schedule IV and V medications orally, topically, and through inhalation;
- (d) Perform simple prescriber-ordered treatments which include blood glucose monitoring, noncomplex clean dressing changes, pulse oximetry readings, and oxygen administration.

(4) The medication assistant shall accurately document the administration of medication and performance of treatments into the resident's medical records on facility-approved forms or format (e.g., electronic record).

(5) Performance of the tasks identified in subsection (1) of this section will be the sole work assignment to the medication assistant.

- (6) A medication assistant may not perform the following tasks:
  - (a) Assessment of resident need for, or response to medication;
  - (b) Acceptance of telephone or verbal orders from prescribers;

- (c) Conversion or calculation of drug dosages;
- (d) Injection of any medications;
- (e) Administration of chemotherapeutic agents and experimental drugs;
- (f) Performance of any sterile task or treatment;
- (g) Medication administration through a tube;
- (h) Administration or participation in the handling, including counting or disposal of any schedule I, II, or III controlled substances;
- (i) Participation in any handling, including counting or disposal of schedule IV and V controlled substances other than when administering these substances as authorized by subsection (3)(c) of this section;
- (j) Performance of any task requiring nursing judgment, such as administration of as necessary or as needed (prn) medications.

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#### NEW SECTION

**WAC 246-841A-590 Requirements for approval of medication assistant certification endorsement training programs.** (1) A medication assistant certification endorsement training program must:

(a) Be a commission-approved nursing assistant certified training program in good standing, or a commission-approved nursing educational program in good standing; and

(b) Meet the requirements for initial and ongoing approval of nursing assistant training programs in this chapter except for the following differences:

(i) The program must implement as its common curriculum the complete medication assistant-certified model curriculum, as adopted and described in materials from the National Council of State Boards of Nursing;

(ii) The curriculum shall include training on the specific tasks that a medication assistant may and may not perform as listed in WAC 246-841A-589.

(iii) The education and training program may add to the required curriculum as stated in these rules but may not delete any content from the required curriculum.

(2) The program must provide the minimum required training hours designed specifically for medication assistant certification endorsement programs: One hundred hours total, with a minimum of 50 hours of classroom theory, a minimum of 10 hours of skills lab, and a minimum of 40 hours of clinical practicum.

(a) The training program will provide a minimum of 40 hours of directly supervised and progressive clinical experience in the administration of medications to residents in a nursing home.

(b) At no time will the ratio of students to instructor be allowed to exceed 10 students to one instructor during clinical.

(c) Instructional staff for the program must hold an active Washington state license in good standing as a registered nurse.

(d) The training program must include a sample lesson plan for one unit with its application to open a medication assistant certification endorsement program.



(e) The skills lab checklists and competency evaluation activities and documentation shall reflect the medication assistant scope as identified in the National Council of State Boards of Nursing model curriculum and WAC 246-841A-589.

(f) The following options for traditional and alternative training programs described in WAC 246-841A-420 through 246-841A-460 are not applicable for medication assistant certification endorsement programs:

- (i) Nursing assistant-registered work pathway;
- (ii) A live online teaching modality; or
- (iii) Hybrid modalities with asynchronous teaching and learning activities counted as required classroom theory hours.

(g) The program director must attest to the student's successful completion of the course on commission-approved forms or electronic methods designed specifically for medication assistant certification endorsement programs.

(h) The standard to maintain an average annual student pass rate of 80 percent for first-time test-takers on the state's medication assistant competency evaluation applies to a knowledge exam only; psychomotor or skills competency evaluation for medication assistants is addressed by the training program.

(3) In addition to standard equipment and supplies required for nursing assistant training programs as described in WAC 246-841A-450, the program must provide equipment and supplies necessary for students to practice medication administration and prescriber-ordered treatments identified in the National Council of State Boards of Nursing medication assistant curriculum and WAC 246-841A-589. All equipment and supplies should reflect the current standard of nursing home practices. Required equipment and supplies include, but are not limited to:

- (a) A medication cart;
- (b) Professionally developed placebo medications that simulate actual medications in their appearance and packaging, enabling students to practice medication administration steps in the skills lab;
- (c) A glucometer;
- (d) A pulse oximeter; and
- (e) Materials required to teach oxygen administration.

(4) Be subject to corrective actions for nursing assistant training programs as described in WAC 246-841A-465 through 246-841A-490, when requirements are not met for initial and ongoing approval of nursing assistant training programs (WAC 246-841A-420 through 246-841A-460), including those specific to medication assistant certification endorsement programs (WAC 246-841A-586 through 246-841A-595).

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#### NEW SECTION

**WAC 246-841A-595 Application requirements for a medication assistant endorsement.** (1) Initial applicant requirements: Applicants for an initial medication assistant endorsement must meet the following requirements:

- (a) Be credentialed as a nursing assistant-certified in good standing, under chapter 18.88A RCW;

(b) Successfully complete a commission-approved medication assistant education and training program, as described in WAC 246-841A-590 within the year immediately prior to the date of application;

(c) Complete at least 1,000 hours of work experience in a nursing home as a nursing assistant-certified within the year immediately prior to the date of application; and

(d) After completing the requirements in (a) through (c) of this subsection, the applicant must pass the commission-approved medication assistant competency evaluation.

(2) Application requirements for adding the medication assistant certification endorsement to a nursing assistant-certified credential:

(a) To add an initial medication assistant certification endorsement to a nursing assistant-certified credential, the nursing assistant-certified must submit to the department:

(i) An application on forms approved by the secretary of the department of health.

(ii) The applicable fees under WAC 246-841A-990.

(iii) Proof of completion of:

(A) A commission-approved medication assistant training program under WAC 246-841A-590; and

(B) Competency evaluation described under subsection (1) of this section; and

(iv) Employer documentation of work experience as required in subsection (1)(c) of this section.

(b) An applicant who is currently credentialed as a medication assistant in another state or jurisdiction may qualify for a medication assistant endorsement credential under this chapter. An applicant must submit to the department:

(i) An application on forms approved by the secretary of the department of health;

(ii) Written verification directly from the state or jurisdiction in which the applicant is credentialed, attesting that the applicant holds a credential in good standing substantially equivalent to the medication assistant endorsement credential in Washington;

(iii) Verification of completion of the required education substantially equivalent to the education requirements as described in WAC 246-841A-590(3);

(iv) Employer documentation of work experience as required in subsection (1)(c) of this section; and

(v) The applicable fees under WAC 246-841A-990.

