

WSR 24-01-015
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed December 7, 2023, 11:08 a.m.]

Supplemental Notice to WSR 23-06-063.

Preproposal statement of inquiry was filed as WSR 20-17-005, 20-17-133, 20-19-009, 20-21-034, and 21-11-061.

Title of Rule and Other Identifying Information: The department is proposing amendments to:

- WAC 388-97-0300, clinical records for residents in medicare and medicaid certified facilities; and adoption of a new section related to nursing facilities providing clinical records to residents and their representatives during the COVID-19 pandemic;
- WAC 388-97-0920, resident and family groups;
- WAC 388-97-1000 Resident assessment; and adoption of a new section related to resident assessment during the COVID-19 pandemic;
- WAC 388-97-1020 Comprehensive plan of care; and adoption of a new section related to care plans during the COVID-19 pandemic;
- WAC 388-97-1260 Physician services, for residents in medicare and medicaid certified facilities; and adoption of a new section related to physician delegation of tasks and visits in nursing homes during the COVID-19 pandemic;
- WAC 388-97-1380 Tuberculosis—Testing required and 388-97-1580 Tuberculosis—Reporting—Required; and adoption of two new sections related to tuberculosis (TB) testing requirements and COVID-19 vaccinations during the COVID-19 pandemic;
- WAC 388-97-1740 Disaster and emergency preparedness, 388-97-1760 Quality assessment and assurance, 388-97-2400 Resident rooms; and the adoption of three new related sections during the COVID-19 pandemic.

Hearing Location(s): On February 6, 2024, at 10:00 a.m., virtual via Microsoft Teams or call in. Please see the department of social and health services (DSHS) website <https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rulings> for the most up-to-date information.

Date of Intended Adoption: Not earlier than February 7, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on February 6, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by 5:00 p.m. on January 23, 2023 [2024].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is proposing to adopt rules to identify the requirements in place during the COVID-19 pandemic in Washington state. The purpose of the rule change is to ensure consistent implementation and enforcement of rule requirements in effect during the COVID-19 pandemic in Washington state.

Reasons Supporting Proposal: This rule making will provide clarity for regulated facilities and DSHS inspection and investigation staff related to requirements in place during the COVID-19 pandemic.

Statutory Authority for Adoption: RCW 74.42.620.

Statute Being Implemented: Chapters 18.51 and 74.42 RCW.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Molly McClintock, P.O. Box 45600, Olympia, WA 98504-5600, 360-742-6966; Implementation and Enforcement: Amy Abbott, P.O. Box 45600, Olympia, WA 98504-5600, 360-485-7893.

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

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is exempt from the requirement for a cost-benefit analysis under RCW 34.05.328 (5)(b)(iv) as the proposed rules clarify language of a rule without changing its effect.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 34.05.328 (5)(b)(iv).

Explanation of exemptions: The rule is exempt under RCW 34.05.328 (5)(b)(iv) as it clarifies language of a rule without changing its effect. The department is proposing to adopt rules to identify the requirements in place during the COVID-19 pandemic in Washington state. The purpose of the rule change is to ensure consistent implementation and enforcement of rule requirements in effect during the COVID-19 pandemic.

Scope of exemption for rule proposal:

Is fully exempt.

December 5, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4968.2

AMENDATORY SECTION (Amending WSR 14-12-040, filed 5/29/14, effective 6/29/14)

WAC 388-97-0300 Notice of rights and services. The department amended or suspended portions of this section from May 15, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-03001.

(1) The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services and activities available in the nursing home and of charges for those services, including any charges for services not covered under medicare or medicaid or by the home's per diem rate.

(2) The resident has the right:

(a) Upon an oral or written request, to access all records pertaining to the resident including clinical records within (~~twenty-four~~) 24 hours; and

(b) After receipt of (~~his or her~~) their records for inspection, to purchase at a cost not to exceed (~~twenty-five~~) 25 cents a page, photocopies of the records or any portions of them upon request and two working days advance notice to the nursing home. For the purposes of this chapter, "**working days**" means Monday through Friday, except for legal holidays.

(3) The resident has the right to:

(a) Be fully informed in words and language that (~~he or she~~) they can understand of (~~his or her~~) their total health status, including, but not limited to, (~~his or her~~) their medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for medicaid of the items, services and activities:

(i) That are included in nursing facility services under the medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees, and prepayment of charges cannot be solicited or accepted from medicare or medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on medicare or medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, (~~thirty~~) 30 days in advance before changes are made to the availability or charges for items, services, or activities specified in section (4)(a)(i) and (ii) of this section, or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or (~~his or her~~) their representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, prepaid charges, or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

- (ii) The amount of any admission fees, deposits, or minimum stay fees.
- (iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges, or minimum stay fees.
- (b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:
- (i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that
- (ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.
- (c) The nursing home must refund any and all refunds due the resident within (~~thirty~~) 30 days from the resident's date of discharge from the nursing home; and
- (d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.
- (7) The nursing home must furnish a written description of legal rights which includes:
- (a) A description of the manner of protecting personal funds, under WAC 388-97-0340;
- (b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in (~~his or her~~) their process of spending down to medicaid eligibility levels;
- (c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombuds program, the protection and advocacy network, and the medicaid fraud control unit; and
- (d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.
- (8) The nursing home must:
- (a) Inform each resident of the name, and specialty of the physician responsible for (~~his or her~~) their care; and
- (b) Provide a way for each resident to contact (~~his or her~~) their physician.
- (9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use medicare and medicaid benefits, and how to receive refunds for previous payments covered by such benefits.
- (10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract execu-

ted between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under medicare or medicaid, with the applicable federal requirements.

NEW SECTION

WAC 388-97-03001 Notice of rights and services—Requirements in effect May 15, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on May 15, 2020, to amend and suspend portions of WAC 388-97-0300. The emergency rules remained in effect until May 7, 2022. The following rule was in effect during that time:

(1) The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services, and activities available in the nursing home and of charges for those services, including any charges for services not covered under medicare or medicaid or by the home's per diem rate.

(2) The resident has the right to purchase at a cost not to exceed 25 cents a page, photocopies of the records or any portions of them upon request and 10 working days advance notice to the nursing home. For the purposes of this chapter, "working days" means Monday through Friday, except for legal holidays.

(3) The resident has the right to:

(a) Be fully informed in words and language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for medicaid of the items, services, and activities:

(i) That are included in nursing facility services under the medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees, and prepayment of charges cannot be solicited or accepted from medicare or medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on medicare or medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, 30 days in advance before changes are made to the availability or charges for items, services, or activities specified in section (4)(a)(i) and (ii) of this section, or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or his or her representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, prepaid charges, or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges, or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within 30 days from the resident's date of discharge from the nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC 388-97-0340;

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the

cost of the institutionalized spouse's medical care in his or her process of spending down to medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombuds program, the protection and advocacy network, and the medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for his or her care; and

(b) Provide a way for each resident to contact his or her physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use medicare and medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under medicare or medicaid, with the applicable federal requirements.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0920 Participation in resident and family groups.

The department repealed this section from April 13, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. The requirements of this section were not in effect during that time.

(1) A resident has the right to organize and participate in resident groups in the nursing home.

(2) The nursing home must provide a resident or family group, if one exists, with private space.

(3) Staff or visitors may attend meetings only at the group's invitation.

(4) The nursing home must provide a designated staff individual responsible for providing assistance and responding to written requests that result from group meetings.

(5) When a resident or family group exists, the nursing home must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the nursing home.

(6) A resident's family has the right to meet in the nursing home with the families of other residents in the facility.

AMENDATORY SECTION (Amending WSR 18-11-001, filed 5/2/18, effective 6/2/18)

WAC 388-97-1000 Resident assessment. The department amended or suspended portions of this section from April 13, 2020, through May 10, 2021, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-10001.

(1) The nursing home must:

(a) Provide resident care based on a systematic, comprehensive, interdisciplinary assessment, and care planning process in which the resident participates, to the fullest extent possible;

(b) Conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity;

(c) At the time each resident is admitted:

(i) Have physician's orders for the resident's immediate care; and

(ii) Ensure that the resident's immediate care needs are identified in an admission assessment.

(d) Ensure that the comprehensive assessment of a resident's needs describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(2) The comprehensive assessment must include at least the following information:

(a) Identification and demographic information;

(b) Customary routine;

(c) Cognitive patterns;

(d) Communication;

(e) Vision;

(f) Mood and behavior patterns;

(g) Psychosocial well-being;

(h) Physical functioning and structural problems;

(i) Continence;

(j) Disease diagnosis and health conditions;

(k) Dental and nutritional status;

(l) Skin conditions;

(m) Activity pursuit;

(n) Medications;

(o) Special treatments and procedures;

(p) Discharge potential;

(q) Documentation of summary information regarding the assessment performed; and

(r) Documentation of participation in assessment.

(3) The nursing home must conduct comprehensive assessments:

(a) No later than (~~fourteen~~) 14 days after the date of admission;

(b) Promptly after a significant change in the resident's physical or mental condition; and

(c) In no case less often than once every (~~twelve~~) 12 months.

(4) The nursing home must ensure that:

(a) Each resident is assessed no less than once every three months, and as appropriate, the resident's assessment is revised to assure the continued accuracy of the assessment; and

(b) The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care under WAC 388-97-1020.

(5) The skilled nursing facility and nursing facility must:

(a) For the required assessment, complete the state approved resident assessment instrument (RAI) for each resident in accordance with federal requirements;

(b) Maintain electronic or paper copies of completed resident assessments in the resident's active medical record for (~~fifteen~~) 15 months; this information must be maintained in a centralized location and be easily and readily accessible;

(c) Place the hard copies of the signature pages in the clinical record of each resident if a facility maintains their RAI data electronically and does not use electronic signatures;

(d) Assess each resident not less than every three months, using the state approved assessment instrument; and

(e) Transmit all state and federally required RAI information for each resident to the department:

(i) In a manner approved by the department;

(ii) Within (~~fourteen~~) 14 days of completion of any RAI assessment required under this subsection; and

(iii) Within (~~fourteen~~) 14 days of discharging or admitting a resident for a tracking record.

NEW SECTION

WAC 388-97-10001 Resident assessment—Requirements in effect April 13, 2020, through May 10, 2021, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on April 13, 2020, to amend and suspend portions of WAC 388-97-0300. The emergency rules remained in effect until May 10, 2021. The following rule was in effect during that time:

(1) The nursing home must:

(a) Provide resident care based on a systematic, comprehensive, interdisciplinary assessment, and care planning process in which the resident participates, to the fullest extent possible;

(b) Conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity;

(c) As soon as practicable after each resident is admitted:

(i) Have physician's orders for the resident's immediate care; and

(ii) Ensure that the resident's immediate care needs are identified in an admission assessment.

(d) Ensure that the comprehensive assessment of a resident's needs describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(2) The comprehensive assessment must include at least the following information:

(a) Identification and demographic information;

(b) Customary routine;

(c) Cognitive patterns;

(d) Communication;

(e) Vision;

(f) Mood and behavior patterns;

- (g) Psychosocial well-being;
 - (h) Physical functioning and structural problems;
 - (i) Continence;
 - (j) Disease diagnosis and health conditions;
 - (k) Dental and nutritional status;
 - (l) Skin conditions;
 - (m) Activity pursuit;
 - (n) Medications;
 - (o) Special treatments and procedures;
 - (p) Discharge potential;
 - (q) Documentation of summary information regarding the assessment performed; and
 - (r) Documentation of participation in assessment.
- (3) The nursing home must ensure that:
- (a) As appropriate, the resident's assessment is revised to assure the continued accuracy of the assessment; and
 - (b) The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care under WAC 388-97-1020.
- (4) The skilled nursing facility and nursing facility must:
- (a) For the required assessment, complete the state approved resident assessment instrument (RAI) for each resident in accordance with federal requirements;
 - (b) Maintain electronic or paper copies of completed resident assessments in the resident's active medical record for 15 months; this information must be maintained in a centralized location and be easily and readily accessible;
 - (c) Place the hard copies of the signature pages in the clinical record of each resident if a facility maintains their RAI data electronically and does not use electronic signatures;
 - (d) Transmit all state and federally required RAI information for each resident to the department in a manner and time period approved by the department.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1020 Comprehensive plan of care. The department amended or suspended portions of this section from April 13, 2020, through May 10, 2021, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-10201.

- (1) The nursing home must develop a comprehensive plan of care for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and mental, and psychosocial needs that are identified in the comprehensive assessment.
- (2) The comprehensive plan of care must:
 - (a) Describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under WAC 388-97-1060;
 - (b) Describe any services that would otherwise be required, but are not provided due to the resident's exercise of rights, including the right to refuse treatment (refer to WAC 388-97-0300 and 388-97-0260);

(c) Be developed within seven days after completion of the comprehensive assessment;

(d) Be prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs;

(e) Consist of an ongoing process which includes a meeting if desired by the resident or the resident's representative; and

(f) Include the ongoing participation of the resident to the fullest extent possible, the resident's family, or the resident's surrogate decision maker.

(3) The nursing home must implement a plan of care to meet the immediate needs of newly admitted residents, prior to the completion of the comprehensive assessment and plan of care.

(4) The nursing home must:

(a) Follow the informed consent process with the resident as specified in WAC 388-97-0260, regarding the interdisciplinary team's plan of care recommendations;

(b) Respect the resident's right to decide plan of care goals and treatment choices, including acceptance or refusal of plan of care recommendations;

(c) Include in the interdisciplinary plan of care process:

(i) Staff members requested by the resident; and

(ii) Direct care staff who work most closely with the resident.

(d) Respect the resident's wishes regarding which individuals, if any, the resident wants to take part in resident plan of care functions;

(e) Provide reasonable advance notice to and reasonably accommodate the resident family members or other individuals the resident wishes to have attend, when scheduling plan of care meeting times; and

(f) Where for practical reasons any individuals significant to the plan of care process, including the resident, are unable to attend plan of care meetings, provide a method for such individuals to give timely input and recommendations.

(5) The nursing home must ensure that each comprehensive plan of care:

(a) Designates the discipline of the individuals responsible for carrying out the program; and

(b) Is reviewed at least quarterly by qualified staff, as part of the ongoing process of monitoring the resident's needs and preferences.

NEW SECTION

WAC 388-97-10201 Comprehensive plan of care—Requirements in effect April 13, 2020, through May 10, 2021, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on April 13, 2020, to amend and suspend portions of WAC 388-97-0300. The emergency rules remained in effect until May 10, 2021. The following rule was in effect during that time:

(1) The nursing home must develop a comprehensive plan of care for each resident that includes measurable objectives and timetables

to meet a resident's medical, nursing and mental, and psychosocial needs that are identified in the comprehensive assessment.

(2) The comprehensive plan of care must:

(a) Describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under WAC 388-97-1060;

(b) Describe any services that would otherwise be required, but are not provided due to the resident's exercise of rights, including the right to refuse treatment (refer to WAC 388-97-0300 and 388-97-0260);

(c) Be prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs;

(d) Consist of an ongoing process which includes a meeting if desired by the resident or the resident's representative; and

(e) Include the ongoing participation of the resident to the fullest extent possible, the resident's family, or the resident's surrogate decision maker.

(3) The nursing home must implement a plan of care to meet the immediate needs of newly admitted residents, prior to the completion of the comprehensive assessment and plan of care.

(4) The nursing home must:

(a) Follow the informed consent process with the resident as specified in WAC 388-97-0260, regarding the interdisciplinary team's plan of care recommendations;

(b) Respect the resident's right to decide plan of care goals and treatment choices, including acceptance or refusal of plan of care recommendations;

(c) Include in the interdisciplinary plan of care process:

(i) Staff members requested by the resident; and

(ii) Direct care staff who work most closely with the resident.

(d) Respect the resident's wishes regarding which individuals, if any, the resident wants to take part in the resident's plan of care functions;

(e) Provide reasonable advance notice to and reasonably accommodate the resident family members or other individuals the resident wishes to have attend, when scheduling plan of care meeting times; and

(f) Where for practical reasons any individuals significant to the plan of care process, including the resident, are unable to attend plan of care meetings, provide a method for such individuals to give timely input and recommendations.

(5) The nursing home must ensure that each comprehensive plan of care:

(a) Designates the discipline of the individuals responsible for carrying out the program; and

(b) Is reviewed at least quarterly by qualified staff, as part of the ongoing process of monitoring the resident's needs and preferences.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1260 Physician services. The department amended or suspended portions of this section from April 28, 2020, through May 7,

2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-12601.

(1) The nursing home must ensure that the resident is seen by the physician whenever necessary.

(2) Except as specified in RCW 74.42.200, a physician must personally approve in writing a recommendation that an individual be admitted to a nursing home.

(3) The nursing home must ensure that:

(a) Except as specified in RCW 74.42.200, the medical care of each resident is supervised by a physician;

(b) Another physician supervises the medical care of residents when their attending physician is unavailable; and

(c) Physician services are provided (~~(twenty-four)~~) 24 hours per day, in case of emergency.

(4) The physician must:

(a) Write, sign, and date progress notes at each visit;

(b) Sign and date all orders; and

(c) In medicare and medicare/medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.

(5) Except as specified in subsections (6), (7), and (9) of this section, a physician may delegate tasks to a physician's assistant or advanced registered nurse practitioner who is:

(a) Licensed by the state;

(b) Acting within the scope of practice as defined by state law; and

(c) Under the supervision of the physician.

(6) The physician may not delegate a task when the delegation is prohibited under state law or by the facility's own policies.

(7) If the resident's primary payor source is medicare, the physician may:

(a) Alternate federally required physician visits between personal visits by:

(i) The physician; and

(ii) An advanced registered nurse practitioner or physician's assistant; and

(b) Not delegate responsibility for the initial required physician visit. This initial visit must occur within the first (~~(thirty)~~) 30 days of admission to the facility.

(8) If the resident's payor source is medicaid, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.

(9) If the resident's payor source is not medicare or medicaid:

(a) In the medicare only certified facility or in the medicare certified area of a medicare/medicaid facility, the physician may alternate federally required physician visits between personal visits by the physician and an advanced registered nurse practitioner or physician's assistant. The physician may not delegate responsibility for the initial required physician visit.

(b) In the medicaid only certified facility or in the medicaid certified area of a medicare/medicaid facility, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to

a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.

(10) The following table describes the physician visit requirements related to medicare or medicaid certified area and payor type.

| | Beds in medicare only certified area | Beds in medicare/medicaid certified area | Beds in medicaid only certified area |
|---|---|--|--------------------------------------|
| Payor source: | Initial by physician | Initial by physician | N/A |
| medicare | Physician may delegate alternate visits | Physician may delegate alternate visits | |
| Payor source: | N/A | Delegate all tasks | Delegate all tasks |
| medicaid | | Nonemployee | Nonemployee |
| Payor source: | Initial by physician | Initial by physician | Delegate all tasks |
| Others: such as insurance, private pay, Veteran Affairs | Physician may delegate alternate visits | Physician may delegate alternate visits | Nonemployee |

(11) The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must:

(a) Participate in the interdisciplinary plan of care process as described in WAC 388-97-1020;

(b) Provide to the resident, or where applicable the resident's surrogate decision maker, information so that the resident can make an informed consent to care or refusal of care (see WAC 388-97-0260); and

(c) Order resident self-medication when appropriate.