(3) Renewal requirements: To renew a medication assistant certification endorsement credential, the medication assistant must have a current nursing assistant-certified credential in good standing and meet the requirements of WAC 246-12-030.

(4) Continuing competency requirements: A medication assistant shall meet the following requirements on an annual basis to coincide with renewal of their nursing assistant-certified credentials:

(a) Employer documentation of successful completion of 250 hours of employment as a medication assistant in a nursing home setting under the direct supervision of a registered nurse;

(b) Documentation of eight hours of continuing education specific to medications, medication administration, and performance of selected patient treatments. Continuing education hours must be obtained through a commission-approved medication education and training program as described in WAC 246-841A-590, continuing education programs approved by a professional association, or staff development programs offered in a nursing home. The education hours must directly relate to

the medication assistant's role of medication administration and the performance of selected treatments.

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## VIOLETIONS OF STANDARDS AND DISCIPLINARY PROCEDURES

### NEW SECTION

**WAC 246-841A-600 Violations of standards for nursing assistant conduct or practice.** (1) General violations of standards of practice for all nursing assistants. The following conduct may subject a nursing assistant to disciplinary action under the Uniform Disciplinary Act, chapter 18.130 RCW:

- (a) Engaging in conduct described in RCW 18.130.180;
- (b) Engaging in conduct such as, but not limited to:
  - (i) Failure to adhere and perform in accordance with standards of practice and competencies as stated in WAC 246-841A-400;
  - (ii) Performance of care activities beyond the nursing assistant scope of practice or regulations specific to the practice setting;
  - (iii) Performing or attempting to perform care tasks or procedures for which the nursing assistant lacks the appropriate knowledge, experience, and education and/or failing to obtain instruction, supervision and/or consultation for client or resident safety;
  - (iv) Failure to follow a client's or resident's care plan;
  - (v) Failure to report and document accurately and legibly the provision of care and other information pertinent to the care of a client or resident. Examples include, but are not limited to, a client's or resident's status; a change in status; observations of client's or resident's responses to care; progress; or a client's or resident's expressed concern;
  - (vi) Altering or destroying entries or making incorrect, illegible, or false entries in a client or resident record or an employer or employee record;
  - (vii) Failure to protect clients from unsafe practices or conditions, exploitation, abusive acts, neglect, or sexual misconduct as defined in WAC 246-16-100;
  - (viii) Violating the confidentiality or privacy of the client or resident, except where required by law or for the protection of the client or resident. These violations include taking or disseminating photos or videos of a client or resident by any means, including social media;
  - (ix) Providing care for a client or resident while impaired by alcohol or drugs;
  - (x) Providing care for a client or resident while affected by a mental, physical, or emotional condition to the extent that there is an undue risk of harm to self or others;
  - (xi) Abandoning a client or resident by leaving an assignment without transferring responsibilities to appropriate personnel or

caregiver when the condition of the client or resident requires continued care;

(xii) Taking client's property for own or other's use or benefit. Soliciting, accepting, or borrowing money or property from clients;

(xiii) Conviction of a crime involving physical abuse or sexual abuse including convictions of any crime or plea of guilty, including crimes against persons as defined in RCW 43.43.830 and crimes involving the personal property of a client or resident, whether or not the crime relates to the nursing assistant role;

(xiv) Permitting another person to use the nursing assistant credential or using another person's credential;

(xv) Disclosing the contents of the nursing assistant credentialing examination or soliciting, accepting, or compiling information regarding the contents of any examination before, during, or after its administration; or

(xvi) Failure to follow the employer's or workplace policy and procedure for the wastage of medications.

(2) Additional standards of practice for nursing assistants working under registered nurse delegation. These nursing assistants may perform additional care tasks beyond those indicated in WAC 246-841A-400 through nursing assistant delegation by a registered nurse. Registered nurse delegation to nursing assistants is described in WAC 246-841A-405. The following conduct may subject a nursing assistant working under the delegation of a registered nurse to disciplinary action under the Uniform Disciplinary Act, chapter 18.130 RCW. Engaging in conduct that includes, but is not limited to:

(a) Failure to adhere to and perform in accordance with the provisions for delegation of certain tasks as stated in WAC 246-841A-405;

(b) Failure to provide care in accordance with the delegation accepted from a designated registered nurse;

(c) Performance of nursing care tasks without being delegated to do so by a designated registered nurse;

(d) Failure to report and document accurately and legibly the provision of delegated care tasks and other information pertinent to the care of a client or resident in accordance with the delegation accepted from a designated registered nurse. Examples include, but are not limited to, a client's or resident's status; a change in status; observation of patient responses to care; progress; or a client's or resident's expressed concern;

(e) Altering or destroying entries or making incorrect, illegible, or false entries in a client or resident record or an employer or employee record pertaining to delegated care tasks; or

(f) Failure to follow the employer's or workplace policy and procedure for the wastage of medications.

(3) Additional standards of practice for nursing assistants-certified who train and test to earn a medication assistant endorsement. These nursing assistants-certified may perform care tasks beyond those indicated in WAC 246-841A-400 when they work under the direct supervision of a designated registered nurse in a nursing home. A nursing assistant-certified with a medication assistant endorsement can administer certain medications and perform certain prescriber-ordered treatments as described in WAC 246-841A-589. The following conduct may subject a nursing assistant-certified with a medication assistant endorsement to disciplinary action under the Uniform Disciplinary Act, chapter 18.130 RCW. Engaging in conduct that includes, but is not limited to:

(a) Failure to adhere to and perform in accordance with the requirements for medication administration and prescriber-ordered treatments in WAC 246-841A-589;

(b) Failure to administer medications or provide prescriber-ordered treatments in the scope of a nursing assistant-certified with a medication assistant endorsement in accordance with:

(i) The direction of the supervising registered nurse;

(ii) Written orders; or

(iii) Common safety and infection control practices for the care tasks performed;

(c) Failure to report and document accurately and legibly:

(i) The administration of medication and performance of prescriber-ordered treatments into the resident's medical records using the facility-approved form or format (e.g., electronic record); and

(ii) Supporting information pertinent to the care of a resident. Examples include, but are not limited to, a resident's status; a change in status; observations of patient responses to care or treatment(s); progress; or a resident's expressed concern;

(d) Altering or destroying entries or making incorrect, illegible, or false entries in a client or resident record or an employer or employee record pertaining to medication administration or performance of prescriber-ordered treatments;

(e) Administering medications or performing prescriber-ordered treatments beyond the scope of a nursing assistant-certified with a medication assistant endorsement as identified in WAC 246-841A-589; or

(f) Failure to follow the employer's or workplace policy and procedure for the wastage of medications.