(12) The nursing home must obtain from the physician the following medical information before or at the time of the resident's admission:

(a) A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;

(b) Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and

(c) Plans for continuing care and discharge.

NEW SECTION

WAC 388-97-12601 Physician services—Requirements in effect April 28, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on April 28, 2020, to amend and suspend portions of WAC 388-97-1260. The emergency rules remained in effect until May 7, 2022. The following rule was in effect during that time:

(1) The nursing home must ensure that the resident is seen by the physician whenever necessary.

(2) Except as specified in RCW 74.42.200, a physician must personally approve in writing a recommendation that an individual be admitted to a nursing home.

(3) The nursing home must ensure that:

(a) Except as specified in RCW 74.42.200, the medical care of each resident is supervised by a physician;

(b) Another physician supervises the medical care of residents when their attending physician is unavailable; and

(c) Physician services are provided 24 hours per day, in case of emergency.

(4) The physician must:

(a) Write, sign, and date progress notes at each visit;

(b) Sign and date all orders; and

(c) In medicare and medicare/medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.

(5) Except as specified in subsection (6) of this section, a physician may delegate tasks, including tasks that, under state law, must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is:

(a) Licensed by the state;

(b) Acting within the scope of practice as defined by state law;

(c) Under the supervision of, and working in collaboration with the physician; and

(d) Not an employee of the facility, if caring for a resident whose payor source is medicaid.

(6) The physician may not delegate a task when the delegation is prohibited under state law or by the facility's own policies.

(7) The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must:

(a) Participate in the interdisciplinary plan of care process as described in WAC 388-97-1020;

(b) Provide to the resident, or where applicable the resident's surrogate decision maker, information so that the resident can make an informed consent to care or refusal of care (see WAC 388-97-0260); and

(c) Order resident self-medication when appropriate.

(8) The nursing home must obtain from the physician the following medical information before or at the time of the resident's admission:

(a) A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;

(b) Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and

(c) Plans for continuing care and discharge.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1380 Tuberculosis—Testing required. The department amended or suspended portions of this section from January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-13801.

(1) The nursing home must develop and implement a system to ensure that facility personnel and residents have tuberculosis testing within three days of employment or admission.

(2) The nursing home must also ensure that facility personnel are tested annually.

(3) For the purposes of WAC 388-97-1360 through 388-97-1580 "**person**" means facility personnel and residents.

NEW SECTION

WAC 388-97-13801 Tuberculosis—Testing required—Requirements in effect January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on January 25, 2021, to amend and suspend portions of WAC 388-97-1380. The emergency rules remained in effect until September 23, 2021. The following rule was in effect during that time:

(1) Unless the nursing home decides to defer tuberculosis testing in accordance with subsection (2) of this section, or the resident or staff person is excluded from testing from WAC 388-97-1440, the nursing home must:

(a) Ensure that facility personnel and residents have tuberculosis testing within three days of employment or admission; and

(b) Ensure that facility personnel are tested annually.

(2) The nursing home may defer tuberculosis testing of facility personnel and residents to complete the COVID-19 vaccination process if the nursing home has considered the risks and benefits of such delay and if the delay is consistent with the current centers for disease control and prevention COVID-19 vaccination guidance.

(3) If testing is deferred for a resident or facility staff person, in accordance with subsection (2) of this section, the nursing home must:

(a) Assess the person for symptoms of tuberculosis within three days of employment or admission, and if the person has tuberculosis symptoms, follow WAC 388-97-1560; and

(b) Complete tuberculosis testing in accordance with WAC 388-97-1400 through 388-97-1580 as soon as indicated by the centers for disease control and prevention COVID-19 vaccination guidelines.

(4) For the purposes of WAC 388-97-1360 through 388-97-1580, "**person**" means facility personnel and residents.

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-1580 Tuberculosis—Test records. (1) The department amended or suspended portions of this section from January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-15801.

(2) The nursing home must:

~~((1))~~ (a) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the nursing home;

~~((2))~~ (b) Make the records readily available to the appropriate health authority and licensing agency;

- ((3)) (c) Retain the records for ((eighteen)) 18 months beyond the date of employment termination; and
- ((4)) (d) Provide the person a copy of ((his/her)) their test results.

NEW SECTION

WAC 388-97-15801 Tuberculosis—Test records—Requirements in effect January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on January 25, 2021, to amend and suspend portions of WAC 388-97-1580. The emergency rules remained in effect until September 23, 2021. The following rule was in effect during that time:

- (2) The nursing home must:
- (a) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the nursing home;
- (b) Keep the records of the tuberculosis symptom assessment and the documented rationale for deferring the tuberculosis testing in the nursing home, if tuberculosis testing is deferred in accordance with WAC 388-97-1380(2);
- (c) Make the records readily available to the appropriate health authority and licensing agency;
- (d) Retain the records for 18 months beyond the date of employment termination; and
- (e) Provide the person a copy of their test results.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1740 Disaster and emergency preparedness. The department amended or suspended portions of this section from June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-17401.

- (1) The nursing home must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum the nursing home must ensure these plans provide for:
- (a) Fire or smoke;
- (b) Severe weather;
- (c) Loss of power;
- (d) Earthquake;
- (e) Explosion;
- (f) Missing resident, elopement;
- (g) Loss of normal water supply;
- (h) Bomb threats;
- (i) Armed individuals;
- (j) Gas leak, or loss of service; and
- (k) Loss of heat supply.

(2) The nursing home must train all employees in emergency procedures when they begin work in the nursing home, periodically review emergency procedures with existing staff, and carry out unannounced staff drills using those procedures.

(3) The nursing home must ensure emergency plans:

- (a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;
- (b) Are reviewed annually; and
- (c) Include evacuation routes prominently posted on each unit.

NEW SECTION

WAC 388-97-17401 Disaster and emergency preparedness—Requirements in effect June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on June 23, 2020, to amend and suspend portions of WAC 388-97-1740. The emergency rules remained in effect until June 7, 2022. The following rule was in effect during that time:

(1) The nursing home must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum the nursing home must ensure these plans provide for:

- (a) Fire or smoke;
- (b) Severe weather;
- (c) Loss of power;
- (d) Earthquake;
- (e) Explosion;
- (f) Missing resident, elopement;
- (g) Loss of normal water supply;
- (h) Bomb threats;
- (i) Armed individuals;
- (j) Gas leak, or loss of service; and
- (k) Loss of heat supply.

(2) The nursing home must train all employees in emergency procedures when they begin work in the nursing home, and periodically review emergency procedures with existing staff.

(3) The nursing home must ensure emergency plans:

- (a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;
- (b) Are reviewed annually; and
- (c) Include evacuation routes prominently posted on each unit.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1760 Quality assessment and assurance. The department amended or suspended portions of this section from June 23, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-17601.

(1) The nursing home must maintain a process for quality assessment and assurance. The department may not require disclosure of the records of the quality assessment and assurance committee except in so far as such disclosure is related to ensuring compliance with the requirements of this section.

(2) The nursing home must ensure the quality assessment and assurance process:

(a) Seeks out and incorporates input from the resident and family councils, if any, or individual residents and support groups; and

(b) Reviews expressed concerns and grievances.

NEW SECTION

WAC 388-97-17601 Quality assessment and assurance—Requirements in effect June 23, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on June 23, 2020, to amend and suspend portions of WAC 388-97-1760. The emergency rules remained in effect until May 7, 2022. The following rule was in effect during that time:

(1) The nursing home must maintain a process for quality assessment and assurance. The department may not require disclosure of the records of the quality assessment and assurance committee except in so far as such disclosure is related to ensuring compliance with the requirements of this section.

(2) The nursing home must ensure the quality assessment and assurance process:

(a) Seeks out and incorporates input from the residents and resident representatives; and

(b) At a minimum, reviews adverse events and infection control.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2400 Resident rooms. The department amended or suspended portions of this section from June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-24001.

(1) The nursing home must ensure that each resident bedroom:

(a) Has direct access to a hall or corridor;

(b) Is located on an exterior wall with a transparent glass window; and

(c) Is located to prevent through traffic.

(2) **In a new building or addition**, each resident bedroom must:

(a) Have an exterior transparent glass window:

(i) With an area equal to at least (~~one-tenth~~) 1/10th of the bedroom usable floor area;

(ii) Located (~~twenty-four~~) 24 feet or more from another building or the opposite wall of a court, or (~~ten~~) 10 feet or more away from a property line, except on street sides;

(iii) Located eight feet or more from any exterior walkway, paved surface, or driveway; and

(iv) With a sill three feet or less above the floor.

(b) Be located on a floor level at or above grade level except for earth berms. "Grade" means the level of ground adjacent to the building floor level measured at the required exterior window. The ground must be level or slope downward for a distance of at least ~~(ten)~~ 10 feet from the wall of the building. From there the ground may slope upward to the maximum sill height of the required window at a rate of one foot vertical for two feet horizontal.

NEW SECTION

WAC 388-97-24001 Resident rooms—Requirements in effect June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on June 23, 2020, to amend and suspend portions of WAC 388-97-2400. The emergency rules remained in effect until June 7, 2022. The following rule was in effect during that time:

(1) The nursing home must ensure that each resident bedroom:

(a) Has direct access to a hall or corridor; and

(b) Is located to prevent through traffic.

(2) In a new building or addition, unless otherwise necessary for infection control, each resident bedroom must:

(a) Have an exterior transparent glass window:

(i) With an area equal to at least 1/10th of the bedroom usable floor area;

(ii) Located 24 feet or more from another building or the opposite wall of a court, or 10 feet or more away from a property line, except on street sides;

(iii) Located eight feet or more from any exterior walkway, paved surface, or driveway; and

(iv) With a sill three feet or less above the floor.

(b) Be located on a floor level at or above grade level except for earth berms. "Grade" means the level of ground adjacent to the building floor level measured at the required exterior window. The ground must be level or slope downward for a distance of at least 10 feet from the wall of the building. From there the ground may slope upward to the maximum sill height of the required window at a rate of one foot vertical for two feet horizontal.

WSR 24-02-002
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed December 20, 2023, 1:21 p.m.]

Supplemental Notice to WSR 23-15-106.

Preproposal statement of inquiry was filed as WSR 23-11-070.

Title of Rule and Other Identifying Information: Land survey monument preservation, chapter 332-120 WAC; clarification of application process and revision of requirements for creating a public record.

Hearing Location(s): On Thursday, February 15, 2024, at 10:00 a.m., at the Department of Natural Resources (DNR) Tumwater Compound, 801 88th Avenue S.E., Tumwater, WA 98501-7019. DNR Black Hills District Conference Room. Participate in person or contact David Icenhower to attend online via Microsoft Teams.

Date of Intended Adoption: February 22, 2024.

Submit Written Comments to: Patrick J. Beehler, PLS, 1111 Washington Street S.E., Mailstop 47030, Olympia, WA 98504-7030, email pat.beehler@dnr.wa.gov, fax 360-902-1178, by February 15, 2024.

Assistance for Persons with Disabilities: Contact David Icenhower, PLS, phone 360-902-1197, email david.icenhower@dnr.wa.gov, by February 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revision to the monument removal and replacement rules to make the process more efficient and lower the cost to the applicant.

Reasons Supporting Proposal: Makes clear that only a licensed professional land surveyor is authorized to participate in the monument preservation process.

Statutory Authority for Adoption: RCW 58.24.030(2), 58.24.040(8), 58.09.130.

Statute Being Implemented: RCW 58.24.030(2), 58.24.040(8), 58.09.130.

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

Name of Proponent: DNR, governmental.

Name of Agency Personnel Responsible for Drafting: Patrick J. Beehler, PLS, Engineering Division, Natural Resources Building, 1111 Washington Street S.E., Olympia, WA 98504-7030, 360-902-1181; Implementation and Enforcement: David Icenhower, PLS, Public Land Survey Office, DNR Tumwater Compound, 801 88th Avenue S.E., Tumwater, WA 98501-7019, 360-902-1197.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost savings is anticipated due to setting up reporting systems and requiring a better system for completion reports. This revision will make the monument removal process more efficient and lower participants' cost.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. A cost savings is anticipated due to setting up reporting systems and requiring a better system for completion reports. This revision will make the monument removal permit process more efficient and lower participants' cost.

December 19, 2023

Todd Welker

Deputy Supervisor State Uplands

OTS-5122.1

AMENDATORY SECTION (Amending WSR 20-10-003, filed 4/23/20, effective 5/24/20)

WAC 332-120-020 Definitions. The following definitions shall apply to this chapter:

Covering: The physical covering of a survey monument such that the physical structure is no longer visible or readily accessible.

Department: The department of natural resources.

Engineer: Any person authorized to practice the profession of engineering under the provisions of chapter 18.43 RCW (~~who also has authority to do land boundary surveying pursuant to RCW 36.75.110, 36.86.050, 47.36.010 or 58.09.090~~).

Geodetic control point: Points established to mark horizontal or vertical control positions that are part of the National Geodetic Survey Network.

Land boundary survey corner: A point on the boundary of any easement, right of way, lot, tract, or parcel of real property; a controlling point for a plat; or a point which is a General Land Office or Bureau of Land Management survey corner.

Land corner record: The record of corner information form as prescribed by the department of natural resources pursuant to chapter 58.09 RCW.

Land surveyor: Any person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW.

Local control point: Points established to mark horizontal or vertical control positions that are part of a permanent government control network other than the National Geodetic Survey network.

Parcel: A part or portion of real property including but not limited to GLO segregations, easements, rights of way, aliquot parts of sections or tracts.

Pavement preservation treatment: Asphalt light bituminous applications such as slurry, micro seal, cape and chip seal treatments that are typically less than 5/8 inch thick.

Removal or destruction: The physical disturbance of a monument such that the physical structure no longer marks the location of the land boundary position.

Survey monument: The physical structure, along with any references or accessories thereto, used to mark the location of a land boundary survey corner, geodetic control point, or local control point.

Survey Recording Act: The law as established and designated in chapter 58.09 RCW.

AMENDATORY SECTION (Amending WSR 94-06-034, filed 2/25/94, effective 3/28/94)

WAC 332-120-050 Application process. (1) Whenever a survey monument needs to be removed or destroyed the application required by this chapter shall be submitted to the department.

It shall be completed, signed and sealed by a land surveyor (~~or engineer~~) as defined in this chapter.

(2) Upon receipt of a properly completed application, the department shall promptly issue a permit authorizing the removal or destruction of the monument; provided that:

(a) In extraordinary circumstances, to prevent hardship or delay, a verbal authorization may be granted, pending the processing and issuance of a written permit. A properly completed application shall be submitted by the applicant within fifteen days of the verbal authorization.

(b) Applications received by the department concerning local or geodetic control points will be referred to the appropriate agency for action. The applicant will be notified when such action is taken.

(3) One application may be submitted for multiple monuments to be removed or destroyed as part of a single project; however, there shall be separate attachments to the application form detailing the required information for each monument removed or destroyed.

AMENDATORY SECTION (Amending WSR 20-10-003, filed 4/23/20, effective 5/24/20)

WAC 332-120-060 Project completion—Perpetuation of the original position. (1) After completion of the activity that caused the removal or destruction of the monument, a land surveyor (~~or engineer shall~~) must, unless specifically authorized otherwise:

(a) Reset a suitable monument at the original survey point or, if that is no longer feasible;

(b) Establish permanent witness monuments easily accessible from the original monument to perpetuate the position of the preexisting monument.

(2) Land boundary survey monumentation required by this chapter shall meet the requirements of the RCW 58.09.120 and 58.09.130.

(3) After completion of the remonumentation, the land surveyor (~~or engineer shall~~) must complete the report form required by this chapter and forward it to the department.

(4) A record of survey (~~or land corner record shall~~) may be (~~completed as~~) required by (~~the Survey Recording Act to document the remonumentation in the public record~~) RCW 58.09.040(1).

(5) When the remonumentation involves a general land office corner, and a record of survey is not required, a Land Corner Record must be completed as required by RCW 58.09.040(2).

AMENDATORY SECTION (Amending WSR 10-09-011, filed 4/9/10, effective 5/10/10)

WAC 332-120-070 (~~(Application/permit form.)~~) Application and completion report forms. All applications and completion reports must be (~~completed~~) on forms provided by the department and following instructions provided by the department. Completed (~~applications~~) forms shall be filed at the department.

WSR 24-02-005
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed December 20, 2023, 2:19 p.m.]

Supplemental Notice to WSR 23-15-099.

Preproposal statement of inquiry was filed as WSR 23-11-161.

Title of Rule and Other Identifying Information: Minimum standards for land boundary surveys. Relative accuracy, WAC 332-130-080. Clarification of guidelines for using and reporting relative accuracy when used to analyze a land boundary survey.

Hearing Location(s): On Thursday, February 15, 2024, at 11:00 a.m., at the Department of Natural Resources (DNR) Tumwater Compound, 801 88th Avenue S.E., Tumwater, WA 98501-7019. DNR Black Hills District Conference Room. Participate in person or contact David Icenhower to attend online via Microsoft Teams.

Date of Intended Adoption: February 22, 2024.

Submit Written Comments to: Patrick J. Beehler, PLS, 1111 Washington Street S.E., Mailstop 47030, Olympia, WA 98504-7030, email pat.beehler@dnr.wa.gov, fax 360-902-1178, by February 15, 2024.

Assistance for Persons with Disabilities: Contact David Icenhower, PLS, phone 360-902-1197, email david.icenhower@dnr.wa.gov, by February 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Provides additional guidance on reporting the results of using relative accuracy.

Reasons Supporting Proposal: Makes clear that this section only applies to principles of relative accuracy.

Statutory Authority for Adoption: RCW 58.24.040(1).

Statute Being Implemented: RCW 58.24.040(1).

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

Name of Proponent: DNR, governmental.

Name of Agency Personnel Responsible for Patrick J. Beehler, PLS, Engineering Division, Natural Resources Building, 1111 Washington Street S.E., Olympia, WA 98504-7030, 360-902-1181; Implementation and Enforcement: David Icenhower, PLS, Public Land Survey Office, DNR Tumwater Compound, 801 88th Avenue S.E., Tumwater, WA 98501-7019, 360-902-1197.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost savings is anticipated due to setting up reporting systems and requiring a better system for completion reports. This revision will make the monument removal process more efficient and lower participants' cost.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This revision will provide guidance to those professional land surveyors who already choose to use relative accuracy to analyze their work. This is voluntary and does not create a mandate.

December 19, 2023

Todd Welker

Deputy Supervisor State Uplands

OTS-4732.2

AMENDATORY SECTION (Amending WSR 22-04-049, filed 1/27/22, effective 2/27/22)

WAC 332-130-080 Relative accuracy—Principles. The following principles of relative accuracy are provided to guide those who may be analyzing their work by these procedures.

(1) Relative accuracy means the theoretical uncertainty in the location of any point or corner relative to other points or corners set, found, reestablished, or established. A standard of relative accuracy can be achieved by using appropriate equipment and implementing field and office procedures that will result in a 95 percent probability of achieving the accuracy required.