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#### NEW SECTION

**WAC 246-841A-720 Mandatory reporting.** The commission adopts the rules for mandatory reporting in chapter 246-16 WAC.

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#### NEW SECTION

**WAC 246-841A-980 Expired credential.** If the certificate has been expired for three years or less, the practitioner must meet the requirements as provided in WAC 246-12-020 through 246-12-051. If the certificate has expired for over three years, the practitioner must:

(1) Demonstrate competence to the standards established by the commission;

(2) Meet the requirements of WAC 246-12-020 through 246-12-051.

[]

**FEEES**

NEW SECTION

**WAC 246-841A-990 Nursing assistant—Fees and renewal cycle.** (1) Credentials must be renewed every year on the practitioner's birthday as provided in WAC 246-12-020 through 246-12-051.

(2) The following nonrefundable fees will be charged for registration credentials:

| <b>Title of Fee</b>             | <b>Fee</b> |
|---------------------------------|------------|
| Application - Registration      | \$85.00    |
| Renewal of registration         | 95.00      |
| Duplicate registration          | 10.00      |
| Registration late penalty       | 50.00      |
| Expired registration reissuance | 52.00      |

(3) The following nonrefundable fees will be charged for certification credentials:

| <b>Title of Fee</b>              | <b>Fee</b> |
|----------------------------------|------------|
| Application for certification    | \$85.00    |
| Certification renewal            | 95.00      |
| Duplicate certification          | 10.00      |
| Certification late penalty       | 50.00      |
| Expired certification reissuance | 52.00      |

(4) The following nonrefundable fees will be charged for medication assistant endorsement credentials:

| <b>Title of Fee</b>         | <b>Fee</b> |
|-----------------------------|------------|
| Application for endorsement | \$25.00    |
| Endorsement renewal         | 10.00      |

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**OTS-4366.1**

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-841-400 Standards of practice and competencies for nursing assistants.

|                 |   |
|-----------------|---|
| WAC 246-841-405 | Nursing assistant delegation.   |
| WAC 246-841-410 | Purpose of the review and approval of nursing assistant-certified training programs.                                  |
| WAC 246-841-420 | Requirements for approval of nursing assistant-certified training programs.   |
| WAC 246-841-430 | Denial or withdrawal of approval for nursing assistant-certified training programs.                                   |
| WAC 246-841-440 | How does a nursing assistant training program whose approval has been withdrawn become reinstated?                    |
| WAC 246-841-450 | Appeal rights of a nursing assistant-certified training program when the commission has denied or withdrawn approval. |
| WAC 246-841-460 | Closure of an approved nursing assistant-certified training program.  |
| WAC 246-841-470 | Program directors and instructors in approved nursing assistant-certified training programs.                          |
| WAC 246-841-490 | Core curriculum in approved nursing assistant-certified training programs.  |
| WAC 246-841-500 | Physical resources required for approved nursing assistant-certified training programs.                               |
| WAC 246-841-510 | Administrative procedures for approved nursing assistant-certified training programs.                                 |
| WAC 246-841-520 | Expired license.  |
| WAC 246-841-530 | Alternative program—Purpose.  |
| WAC 246-841-535 | Alternative program—Definitions.  |
| WAC 246-841-545 | Home care aide-certified alternative program requirements.  |
| WAC 246-841-550 | Medical assistant-certified alternative program requirements.   |
| WAC 246-841-555 | Responsibilities of the program director in alternative programs.   |
| WAC 246-841-560 | Alternative program application for approval, denial, or withdrawal.  |
| WAC 246-841-570 | Recordkeeping and administrative procedures for approved alternative programs.  |
| WAC 246-841-573 | Closure of an alternative program.  |
| WAC 246-841-575 | Alternative program—Eligibility to complete the nursing assistant-certified competency examination.                   |
| WAC 246-841-578 | Application requirements.   |

|                 |  |
|-----------------|--|
| WAC 246-841-585 | Application for nursing assistant-certified from an alternative program. |
| WAC 246-841-586 | Applicability.   |
| WAC 246-841-587 | Definitions.   |
| WAC 246-841-588 | Application requirements.  |
| WAC 246-841-589 | Medication administration and performing prescriber ordered treatments.  |
| WAC 246-841-590 | Requirements for approval of education and training programs.            |
| WAC 246-841-591 | Commission review and investigation.                                     |
| WAC 246-841-592 | Commission action for violations.  |
| WAC 246-841-593 | Reinstatement of approval.   |
| WAC 246-841-594 | Appeal rights.   |
| WAC 246-841-595 | Medication assistant endorsement program renewal.                        |
| WAC 246-841-720 | Mandatory reporting.   |
| WAC 246-841-990 | Nursing assistant—Fees and renewal cycle.                                |

**OTS-4367.1**REPEALER

The following chapter of the Washington Administrative Code is repealed:

|                 |   |
|-----------------|---|
| WAC 246-842-100 | Standards of practice and competencies of nursing assistants.   |
| WAC 246-842-110 | Purpose of review and approval of nursing assistant training programs.                                    |
| WAC 246-842-120 | Requirements for nursing assistant training program approval.   |
| WAC 246-842-130 | Denial of approval or withdrawal of approval for programs for which the board is the approving authority. |
| WAC 246-842-140 | Reinstatement of approval.  |
| WAC 246-842-150 | Appeal of board decisions.  |
| WAC 246-842-160 | Closing of an approved nursing assistant training program.  |
| WAC 246-842-170 | Program directors and instructors in approved training programs.  |
| WAC 246-842-180 | Students (trainees) in approved training programs.  |



- WAC 246-842-190 Core curriculum in approved training programs.
- WAC 246-842-200 Physical resources for approved education programs.
- WAC 246-842-210 Administrative procedures for approved nursing assistant training programs.