(2) In the application of a relative accuracy standard, the surveyor must consider the established land use patterns, land values of and in the vicinity of the surveyed parcel, and the client's intended use of the property. Higher levels of measurement precision are expected to be used in situations necessitating higher accuracy being achieved.

(3) Each land boundary survey analyzed using relative accuracy should contain a statement reporting the relative accuracy achieved and identifying the method of mathematical analysis used in achieving a stated relative accuracy.

WSR 24-02-006

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed December 20, 2023, 3:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-21-070.

Title of Rule and Other Identifying Information: Health equity continuing education (CE) for dental hygienists WAC 246-815-145. The secretary of health is proposing a new section of rule to establish health equity CE requirements to implement ESSB 5229 (chapter 276, Laws of 2021).

Hearing Location(s): On March 7, 2024, at 1:00 p.m., at the Washington State Department of Health (DOH), 111 Israel Road S.E., Town Center 2, Room 166, Tumwater, WA 98501; via Zoom. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_vri4zakCSQW_2Fu6yXYBxw. After registering, you will receive a confirmation email containing information about joining the webinar. DOH will be offering a hybrid hearing. You may attend virtually or in person. You may also submit comments in writing.

Date of Intended Adoption: March 14, 2024.

Submit Written Comments to: Bruce Bronoske, Jr., P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2901, by March 7, 2024.

Assistance for Persons with Disabilities: Contact Bruce Bronoske, Jr., phone 360-236-4843, fax 360-236-2901, TTY 711, email bruce.bronoske@doh.wa.gov, by February 22, 2024.

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

The secretary of health is proposing new WAC 246-815-145 to implement ESSB 5229. The secretary is proposing adopting the health equity model rules, WAC 246-12-800 through 246-12-830, for dental hygienists to comply with RCW 43.70.613.

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

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

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

Statutory Authority for Adoption: RCW 43.70.613 and 18.29.130.

Statute Being Implemented: RCW 43.70.613.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Bruce Bronoske, Jr., 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4843.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Bruce Bronoske, Jr., P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4843, fax 360-236-2901, TTY 711, email bruce.bronoske@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule only affects dental hygiene provider licenses.

Scope of exemption for rule proposal:

Is fully exempt.

December 19, 2023
 Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-5076.1

NEW SECTION

WAC 246-815-145 Dental hygiene health equity training requirements. (1) A licensed dental hygienist must complete two hours of health equity continuing education training every four years as described in WAC 246-12-800 through 246-12-830.

(2) The two hours of health equity continuing education a licensed dental hygienist completes counts toward meeting the applicable continuing education requirements under WAC 246-815-140.

(3) An approved program providing health equity continuing education training must meet the requirements listed in WAC 246-12-830. For

purposes of this rule, health equity has the same meaning as defined in WAC 246-12-810.

WSR 24-02-013

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed December 21, 2023, 10:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-081.

Title of Rule and Other Identifying Information: WAC 182-517-0100
Federal medicare savings programs.

Hearing Location(s): On February 6, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_k08Qp1d6Q_uVNrXsLxmKXw. If the link opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not earlier than February 7, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by February 6, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by January 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending this rule to increase the eligibility threshold for the qualified medicare beneficiary program and the qualified individual program per a legislative directive in the 2023-2025 operating budget (section 211(84), chapter 475, Laws of 2023).

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160; section 211(84), chapter 475, Laws of 2023.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Mark Westenhaver, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-1324.

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

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

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

Is exempt under RCW 19.85.025(4).

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

Scope of exemption for rule proposal:

Is fully exempt.

December 21, 2023

Wendy Barcus

Rules Coordinator

OTS-5104.1

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

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

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

(2) Eligibility requirements.

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

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

182-503-0505.

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

(c) Income limits.

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

(ii) If a client's countable income is less than or equal to ~~((100))~~ 110 percent of the federal poverty level (FPL), the client is income eligible for the QMB program.

(iii) If a client's countable income is over ~~((100))~~ 110 percent of the FPL, but does not exceed 120 percent of the FPL, the client is income eligible for the SLMB program.

(iv) If a client's countable income is over 120 percent of the FPL, but does not exceed ~~((135))~~ 138 percent of the FPL, the client is income eligible for the QI-1 program.

(v) If a client's countable income is over ~~((135))~~ 138 percent of the FPL, but does not exceed 200 percent of the FPL, the client is income eligible for the QDWI program if the client is employed and meets disability requirements described in WAC 182-512-0050.

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

(3) MSP income eligibility determinations.

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

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

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

- (A) The client;
- (B) The client's spouse who lives with the client;
- (C) The client's dependents who live with the client;

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

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

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

(i) Countable income;

(ii) Availability of income;

(iii) Allowable income deductions and exclusions; and

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

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

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

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

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

(d) When calculating income under this section:

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

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

(4) Covered costs.

(a) The QMB program pays:

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

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

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

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

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

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

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

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

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

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

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

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

WSR 24-02-045
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed December 27, 2023, 4:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-18-018.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing amendments to WAC 388-444-0030 Are able-bodied adults without dependents (ABAWD) subject to additional work requirements and time limits to be eligible for basic food? and 388-444-0035 Who is exempt from ABAWD time limits and minimum work requirements?

Hearing Location(s): On February 6, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than February 7, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by February 6, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by January 23, 2024, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments are necessary to comply with federal regulatory changes under the Fiscal Responsibility Act of 2023, effective September 1, 2023. Related amendments are in effect as of September 1, 2023, under emergency rule filed as WSR 23-18-017 and 24-01-133.

Reasons Supporting Proposal: See above.

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

Rule is necessary because of federal law, [no information supplied by agency].

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Troy Burgess, P.O. Box 45470, Olympia, WA 98504-5470, 360-584-5162.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: [No information supplied by agency].

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS customers.

Scope of exemption for rule proposal:

Is fully exempt.

December 27, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4998.2

AMENDATORY SECTION (Amending WSR 21-07-132, filed 3/23/21, effective 4/23/21)

WAC 388-444-0030 Are able-bodied adults without dependents (ABAWD) subject to additional work requirements and time limits to be eligible for basic food? (1) An able-bodied adult without dependents (ABAWD) is a person who:

(a) Is age ~~((eighteen))~~ 18 through:

(i) ~~((forty-nine))~~ 50 from September 1, 2023, to September 30, 2023;

(ii) 52 from October 1, 2023, to September 30, 2024;

(iii) 54 beginning October 1, 2024; and

(b) Is fit for work and not exempted under WAC 388-444-0035.

~~(2) ((If you are an ABAWD, you must participate in work activities under subsection (3) of this section.~~

~~(3))~~ A nonexempt ABAWD is not eligible to receive food assistance for more than three full months (which do not have to be consecutive months), not including any partial benefit months in a ~~((thirty-six))~~ 36 month period, unless the ABAWD:

(a) Works an average of ~~((eighty))~~ 80 hours per month, including:

(i) Work in exchange for money;

(ii) Work in exchange for goods or services ("in kind" work);

(iii) Unpaid work that is verified according to department requirements; or

(iv) Any combination of (a)(i) through (iii) of this subsection;

(b) Participates in one of the following work programs and is meeting the requirements of that work program:

(i) The Workforce Innovation and Opportunity Act of 2014;

(ii) Section 236 of the Trade Act of 1974;

(iii) A state-approved employment and training program at least an average of ~~((eighty))~~ 80 hours per month; or

(c) Participates in an unpaid work program as provided in WAC 388-444-0040.

AMENDATORY SECTION (Amending WSR 21-07-132, filed 3/23/21, effective 4/23/21)

WAC 388-444-0035 Who is exempt from ABAWD time limits and minimum work requirements? Some people who receive basic food are exempt

from able-bodied adult without dependents (ABAWD) time limits and minimum work requirements. You are exempt from ABAWD time limits and work requirements under WAC 388-444-0030 if you meet any one or more of the following:

- (1) You are exempt from work requirements under WAC 388-444-0010;
- (2) You are under age ~~((eighteen))~~ 18 or are age:
 - (a) ~~((fifty))~~ 51 or older from September 1, 2023, to September 30, 2023;
 - (b) 53 or older beginning October 1, 2023, through September 30, 2024; and
 - (c) 55 or older beginning October 1, 2024.
- (3) You receive temporary or permanent disability benefits issued by a governmental or private source;
- (4) You are obviously mentally or physically unfit for employment as determined by the department; however, if the unfitness is not obvious, you must provide a statement that you are physically or mentally unfit for employment from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, licensed or certified psychologist, social worker, or any other medical personnel the department determines appropriate;
- (5) You are an adult in a basic food assistance unit that has a family member who is under the age of ~~((eighteen))~~ 18;
- (6) You are pregnant;
- (7) You are homeless;
- (8) You are a veteran as defined under the James M. Inhofe National Defense Authorization Act of 2023;
- (9) You are 24 or younger, and were:
 - (a) In foster care as defined in RCW 74.13.020 at the time of your 18th birthday; or
 - (b) Under extended foster care services as defined in RCW 74.13.336;
- (10) You live in an area approved as exempt by U.S. Department of Agriculture (USDA); or
- ~~((8))~~ (11) You are eligible for one of the approved exemption slots under the ~~((U.S. Department of Agriculture))~~ USDA ~~((fifteen percent exemption))~~ discretionary exemptions rule.