**WSR 23-20-125**  
**PERMANENT RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R2023-03—Filed October 4, 2023, 8:58 a.m., effective November 4, 2023]

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

Purpose: Passage of SSB 5720 (2023) amends RCW 48.18.558 and 48.19.530 to no longer exclude commercial property insurers from providing goods and services intended to reduce the probability of loss as part of an insurance policy. Additionally, SSB 5720 amends RCW 48.18.559 to remove the commissioner's rule-making authority to increase the value of risk mitigation goods and services. The purpose of this rule is to align existing rule language, including WAC 284-33-005, 284-33-010, and 284-33-030, with newly amended RCW 48.18.558, 48.18.559, and 48.19.530.

Citation of Rules Affected by this Order: Amending WAC 284-33-005, 284-33-010, and 284-33-030.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.559.

Adopted under notice filed as WSR 23-15-109 on July 19, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

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

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

Date Adopted: October 4, 2023.

Mike Kreidler  
Insurance Commissioner

**OTS-4749.1**

AMENDATORY SECTION (Amending WSR 18-24-084, filed 12/3/18, effective 1/3/19)

**WAC 284-33-005 Definition((s)).** The definition((s)) in this section apply throughout this chapter unless the context clearly requires otherwise:

~~((1))~~ A "risk reduction program" means a program by a property insurance company to reduce either the probability of loss or extent of loss, or both, from a covered event as described in RCW 48.18.558(1) by supplying its named insured with either goods or services, or both, as described in WAC 284-33-030(1).

~~((2)) "Commercial property insurance" means insurance pertaining to a business, profession, occupation, nonprofit organization, or pub-~~

~~lic entity for the line of property insurance as defined in RCW 48.11.040.)~~

[Statutory Authority: RCW 48.02.60 [48.02.060] and 48.18.559. WSR 18-24-084 (R 2018-11), § 284-33-005, filed 12/3/18, effective 1/3/19.]

AMENDATORY SECTION (Amending WSR 18-24-084, filed 12/3/18, effective 1/3/19)

**WAC 284-33-010 Purpose and scope.** The purpose of this chapter is to implement RCW 48.18.558, 48.18.559, and 48.19.530 for property insurance by establishing rules:

- (1) For property insurers' risk reduction programs for covered events (~~(, except commercial property insurance)~~);
- (2) For property insurers' pilot risk reduction programs for covered events (~~(, except commercial property insurance)~~); and
- (3) To identify which property insurers' disaster or emergency response activities for covered events are exempt from RCW 48.18.558, 48.19.530, 48.30.140, and 48.30.150.

[Statutory Authority: RCW 48.02.60 [48.02.060] and 48.18.559. WSR 18-24-084 (R 2018-11), § 284-33-010, filed 12/3/18, effective 1/3/19.]

AMENDATORY SECTION (Amending WSR 20-23-004, filed 11/5/20, effective 1/1/21)

**WAC 284-33-030 Goods and services.** (1) All goods or services, or both, that are approved by the commissioner to be included within a property insurer's risk reduction program, or pilot risk reduction program, or both, must be implemented by the insurer to reduce either the probability of damage or extent of damage, or both, by a peril covered under the property policy, and may include:

- (a) Smoke alarms;
- (b) Fire extinguishers;
- (c) Natural gas detectors;
- (d) Brush and other wildfire fuel source removal services;
- (e) Water monitors;
- (f) Water shut off systems;
- (g) Earthquake strapping;
- (h) Locking mechanisms to secure property;
- (i) Lightning protection devices;
- (j) Security lighting;
- (k) Security camera systems;
- (l) Home safety monitoring systems; and
- (m) Other goods or services, or both, the commissioner may approve through a form filing.

(2) A voucher provided from the insurer to the insured for either goods or services, or both, is only permissible for those items as described in subsection (1) of this section and must fully redeem either the goods or services, or both, being used in the risk reduction program.

~~((3) Under RCW 48.18.559, the commissioner may increase the value of goods and services permitted under RCW 48.18.558. The limit to~~

~~the value of goods and services to be provided is increased to seven thousand five hundred dollars in value in aggregate in any twelve-month period if the insurer:~~

~~(a) Submits a rate filing with the information required by RCW 48.19.530; and~~

~~(b) Includes an explanation and exhibit in the filing showing that the present value of the expected reduction in claims costs arising from the goods and services, over the service life of the goods and services, is greater than, or equal to, the total cost to the insurer of the goods and services.)~~

[Statutory Authority: RCW 48.02.060(3) and 48.18.559. WSR 20-23-004 (R 2020-01), § 284-33-030, filed 11/5/20, effective 1/1/21. Statutory Authority: RCW 48.02.60 [48.02.060] and 48.18.559. WSR 18-24-084 (R 2018-11), § 284-33-030, filed 12/3/18, effective 1/3/19.]

## WSR 23-20-128

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed October 4, 2023, 10:13 a.m., effective November 4, 2023]

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

Purpose: The agency amended these rules to:

(1) Remove language referencing a center of excellence (COE) as a facility rather than an individual provider; for the purposes of this chapter, COE means an individual provider.

(2) Update the COE definition in WAC 182-531A-0200.

(3) Add physician assistants and naturopaths to the list of eligible providers who can diagnose autism spectrum disorder.

(4) Add additional clarification and requirement that advanced registered nurse practitioners, physicians, physician assistants, and naturopaths must complete the required COE training authorized by the agency. Additionally, physician assistants and naturopaths, in order to be recognized as a COE by the agency, must submit a signed COE attestation form, HCA 13-0009, to the agency.

(5) Remove subsection (11)(b), the attestation form regarding ABA qualifications, HCA 13-0008, is not required by the certified behavior technician.

(6) Clarify in WAC 182-531A-0800(6) that all COEs must be enrolled with the agency and all COEs providing services to clients enrolled with a managed care organization (MCO) must also be contracted with the MCO per the MCO contract specifications in accordance with 42 C.F.R. 438.14 to be reimbursed for fee-for-service or MCO services.