WSR 24-02-046
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed December 27, 2023, 4:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-20-093.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-412-0025 How do I receive my benefits?, 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and basic food benefits?, 388-450-0200 Will the medical expenses of elderly persons or individuals with disabilities in my assistance unit be used as an income deduction for basic food?, 388-450-0225 How are my assistance unit's benefits calculated for the first month I am eligible for cash assistance?, 388-473-0010 What are ongoing additional requirements and how do I qualify?, 388-473-0040 Assistance for service animals as an ongoing additional requirement, 388-473-0050 Telephone and internet services as an ongoing additional requirement, 388-478-0050 Payment standards for ongoing additional requirements. Additionally, DSHS is proposing creation of WAC 388-473-0070 Transportation as an ongoing additional requirement, and 388-473-0080 Medical related items or services as an ongoing additional requirement.

Hearing Location(s): On February 6, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than February 7, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by February 6, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by January 23, 2024, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective April 1, 2024, these amendments expand potential eligibility of ongoing additional requirements (OAR) to individuals with an incapacity (under WAC 388-400-0070). These amendments also increase payment standards for existing OAR benefits, and create new benefits to assist with things such as transportation and medical related items not covered by insurance. The operating budget includes funding to support this change.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.005 and 74.08.283.

Statute Being Implemented: Operating budget, ESSB 5187 (chapter 475, Laws of 2023).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Evelyn Acopan, P.O. Box 45470, Olympia, WA 98504-5470, 253-778-2381.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:

Is fully exempt.

December 27, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-5010.2

AMENDATORY SECTION (Amending WSR 22-15-048, filed 7/15/22, effective 8/15/22)

- WAC 388-412-0025 How do I receive my benefits?** (1) You can choose to get your cash benefits by:
- (a) Electronic benefit transfer (EBT), which is a direct deposit into a DSHS account that you access with a debit card called the Washington EBT Quest card;
 - (b) Electronic funds transfer (EFT), which is a direct deposit into your own bank account;
 - (c) A warrant (check) to an approved authorized representative (AREP);
 - (d) A warrant (check) to a payee who is not approved for direct deposit; or
 - (e) A warrant (check) to you if you get:
 - (i) Diversion cash assistance (DCA) that is not paid directly to a vendor;
 - (ii) Ongoing additional requirements (OAR) (~~that cannot be paid directly to a vendor~~) and are receiving SSI; or
 - (iii) Clothing and personal incidentals (CPI) payments.
- (2) We send your **basic food** benefits to you by EBT.
- (3) EBT accounts:
- (a) We set up an EBT account for the head of household of each assistance unit (AU) that receives benefits by EBT.
 - (b) You use a Quest debit card to access your benefits in your EBT account. You select a personal identification number (PIN) that you must enter when using this card.
 - (c) You must use your cash and basic food benefits from your EBT account. We cannot transfer cash to your bank account or change cash or basic food benefits to checks.
- (4) **Suspended EBT benefits:**
- (a) We suspend access to benefits from your EBT account if:
 - (i) You are a single-person household; and

(ii) We are notified that you are incarcerated over 30 days.

(b) You must contact the department upon release to activate your EBT account for use within 48 hours.

(5) **Unused EBT benefits:**

(a) If you do not use your EBT account within 274 days, we cancel the cash and basic food on your account; or

(b) Benefits on your account will be cancelled upon verification you and all members of your household are deceased.

(6) **Replacing benefits:**

(a) **Replacing basic food benefits:** We **cannot replace** cancelled basic food benefits.

(b) **Replacing cash benefits:** We **can replace** cancelled cash benefits for you or another member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

(c) **Replacing cash warrants:**

(i) If we issued you cash benefits as a warrant we can replace these benefits for you or a member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

(ii) If we issued the benefits as a warrant 160 or fewer days ago, your local office can replace the warrant.

(iii) If we issued the benefits as a warrant more than 160 days ago, the Office of Accounting Services (OAS) can replace the warrant. We will contact OAS with the request.

(7) **Correcting your EBT balance:** When you make a purchase with your EBT card a system error can occur where the purchase amount is not deducted from your EBT account. When the error is discovered the following will happen:

(a) You will be notified in writing of the system error before the money is removed from your account; and

(b) You will have 90 days to request an administrative hearing. If you ask for an administrative hearing within 10 calendar days, the money will not be removed from your EBT account unless:

(i) You withdraw your administrative hearing request in writing;

(ii) You do not follow through with the administrative hearing process; or

(iii) The administrative law judge tells us in writing to remove the money.

AMENDATORY SECTION (Amending WSR 18-09-017, filed 4/10/18, effective 7/1/18)

WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and basic food benefits? (1) Countable income is all income your assistance unit (AU) has after we subtract the following:

(a) Excluded or disregarded income under WAC 388-450-0015;

(b) For **cash assistance**, earned income incentives and deductions allowed for specific programs under WAC 388-450-0170, 388-450-0177, and 388-450-0178;

(c) For **basic food**, deductions allowed under WAC 388-450-0185; and

(d) Income we allocate to someone outside of the assistance unit under WAC 388-450-0095 through 388-450-0160.

(2) Countable income includes all income that we must deem or allocate from financially responsible persons who are not members of your AU under WAC 388-450-0095 through 388-450-0160.

(a) If the children in your care qualify for a TANF/SFA grant, the child's income is budgeted against the child-only payment standard amount.

(b) If the children in your care do not qualify for a TANF/SFA grant, they may still qualify for medical assistance under WAC 182-505-0210.

(3) For **cash assistance**:

(a) We compare your countable income to the payment standard in WAC 388-478-0020 and 388-478-0033 (~~to the payment standard amount in subsection (3) of this section~~).

(b) You are not eligible for benefits when your AU's countable income is equal to or greater than the payment standard (~~plus any authorized additional requirements~~).

(c) Your benefit level is the payment standard (~~and authorized additional requirements~~) minus your AU's countable income.

(4) For **basic food**, if you meet all other eligibility requirements for the program under WAC 388-400-0040, we determine if you meet the income requirements for benefits and calculate your AU's monthly benefits as specified under Title 7 Part 273 of code of federal regulations for the supplemental nutrition assistance program (SNAP). The process is described in brief below:

(a) How we determine if your AU is income eligible for basic food:

(i) We compare your AU's total monthly income to the gross monthly income standard under WAC 388-478-0060. We don't use income that isn't counted under WAC 388-450-0015 as a part of your gross monthly income.

(ii) We then compare your AU's countable monthly income to the net income standard under WAC 388-478-0060.

(A) If your AU is categorically eligible for basic food under WAC 388-414-0001, your AU can have income over the gross or net income standard and still be eligible for benefits.

(B) If your AU includes a person who is (~~sixty~~) 60 years of age or older or has a disability, your AU can have income over the gross income standard, but must have income under the net income standard to be eligible for benefits.

(C) **All other AUs** must have income at or below the gross and net income standards as required under WAC 388-478-0060 to be eligible for basic food.

(b) How we calculate your AU's monthly basic food benefits:

(i) We start with the maximum allotment for your AU under WAC 388-478-0060.

(ii) We then subtract (~~thirty percent~~) 30% of your AU's countable income from the maximum allotment and round the benefit down to the next whole dollar to determine your monthly benefit.

(iii) If your AU is eligible for benefits and has one or two persons, your AU will receive at least the minimum allotment as described under WAC 388-412-0015, even if the monthly benefit we calculate is lower than the minimum allotment.

AMENDATORY SECTION (Amending WSR 16-09-065, filed 4/18/16, effective 5/19/16)

WAC 388-450-0200 Will the medical expenses of elderly persons or individuals with disabilities in my assistance unit be used as an income deduction for basic food? (1) If your basic food assistance unit (AU) includes an elderly person or individual with a disability as defined in WAC 388-400-0040, your AU may be eligible for an income deduction for that person's out-of-pocket medical expenses. We allow the deduction for medical expenses over (~~(thirty-five dollars)~~) \$35.00 each month.

(2) You can use an out-of-pocket medical expense toward this deduction if the expense covers services, supplies, medication, or other medically needed items prescribed by a state-licensed practitioner or other state-certified, qualified, health professional. Examples of expenses you can use for this deduction include those for:

(a) Medical, psychiatric, naturopathic physician, dental, or chiropractic care;

(b) Prescribed alternative therapy such as massage or acupuncture;

(c) Prescription drugs except medical marijuana;

(d) Over the counter drugs;

(e) Eye glasses;

(f) Medical supplies other than special diets;

(g) Medical equipment or medically needed changes to your home;

(h) Shipping and handling charges for an allowable medical item.

This includes shipping and handling charges for items purchased through mail order or the internet;

(i) Long distance calls to a medical provider;

(j) Hospital and outpatient treatment including:

(i) Nursing care; or

(ii) Nursing home care including payments made for a person who was an assistance unit member at the time of placement.

(k) Health insurance premiums paid by the person including:

(i) Medicare premiums; and

(ii) Insurance deductibles and copayments.

(l) Out-of-pocket expenses used to meet a spenddown as defined in WAC (~~(182-519-0010)~~) 182-519-0100. We do not allow your entire spend-down obligation as a deduction. We allow the expense as a deduction as it is estimated to occur or as the expense becomes due;

(m) Dentures, hearing aids, and prosthetics;

(n) Cost to obtain and care for a seeing eye, hearing, or other specially trained service animal. This includes the cost of food and veterinarian bills. We do not allow the expense of food or veterinary bills for a service animal as a deduction if you receive ongoing additional requirements under WAC 388-473-0040 to pay for this need;

(o) Reasonable costs of transportation and lodging to obtain medical treatment or services; and

(p) Attendant care necessary due to age, infirmity, or illness.

If your AU provides most of the attendant's meals, we allow an additional deduction equal to a one-person allotment.

(3) There are two types of deductions for out-of-pocket expenses:

(a) One-time expenses are expenses that cannot be estimated to occur on a regular basis. You can choose to have us:

(i) Allow the one-time expense as a deduction when it is billed or due;

(ii) Average the expense through the remainder of your certification period; or

(iii) If your AU has a (~~twenty-four-month~~) 24-month certification period, you can choose to use the expense as a one-time deduction, average the expense for the first (~~twelve~~) 12 months of your certification period, or average it for the remainder of our certification period.

(b) Recurring expenses are expenses that happen on a regular basis. We estimate your monthly expenses for the certification period.

(4) We do not allow a medical expense as an income deduction if:

(a) The expense was paid before you applied for benefits or in a previous certification period;

(b) The expense was paid or will be paid by someone else;

(c) The expense was paid or will be paid by the department or another agency;

(d) The expense is covered by health care insurance;

(e) We previously allowed the expense, and you did not pay it. We do not allow the expense again even if it is part of a repayment agreement;

(f) You included the expense in a repayment agreement after failing to meet a previous agreement for the same expense; or

(g) You claim the expense after you have been denied for presumptive SSI; and you are not considered disabled by any other criteria.

AMENDATORY SECTION (Amending WSR 03-21-029, filed 10/7/03, effective 11/1/03)

WAC 388-450-0225 How are my assistance unit's benefits calculated for the first month I am eligible for cash assistance? (1) To calculate your AU's cash benefit for your first month's benefits, we compare your AU's countable income to the payment standard as described in WAC 388-450-0162.

(2) (~~Even if your AU has countable income over the payment standard, you may still receive additional requirements.~~

~~(3))~~ If your countable income is less than the payment standard, we prorate your grant amount based on the date you are eligible.

~~((4))~~ (3) We do not prorate any approved additional requirements.

~~((5))~~ (4) We prorate your grant by:

(a) Dividing your AU's grant amount by the number of days in the first month of eligibility; and

(b) Multiplying the result in ~~((5))~~ (4)(a) of this section by the number of days from the date of eligibility to the last day of the month.

AMENDATORY SECTION (Amending WSR 15-02-006, filed 12/26/14, effective 1/26/15)

WAC 388-473-0010 What are ongoing additional requirements and how do I qualify? "Ongoing additional requirement" means a need beyond essential food, clothing, and shelter needs and is necessary to help you continue living independently.

(1) We may authorize ongoing additional requirement benefits if you are active in one of the following programs:

- (a) Temporary assistance for needy families (TANF), or tribal TANF;
- (b) State family assistance (SFA);
- (c) Pregnant women assistance (PWA);
- (d) Refugee cash assistance (RCA);
- (e) Aged, blind, or disabled (ABD) cash assistance; ((~~or~~))
- (f) Housing and essential needs (HEN) referral; or
- (g) Supplemental security income (SSI).

(2) You apply for an ongoing additional requirement benefit by notifying staff who maintain your ((~~cash~~)) public assistance that you need additional help to live independently.

(3) We authorize ongoing additional requirement benefits only when we determine the item is essential to you. We make the decision based on proof you provide of:

- (a) The circumstances that create the need; and
- (b) How the need affects your health, safety, and ability to continue to live independently.

(4) We authorize ongoing additional requirement benefits by ((~~increasing your monthly cash assistance benefit.~~)):

- (a) Increasing your cash assistance benefit if you receive cash assistance; or
- (b) Issuing a cash benefit if you are a HEN referral or SSI recipient.

(5) We use the following review cycle table to decide when to review your need for the additional benefit(s).

| REVIEW CYCLE | |
|----------------------|---|
| Program | Frequency (Months) |
| TANF/RCA/ SFA/PWA | 6 Months |
| ABD | 12 Months |
| HEN referral | <u>12 Months</u> |
| SSI | 24 Months |
| All | Any time need or circumstances are expected to change |

(6) Monthly payment standards for ongoing additional requirements are described under WAC 388-478-0050.

(7) The department may discontinue the program benefit issuances when state funds appropriated for ongoing additional requirements are exhausted.

AMENDATORY SECTION (Amending WSR 07-10-043, filed 4/26/07, effective 5/27/07)

WAC 388-473-0040 ((~~Food~~)) Assistance for service animals as an ongoing additional requirement. (1) ((A)) "Service animal" ((~~is an animal that is trained for the purpose of assisting or accommodating a person with a disability's sensory, mental, or physical disability~~)) means any dog or miniature horse, as discussed in RCW 49.60.040, that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

(2) We authorize benefits for food for a service animal if we decide the animal is necessary for your health and safety and supports your ability to continue to live independently.

(3) We authorize benefits for veterinary care for a service animal if we decide that a service animal has a medical necessity that would require treatment so that the service animal can continue to do the work or task the animal has been trained to perform.

(4) We authorize boarding for a service animal for a maximum amount of \$300.00 a year if we determine that you need medical or mental health care and are in a facility in which your service animal cannot reside and there is no one who can provide care for your service animal.

AMENDATORY SECTION (Amending WSR 00-15-053, filed 7/17/00, effective 9/1/00)

WAC 388-473-0050 Telephone and internet services as an ongoing additional requirement. (1) We authorize benefits for telephone services when we decide:

~~((1))~~ (a) Without a telephone, your life would be endangered, you could not live independently, or you would require a more expensive type of personal care; and

(b) You have applied for telephone assistance through a federal program.

~~(2) ((You have applied for the Washington telephone assistance program (WTAP) through your local telephone company.))~~ We authorize benefits for internet services when we decide:

(a) Without internet services, you could not live independently, or you would require a more expensive type of personal care; and

(b) You have applied for low-cost internet and need assistance paying the monthly bill.

(3) You are not eligible for benefits for telephone or internet services if you are receiving those services free of charge.

NEW SECTION

WAC 388-473-0070 Transportation as an ongoing additional requirement. (1) We authorize assistance for transportation costs as an ongoing additional requirement when we decide you need assistance:

(a) Getting to and from appointments; or

(b) Taking care of activities to continue living independently.

(2) You are not eligible for assistance for transportation if you are receiving this service from another agency or program.

NEW SECTION

WAC 388-473-0080 Medically related items or services as an ongoing additional requirement. (1) We authorize the following benefits as a one-time payment within a 12 month period:

(a) Dentures;

(b) Optometrist visit for eye glasses;

- (c) Eye glasses;
- (d) Hearing aids.
- (2) Benefits are issued after we determine:
 - (a) You did not qualify for the service or item from any state, federal, or private insurance coverage; or
 - (b) You have been unable to obtain a replacement through state, federal, or private insurance.

AMENDATORY SECTION (Amending WSR 00-15-052, filed 7/17/00, effective 9/1/00)

WAC 388-478-0050 Payment standards for ongoing additional requirements. ((An "~~ongoing additional requirement~~" is a continuing need that you have for which you require additional financial benefits in order to continue living independently.)) The ("~~payment standard~~") payment standard for ongoing additional requirement benefits is the amount of money ((needed)) authorized to pay for these items or services. We use the following payment standards for ongoing additional requirements approved under chapter 388-473 WAC ((~~388-473-0020 through 388-473-0060~~)):

- (1) Restaurant meals: (((\$187.09)) \$390.00 per month ((~~or \$6.04 per day with the payment rounded down to the nearest dollar amount~~)));
- (2) Laundry: (((\$11.13)) \$20.84 per month;
- (3) Service animal food: (((\$33.66)) \$50.00 per month;
- (4) Home delivered meals: The amount charged by the agency providing the meals;
- (5) Telephone: ((The local telephone flat rate for the area; or the Washington telephone assistance program (WTAP) rate, whichever is less.)) \$4.00 per month;
- (6) Internet: Up to \$30.00 per month;
- (7) Transportation: \$40.00 per month;
- (8) Dentures: \$1,800.00 in a 12 month period;
- (9) Optometrist visit for eye glasses: \$200.00 in a 12 month period;
- (10) Eye glasses: \$240.00 in a 12 month period;
- (11) Hearing aid(s): \$1,000.00 in a 12 month period;
- (12) Veterinary cost for service animals: \$200.00 annual limit;
- (13) Boarding for service animals: \$300.00 annual limit.

WSR 24-02-067
PROPOSED RULES
BUILDING CODE COUNCIL
 [Filed December 29, 2023, 4:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-23-152.

Title of Rule and Other Identifying Information: Changes to WAC 51-55-0300 and 51-55-0600. Changes to 2021 Wildland-Urban Interface Code (WUIC), Chapters 3 and 6.

Hearing Location(s): On Friday, February 9, 2024, at 10:00 a.m., at 1500 Jefferson Street S.E., Olympia, WA 98504. Please access the meetings in person, via Zoom, or conference call. The Zoom link and phone number will be provided in the agenda at sbcc.wa.gov.

Date of Intended Adoption: February 16, 2024.

Submit Written Comments to: Dustin Curb, P.O. Box 41449, Olympia, WA 98504-1449, email dustin.curb@deswa.gov [dustin.curb@des.wa.gov], by January 26, 2024.

Assistance for Persons with Disabilities: Contact Rozanna Ghanie, phone 360-742-1284, email Rozanna.ghanie@des.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The state building code council directed staff to start rule making to amend sections in Chapters 3 and 6 of the 2021 International WUIC. The reason for the amendments is to address concerns raised by stakeholders, subject matter experts, and citizens.