(7) Add housekeeping changes such as updating the term "clinician" to "provider" for language consistency and the term "order or ordered" to "prescribed or prescription" to align with standard of language that ABA therapy is a prescription.

Citation of Rules Affected by this Order: Amending WAC 182-531A-0200, 182-531A-0400, 182-531A-0500, 182-531A-0600, and 182-531A-0800.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-17-087 on August 15, 2023.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: October 4, 2023.

Wendy Barcus  
Rules Coordinator

OTS-4723.2

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

**WAC 182-531A-0200 Applied behavior analysis (ABA)—Definitions.**

The following definitions and those found in chapter 182-500 WAC, medical definitions, and chapter 182-531 WAC, physician-related services, apply throughout this chapter.

**Applied behavior analysis** or **ABA** - Applied behavior analysis (ABA) is an empirically validated approach to improve behavior and skills related to core impairments associated with autism and a number of other developmental disabilities. ABA involves the systematic application of scientifically validated principles of human behavior to change inappropriate behaviors. ABA uses scientific methods to reliably demonstrate that behavioral improvements are caused by the prescribed interventions. ABA's focus on social significance promotes a family-centered and whole-life approach to intervention. Common methods used include: Assessment of behavior, caregiver interviews, direct observation, and collection of data on targeted behaviors. A single-case design is used to demonstrate the relationship between the environment and behavior as a means to implement client-specific ABA therapy treatment plans with specific goals and promote lasting change. ABA also includes the implementation of a functional behavior assessment to identify environmental variables that maintain challenging behavior and allow for more effective interventions to be developed that reduce challenging behaviors and teach appropriate replacement behaviors.

**Autism spectrum disorder (ASD)** - A condition, as defined by *Diagnostic and Statistical Manual of Mental Disorders* (DSM) or *Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood* (DC 0-5) criteria.

**Autism spectrum disorder (ASD) diagnostic tool** - A validated tool used to establish the presence (or absence) of autism and to make a definitive diagnosis which will be the basis for treatment decisions and assist in the development of a multidisciplinary clinical treatment plan. Examples of autism diagnostic tools include:

- (a) Autism Diagnosis Interview (ADI); and
- (b) Autism Diagnostic Observation Schedule (ADOS).

**Autism spectrum disorder (ASD) screening tool** - A tool used to detect ASD indicators or risk factors which then require confirmation. Examples of screening tools include, but are not limited to:

- (a) Ages and Stages Questionnaire (ASQ);
- (b) Communication and Symbolic Behavior Scales (CSBS);
- (c) Parent's Evaluation and Developmental Status (PEDS);
- (d) Modified Checklist for Autism in Toddlers (MCHAT); and
- (e) Screening Tools for Autism in Toddlers and young children

(STAT).

**Centers of excellence (COE)** - (~~(A facility that employs a health care provider, or alternatively)~~) An individual provider who has been trained, as listed in WAC 182-531A-0800, to establish or confirm the diagnosis of autism spectrum disorder and that has been designated by the agency as a center of excellence provider. For the purposes of this chapter, center of excellence (COE) refers to an individual provider, not a facility.

**Client** - For the purposes of this chapter, client means a person enrolled in Washington apple health (WAH).

**Family member** - A client's parent, guardian, caregiver, or other support person.

**Qualifying diagnosis** - A diagnosis of an ASD, as defined by the DSM or DC 0-5, or other intellectual or developmental disability for which there is evidence ABA is effective.

[Statutory Authority: RCW 41.05.021, 41.05.160, and Thurston County Superior Court in J.C. and H.S. v. Washington State Health Care Authority, no. 20-2-01813-34. WSR 22-08-035, § 182-531A-0200, filed 3/29/22, effective 4/29/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-0200, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

**WAC 182-531A-0400 Applied behavior analysis (ABA)—Client eligibility.** To be eligible for applied behavior analysis (ABA) services, a client must:

(1) Be covered under Washington apple health (WAH);

(2) Provide documentation created by a COE (~~(clinician)~~) provider

that:

(a) Establishes the presence of functional impairment; delay in communication, behavior, or social interaction; or repetitive or stereotyped behavior;

(b) Establishes that the client's impairment, delay, or behaviors adversely affect development or communication, or both, such that:

(i) The client cannot adequately participate in home, school, or community activities because the behavior or skill deficit interferes with these activities; or

(ii) The client's behavior endangers the client or another person, or impedes access to home and community activities; and

(c) An agency-recognized center of excellence (COE) (~~(clinician)~~) provider has confirmed that:

(i) The client meets all requirements in (a) and (b) of this subsection;

(ii) The client has a qualifying diagnosis;

(A) Autism spectrum disorder; or

(B) Developmental/intellectual disability;

(iii) There is a reasonable expectation the requested services will result in measurable improvement in either the client's behavior, skills, or both; and

(iv) Either:

(A) Less intrusive or less intensive behavioral interventions have been tried and have not been successful; or

(B) No equally effective and substantially less costly alternative is available for reducing interfering behaviors, increasing pro-social skills and behaviors, or maintaining desired behaviors.

[Statutory Authority: RCW 41.05.021, 41.05.160, and Thurston County Superior Court in J.C. and H.S. v. Washington State Health Care Authority, no. 20-2-01813-34. WSR 22-08-035, § 182-531A-0400, filed

3/29/22, effective 4/29/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-0400, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

**WAC 182-531A-0500 Applied behavior analysis (ABA)—Stage one: COE evaluation and ~~((order))~~ prescription.** (1) Any person may refer a client suspected of meeting the criteria in WAC 182-531A-0400 to a center of excellence (COE) provider for an evaluation.

(2) The individual COE provider must complete a comprehensive diagnostic evaluation and provide:

(a) Documentation showing how the autism spectrum disorder or other intellectual/developmental disability (for which there is evidence ABA is effective) diagnosis was made or confirmed by an approved individual COE provider that includes:

(i) Results of formal diagnostic procedures performed by a ~~((clinician))~~ provider, including name of measure, dates, and results, as available; or

(ii) Clinical findings and observations used to confirm the diagnosis;

(b) Documentation showing that the client's behaviors or skills deficits adversely affect development or communication, or demonstrating injurious behavior, such that:

(i) The client cannot adequately participate in home, school, or community activities because behavior or skill deficit interferes with these activities; or

(ii) The client presents a safety risk to self or others;

(c) Documentation showing:

(i) Less intrusive or less intensive behavioral interventions have been tried and were not successful; or

(ii) There is no equally effective alternative available for reducing interfering behaviors, increasing prosocial behaviors, or maintaining desired behaviors;

(d) Recommendations that address all of the client's health care needs;

(e) A statement that the evaluating and prescribing provider believes that there is a reasonable expectation that the requested ABA services will result in measurable improvement in the client's behavior or skills; and

(f) ~~((An order))~~ A prescription for ABA services. If ~~((ordered))~~ prescribed, a copy of the ~~((COE's))~~ COE provider's comprehensive diagnostic evaluation and multidisciplinary clinical treatment plan must be forwarded to the ABA provider selected by the client or the client's guardian under this chapter or provided to the client or the client's guardian to forward to the selected ABA provider.

(3) The COE provider must also include the following items if ~~((it possesses))~~ they possess a copy:

(a) Results of routine developmental screening;

(b) Audiology and vision assessment results, or documentation that vision and hearing were determined to be within normal limits during assessment and not a barrier to completing a valid evaluation;



(c) The name of the completed autism spectrum disorder (ASD) screening tool, including date completed and significant results;

(d) Documentation of a formal cognitive or developmental assessment performed by the COE provider or another qualified (~~(clinician)~~) provider, including name of measure, dates, results, and standardized scores providing verbal, nonverbal, and full-scale scores; and

(e) Documentation of a formal adaptive behavior assessment performed by the COE provider for developmental/intellectual disability or another qualified (~~(clinician)~~) provider, including name of measure, dates, results, and standardized scores providing scores of each domain.

[Statutory Authority: RCW 41.05.021, 41.05.160, and Thurston County Superior Court in J.C. and H.S. v. Washington State Health Care Authority, no. 20-2-01813-34. WSR 22-08-035, § 182-531A-0500, filed 3/29/22, effective 4/29/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-0500, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

**WAC 182-531A-0600 Applied behavior analysis (ABA)—Stage two: Functional assessment and treatment plan development.** (1) If the center of (~~(excellence's (COE's) evaluating and prescribing)~~) excellence (COE) provider has (~~(ordered)~~) prescribed applied behavior analysis (ABA) services, the client may begin stage two - ABA assessment, functional analysis, and ABA therapy treatment plan development.

(2) Prior authorization must be obtained from the agency prior to implementing the ABA therapy treatment plan. The prior authorization request must be received no more than 60 days from the date of the assessment and ABA therapy treatment plan. See WAC 182-501-0165 for agency authorization requirements.

(3) The client or the client's legal guardian selects the ABA provider and the setting in which services will be rendered. ABA services may be rendered in one of the following settings:

(a) Day services program, which mean an agency-approved, outpatient facility or clinic-based program that:

(i) Employs or contracts with a lead behavior analysis therapist (LBAT), therapy assistant, speech therapist, and if clinically indicated, an occupational therapist, physical therapist, psychologist, medical (~~(clinician)~~) provider, and dietitian;

(ii) Provides multidisciplinary services in a short-term day treatment program setting;

(iii) Delivers comprehensive intensive services;

(iv) Embeds early, intensive behavioral interventions in a developmentally appropriate context;

(v) Provides an individualized developmentally appropriate ABA therapy treatment plan for each client; and

(vi) Includes family support and training.

(b) Community-based program, which means a program that provides services in a natural setting, such as a school, home, workplace, office, or clinic. A community-based program:

- (i) May be used after discharge from a day services program (see subsection (3)(a) of this section);
  - (ii) Provides a developmentally appropriate ABA therapy treatment plan for each client;
  - (iii) Provides ABA services in the home (wherever the client resides), office, clinic, or community setting, as required to accomplish the goals in the ABA therapy treatment plan. Examples of community settings are: A park, restaurant, child care, early childhood education, school, or place of employment and must be included in the ABA therapy treatment plan with services being provided by the enrolled LBAT or therapy assistant approved to provide services via authorization;
  - (iv) Requires recertification of medical necessity through continued authorization; and
  - (v) Includes family or caregiver education, support, and training.
- (4) An assessment, as described in this chapter, must be conducted and an ABA therapy treatment plan developed by an LBAT in the setting chosen by the client or the client's legal guardian. The ABA therapy treatment plan must follow the agency's ABA therapy treatment plan report template and:
- (a) Be signed by the LBAT responsible for the plan development and oversight;
  - (b) Be applicable to the services to be rendered over the next six months, based on the LBAT's judgment, and correlate with the ~~((COE's))~~ COE provider's current diagnostic evaluation (see WAC 182-531A-0500(2));
  - (c) Address each behavior, skill deficit, and symptom that prevents the client from adequately participating in home, school, employment, community activities, or that presents a safety risk to the client or others;
  - (d) Be individualized;
  - (e) Be client-centered, family-focused, community-based, culturally competent, and minimally intrusive;
  - (f) Take into account all school or other community resources available to the client, confirm that the requested services are not redundant or in conflict with, but are in coordination with, other services already being provided or otherwise available, and coordinate services (e.g., from school and special education, from early intervention programs and early intervention providers or from the developmental disabilities administration) with other interventions and treatments (e.g., speech therapy, occupational therapy, physical therapy, family counseling, and medication management);
  - (g) Focus on family engagement and training;
  - (h) Identify and describe in detail the targeted behaviors and symptoms;
  - (i) Include objective, baseline measurement levels for each target behavior/symptom in terms of frequency, intensity, and duration, including use of curriculum-based measures, single-case studies, or other generally accepted assessment tools;
  - (j) Include a comprehensive description of treatment interventions, or type of treatment interventions, and techniques specific to each of the targeted behaviors/symptoms, (e.g., discrete trial training, reinforcement, picture exchange, communication systems) including documentation of the number of service hours, in terms of frequency and duration, for each intervention;

(k) Establish treatment goals and objective measures of progress for each intervention specified to be accomplished in the authorized treatment period;

(l) Incorporate strategies for promoting the learning of skills that improve targeted behaviors within settings as listed in this chapter;

(m) Integrate family education, goals, training, support services, and modeling and coaching family/client interaction;

(n) Incorporate strategies for coordinating treatment with school-based education and vocational programs, behavioral health treatment, habilitative supports, and community-based early intervention programs, and plan for transition through a continuum of treatments, services, and settings; and

(o) Include measurable discharge criteria and a discharge plan.

[Statutory Authority: RCW 41.05.021, 41.05.160, and Thurston County Superior Court in J.C. and H.S. v. Washington State Health Care Authority, no. 20-2-01813-34. WSR 22-08-035, § 182-531A-0600, filed 3/29/22, effective 4/29/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-0600, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

**WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.**

**Center of excellence.**

(1) For the purposes of this chapter, center of excellence (COE) refers to an individual provider, not a facility.

(2) A center of excellence (COE) (~~may include a facility or an individual.~~

(2) ~~The COE facility evaluating and prescribing providers must function as a multidisciplinary care team)~~ must be an evaluating and prescribing provider.

(3) The COE provider must be (~~or must employ~~):

(a) A person licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and is:

(i) A developmental pediatrician;

(ii) A neurologist;

(iii) A pediatric neurologist;

(iv) A pediatric psychiatrist;

(v) A psychiatrist; or

(vi) A psychologist; or

(b) A qualified medical provider who meets qualifications in subsection (4) of this section and who has been designated by the agency as a COE provider. (~~Behavioral health clinicians do not apply.~~)

(4) With the exception of providers listed in subsection (3)(a) of this section, ARNPs, physicians, physician assistants, and naturopaths must complete the required COE training authorized by the agency. The COE provider must be prequalified by the agency (~~or employ people who~~) and meet the following criteria:

(a) ARNPs, physicians, ~~((and psychologists))~~ physician assistants, and naturopaths must have demonstrated expertise in diagnosing an autism spectrum disorder by:

(i) Using a validated diagnostic tool;

(ii) Confirming the diagnosis by observing the client's behavior and interviewing family members; or

(iii) Reviewing the documentation available from the client's primary care provider, individualized education plan, or individualized family service plan;

(b) ARNPs, physicians, ~~((and psychologists))~~ physician assistants, and naturopaths must understand the medically necessary use of applied behavior analysis (ABA); and

(c) ARNPs, physicians, ~~((and psychologists))~~ physician assistants, and naturopaths must be sufficiently qualified to conduct and document a comprehensive diagnostic evaluation~~((7))~~ and develop a multidisciplinary clinical treatment plan under WAC 182-531A-0500(2).

(5) To be recognized as a COE by the agency, the provider, as listed in (4)(a) of this section, must submit a signed COE Attestation form, HCA 13-0009, to the agency.

(6) ~~((The))~~ To be reimbursed for fee-for-service or agency-contracted managed care organization (MCO) services:

(a) All COE providers must be enrolled with the agency ~~((or the client's managed care organization to be reimbursed for services.~~

~~(7) Examples of providers who can qualify as a designated COE include:~~

~~(a) Multidisciplinary clinics;~~

~~(b) Individual qualified provider offices; and~~

~~(c) Neurodevelopmental centers.~~

~~(8)).~~

(b) All COEs providing services to clients enrolled with an agency-contracted MCO must also be contracted with the MCO, per the MCO contract specifications in accordance with 42 C.F.R. § 438.14.

(7) All ABA providers must meet the specified minimum qualifications and comply with applicable state laws.

#### **Lead behavior analysis therapist.**

~~((9))~~ (8) The lead behavior analysis therapist (LBAT) must:

(a) Be licensed by the department of health (DOH) to practice independently as a behavior analyst or an assistant behavior analyst with supervision from a licensed behavior analyst or licensed psychologist (see chapter 18.380 RCW) and be an eligible provider according to chapter 182-502 WAC; or

(b) Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or DOH-licensed psychologist (see chapter 18.380 RCW). Providers listed in this subsection must have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-0008, regarding certification as a board-certified behavior analyst (BCBA) or a board-certified assistant behavior analyst (BCaBA) on file with the agency.

~~((10))~~ (9) The LBAT must enroll as a servicing provider under chapter 182-502 WAC, be authorized to supervise ancillary providers, and be:

(a) A DOH-licensed behavior analyst (LBA) (see chapter 18.380 RCW); or

(b) A DOH-licensed assistant behavior analyst (LABA) (see chapter 18.380 RCW).

~~((11))~~ (10) If the LBAT's role is filled by a LABA, the responsibilities below must be fulfilled by both the LABA and the supervising LBA or licensed psychologist, as required by DOH under chapter 246-805 WAC. The LBAT must:

- (a) Develop and maintain an ABA therapy treatment plan that is comprehensive, incorporating treatment provided by other health care professionals, and that states how all treatment will be coordinated; and
- (b) Supervise at least five percent of the total direct care provided by the certified behavior technician per week.

**Certified behavior technician.**

~~((12))~~ (11) The certified behavior technician (CBT) must ~~((+ (a)))~~ be certified by DOH as a CBT under chapter 18.380 RCW in good standing with no license restrictions ~~((+ and (b)))~~ ~~Have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-0008, regarding ABA qualifications on file with the agency).~~

~~((13))~~ (12) The CBT must enroll as a servicing provider under chapter 182-502 WAC.

~~((14))~~ (13) The CBT must:

- (a) Deliver services according to the ABA therapy treatment plan;
- (b) Be supervised by a DOH-licensed professional who meets the requirements under WAC 246-805-330; and
- (c) Review the client's progress with the supervisor at least every two weeks to confirm that the ABA therapy treatment plan still meets the client's needs. If changes are clinically indicated, they must be made by the supervisor.

**Facility-based day program.**

~~((15))~~ (14) All facility-based day program providers must meet the requirements under WAC 182-531A-0600 (3) (a), and meet the following requirements:

- (a) Outpatient hospital facilities must meet the applicable DOH licensure requirements under chapter 246-320 WAC;
- (b) Any provider rendering direct ABA services in the facility-based day program must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable;
- (c) Any provider serving as a member of the multidisciplinary care team must be licensed or certified under Title 18 RCW; and
- (d) Have a signed ABA Day Program Capacity Attestation form, HCA 13-0007, on file with the agency.

[Statutory Authority: RCW 41.05.021, 41.05.160, and Thurston County Superior Court in J.C. and H.S. v. Washington State Health Care Authority, no. 20-2-01813-34. WSR 22-08-035, § 182-531A-0800, filed 3/29/22, effective 4/29/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-16-071, § 182-531A-0800, filed 7/30/18, effective 8/30/18. Statutory Authority: RCW 41.05.021, 41.05.160, and 2015 c 118. WSR 18-09-036, § 182-531A-0800, filed 4/12/18, effective 5/13/18. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 15-19-121, § 182-531A-0800, filed 9/21/15, effective 10/22/15; WSR 14-24-083, § 182-531A-0800, filed 12/1/14, effective 1/1/15.]

## WSR 23-20-129

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed October 4, 2023, 10:58 a.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: The health care authority amended this rule to increase the allowable number of periodontal treatments to up to four per 12-month period for apple health eligible clients age 21 and over with a current diagnosis of diabetes. Effective January 1, 2024, periodontal maintenance is allowed once every three months when criteria are met. In subsection (2)(a)(i), the agency removed "subgingival calculus" as it is unnecessary language.

Citation of Rules Affected by this Order: Amending WAC 182-535-1088.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: ESSB 5187, conference budget, section 211(60).

Adopted under notice filed as WSR 23-17-080 on August 15, 2023.

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

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

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

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

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

Date Adopted: October 4, 2023.

Wendy Barcus  
Rules Coordinator

## OTS-4724.2

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

**WAC 182-535-1088 Dental-related services—Covered—Periodontic services.** Clients described in WAC 182-535-1060 are eligible to receive the dental-related periodontic services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specified service.

(1) **Surgical periodontal services.** The medicaid agency covers the following surgical periodontal services, including all postoperative care:

(a) Gingivectomy/gingivoplasty (does not include distal wedge procedures on erupting molars) only on a case-by-case basis and when prior authorized and only for clients age (~~twenty~~) 20 and younger; and

(b) Gingivectomy/gingivoplasty (does not include distal wedge procedures on erupting molars) for clients of the developmental disabilities administration of the department of social and health services (DSHS) according to WAC 182-535-1099.

(2) **Nonsurgical periodontal services.** The agency:

(a) Covers periodontal scaling and root planing for clients age (~~(thirteen through eighteen)~~) 13 through 18, once per quadrant per client, in a two-year period on a case-by-case basis, when prior authorized, and only when:

(i) The client has radiographic evidence of periodontal disease (~~(and subgingival calculus)~~);

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting done within the past (~~(twelve)~~) 12 months from the date of the prior authorization request and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) Performed at least two years from the date of completion of periodontal scaling and root planing or surgical periodontal treatment, or at least (~~(twelve)~~) 12 calendar months from the completion of periodontal maintenance.

(b) Covers periodontal scaling and root planing once per quadrant per client in a two-year period for clients age (~~(nineteen)~~) 19 and older. Criteria in (a)(i) through (iv) of this subsection must be met.

(c) Considers ultrasonic scaling, gross scaling, or gross debridement to be included in the procedure and not a substitution for periodontal scaling and root planing.

(d) Covers periodontal scaling and root planing only when the services are not performed on the same date of service as prophylaxis, periodontal maintenance, gingivectomy, or gingivoplasty.

(e) Covers periodontal scaling and root planing for clients of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(f) Covers periodontal scaling and root planing, one time per quadrant in a (~~(twelve)~~) 12-month period for clients residing in an alternate living facility or nursing facility.

(3) **Other periodontal services.** The agency:

(a) Covers periodontal maintenance for clients age (~~(thirteen through eighteen)~~) 13 through 18 once per client in a (~~(twelve)~~) 12-month period on a case-by-case basis, when prior authorized, and only when:

(i) The client has radiographic evidence of periodontal disease;

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting done within the past (~~(twelve)~~) 12 months with location of the gingival margin and clinical attachment loss and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) The client has had periodontal scaling and root planing but not within (~~(twelve)~~) 12 months of the date of completion of periodontal scaling and root planing, or surgical periodontal treatment.

(b) Covers periodontal maintenance once per client in a twelve month period for clients age (~~(nineteen)~~) 19 and older. Criteria in

(a)(i) through (iv) of this subsection must be met.

(c) Covers periodontal maintenance only if performed at least ~~((twelve))~~ 12 calendar months after receiving prophylaxis, periodontal scaling and root planing, gingivectomy, or gingivoplasty.

(d) Covers periodontal maintenance for clients of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(e) Covers periodontal maintenance for clients residing in an alternate living facility or nursing facility:

(i) Periodontal maintenance (four quadrants) substitutes for an eligible periodontal scaling or root planing once every six months.

(ii) Periodontal maintenance allowed six months after scaling or root planing.

(f) Covers periodontal maintenance for clients 21 and older with a diagnosis of diabetes:

(i) Periodontal maintenance allowed once every three months. Criteria in (a)(i) through (iii) of this subsection must be met.

(ii) Periodontal maintenance allowed three months after scaling or root planing.

(g) Covers full-mouth scaling in the presence of generalized moderate or severe gingival inflammation and only:

(i) For clients age ~~((nineteen))~~ 19 and older once in a ~~((twelve))~~ 12-month period after an oral evaluation; and

(ii) For clients age ~~((thirteen through eighteen))~~ 13 through 18 once in a ~~((twelve))~~ 12-month period after an oral evaluation and when prior authorized.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-20-097, § 182-535-1088, filed 10/3/17, effective 11/3/17; WSR 16-18-033, § 182-535-1088, filed 8/26/16, effective 9/26/16. Statutory Authority: RCW 41.05.021 and 2013 2nd sp.s. c 4 § 213. WSR 14-08-032, § 182-535-1088, filed 3/25/14, effective 4/30/14. Statutory Authority: RCW 41.05.021. WSR 12-09-081, § 182-535-1088, filed 4/17/12, effective 5/18/12. WSR 11-14-075, recodified as § 182-535-1088, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.520. WSR 07-06-042, § 388-535-1088, filed 3/1/07, effective 4/1/07.]