SUMMARY OF PROPOSED CHANGES

2021 WUIC Amendments to Chapter 51-55 WAC

Underlined text indicates added language and ~~struck through~~ text indicates deleted text as compared to the model code.

| WAC | Section | Changes to 2021 Code Text | Rationale/Discussion |
|------------|-----------------------------|---|--|
| 51-55-0300 | All Amendments to Chapter 3 | All amendments to Chapter 3 are removed and the section is labeled "Reserved." | Concerns with department of natural resources mapping and enforcement challenges brought up by stakeholders informed a decision by the building code council to remove amendments to this section completely and return to the language of the model code. |
| 51-55-0600 | Section 603.2 | Adds the following exceptions to Section 603.2: <u>1. Buildings or structures constructed, altered, relocated, or repaired in compliance with sections 501.4 through 501.8.</u> <u>2. Existing buildings or structures in compliance with section 101.4.</u> <u>3. Additions and alterations in compliance with section 101.5.</u> <u>4. Within urban growth areas designated under RCW 36.70A.110 the jurisdictions code official may exempt buildings or structures with a conforming water supply based on either section 402.1 or Section 404 and in conformance with 2021 International Fire Code Section 507.</u> | Addition of Exceptions 1, 2, and 3 to Section 603.2 are intended to further clarify Sections 101.4, 101.5, and 501.4 through 501.8. The addition of Exception 4 provides additional consideration for urban growth areas. |
| | Table 603.2 | Changes the title of the table " <u>Conforming Required Defensible Space for Table 503.1.</u> " | The change is intended to clarify the use of the table. |

| WAC | Section | Changes to 2021 Code Text | Rationale/Discussion |
|-----|-----------------|---|--|
| | Section 603.2.2 | The model code is amended: "Trees are allowed within the defensible space, provided that the horizontal distance between crowns of adjacent trees and crowns of trees and structures, or overhead electrical facilities or unmodified fuel is not less than 10 feet (3048 mm)." | Changes are intended to mitigate the amount of vegetation removal required when not claiming the exemptions to Section 603.2 listed above. |
| | Section 603.2.3 | The model code is amended: "Deadwood and litter shall be regularly removed from <u>mature trees to a height of 6ft (1828 mm)</u> . Where ornamental vegetative fuels or cultivated ground cover, such as green grass, ivy, succulents, or similar plants are used as ground cover, they are allowed to be within the designated defensible space, provided that they do not form a means of transmitting fire from the native growth to any structure." | |

Reasons Supporting Proposal: RCW 19.27.031, 19.27.074, 19.27.560.
 Statutory Authority for Adoption: RCW 19.27.031, 19.27.074, 19.27.560.

Statute Being Implemented: RCW 19.27.031, 19.27.074, 19.27.560.
 Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dustin Curb, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-972-4158; and Enforcement: Local jurisdictions.

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

A cost-benefit analysis is not required under RCW 34.05.328. The content of the proposed rule is explicitly and specifically dictated by statute (RCW 19.27.560).

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

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

Scope of exemption for rule proposal:

Is fully exempt.

November 17, 2023
 Tony Doan
 Chair

OTS-5124.1

AMENDATORY SECTION (Amending WSR 23-23-107, filed 11/15/23, effective 3/16/24)

WAC 51-55-0300 ((Wildland urban interface areas-)) Reserved.

~~((301 General.~~

~~**301.1 Scope.** Wildland urban interface areas shall be determined using the Washington wildland urban interface map (WA-WUI). WA-WUI designations are permitted to be modified, upon approval of a finding of fact in accordance with Section 302.~~

~~**User note:** The WA-WUI map is available at <https://geo.wa.gov/maps/786aaa1dbbd748e6ae04bc43c8f127fe/explore>.~~

~~**301.2 Construction in wildland urban interface or intermix areas.** Where a structure is proposed to be constructed in an area designated by the WA-WUI map as wildland urban interface or intermix, the construction shall comply with the provisions of this code.~~

~~**301.3 Construction in wildlands areas.** Where a structure is proposed to be constructed in an area designated by the WA-WUI map as wildlands, the applicable wildland urban interface area designation shall be based on a finding of fact in accordance with Section 302.~~

~~**302 Wildland urban interface area designations.**~~

~~**302.1 General.** Wildland urban interface area designations are permitted to be established in accordance with this section.~~

~~**302.2 Finding of fact.** The applicable wildland urban interface designation shall be based on a finding of fact. The finding of fact shall comply with the provisions of Appendix E or is permitted to be based on the worksheet and procedures in Section 302.3.~~

~~**302.3 Simplified wildland urban interface designation worksheet.** The wildland urban interface designation is permitted to be established using the procedure outlined in Table 302(1), using the worksheet in Table 302(2).~~

~~**302.3.1 Area to be evaluated.** For the purposes of establishing structure and vegetation densities, the area covered by a square of 1320 feet on a side (40 acres) shall be evaluated. The square area shall be located such that the site under consideration is in its center, except where the square would overlap a water body shown on the WA-WUI map with a surface area greater than 200,000 square feet, the location shall be adjusted such that no part of the square overlaps the water body.~~

~~**Table 302.3(1)**~~

~~**Outline of Simplified Procedure for Determining Wildland Interface Designation**~~

| For the area to be evaluated in Section 302.3.1: |
|---|
| 1. Determine structure density category (uninhabited, very low, low, medium, or high): |
| 2. Determine vegetation density category (nonvegetated or vegetated): |
| 3. Determine proximity category (near or distant): |
| 4. Based on structure density, vegetation density, and proximity categories, determine if compliance with this code is required (WUIC applies, WUIC does not apply): |
| 5. Where compliance with this code is required, determine wildland urban interface area designation (intermix or interface): |

302.3.2 Structure density category. ~~The structure density category shall be determined by counting the number of structures within the area to be evaluated per Section 302.3.1. The structure density category shall be determined as follows:~~

| | |
|--------------|--------------------------|
| UNINHABITED: | 0 structures |
| VERY LOW: | 1 structure |
| LOW: | 2 to 8 structures |
| MEDIUM: | 9 to 120 structures |
| HIGH: | more than 120 structures |

302.3.3 Vegetation density category. ~~Vegetation coverage within the area to be evaluated per Section 302.3.1 shall be determined in accordance with Chapter 9. Vegetation density shall be determined by dividing the vegetation coverage by 1,742,400 square feet (40 acres). Where the vegetation density is less than 50 percent, the vegetation density category for the site shall be nonvegetated. Where the vegetation density is 50 percent or more, the vegetation density category for the site shall be vegetated.~~

302.3.4 Proximity category. ~~The distance from the site being evaluated to a high-density vegetated area shall be measured from the closest edge of the site boundary to the closest edge of the nearest high-density vegetated area. Where the distance is less than 1.5 miles, the proximity category shall be near. Where the distance is 1.5 miles or more, the proximity category shall be distant.~~

302.3.5 WUIC applicability. ~~The WUIC shall apply, and the site shall be designated as intermix or interface in accordance with Section 302.3.6 under either of the following conditions:~~

1. ~~The structure density category is very low to high, and the vegetation density category is vegetated.~~

2. ~~The structure density category is very low to high, and the proximity category is near.~~

~~The WUIC shall not apply under either of the following conditions:~~

1. ~~The structure density category is uninhabited, and the site is not located within an area designated as intermix or interface on the WA-WUI map.~~

2. ~~The structure density category is uninhabited to high, the vegetation density category is nonvegetated, and the proximity category is distant.~~

302.3.6 Wildland urban interface area designation. ~~Where required by Section 302.3.5, the site shall be designated as intermix or interface in accordance with Section 302.3.6.1 or 302.3.6.2.~~

302.3.6.1 Intermix designation. ~~The site shall be designated as intermix where the structure density category is very low to high, and the vegetation density category is vegetated.~~

302.3.6.2 Interface designation. ~~The site shall be designated as interface where the structure density category is very low to high, and the proximity category is near.~~

Table 302(1). Outline of simplified procedure for determining wildland interface designation

1. Determine structure density category in accordance with Section 302.3.2. Numbers in table are the number of structures within the area determined by Section 302.3.1.

| | | | | |
|--------------------|-----------------|------------|---------------|---------------|
| UNINHABITED | VERY LOW | LOW | MEDIUM | HIGH |
| 0 | 1 | 2 TO 8 | 9 TO 120 | MORE THAN 120 |

2. Determine vegetation density category within the area determined by Section 302.3.1.

| | |
|-------------------------|-----------------------|
| NONVEGETATED | VEGETATED |
| Less than 50% vegetated | 50% or more vegetated |

3. Determine proximity category to the nearest high-density vegetated area.

| | |
|-----------------------------|---------------------------|
| NEAR | DISTANT |
| Less than 1.5 mi (2.414 km) | 1.5 mi (2.414 km) or more |

4. Use structure density, vegetation density, and proximity categories from above to determine if WUIC applies.

| | |
|--|--|
| WUIC Applies | WUIC Does Not Apply |
| <ul style="list-style-type: none"> • Structure density category is very low to high; and • Vegetation density category is vegetated. | <ul style="list-style-type: none"> • Structure density category is uninhabited; and • The site is not located within an area designated as intermix or interface on the WA-WUI map. |
| <ul style="list-style-type: none"> • Structure density category is very low to high; and • Proximity category is near. | <ul style="list-style-type: none"> • Structure density category is uninhabited to high; and • Vegetation density category is nonvegetated; and • Proximity category is distant. |

5. Where WUIC applies, the site shall be designated as intermix or interface as follows:

| | |
|--|--|
| INTERMIX | INTERFACE |
| <ul style="list-style-type: none"> • Structure density category is very low to high; and • Vegetation density category is vegetated. | <ul style="list-style-type: none"> • Structure density category is very low to high; and • Proximity category is near. |

Table 302(2). Worksheet for simplified procedure for determining wildland interface designation

~~302.4 Review of wildland-urban interface areas. The code official shall review for approval evaluated areas for new or modified findings of fact. Where a new or modified findings of fact are approved, the code official shall recommend to WADNR a modification to the wildland-urban interface areas mapping.)~~

AMENDATORY SECTION (Amending WSR 23-02-056, 23-12-109, and 23-20-028, filed 1/3/23, 6/7/23, and 9/25/23, effective 3/15/24)

WAC 51-55-0600 Fire protection requirements.

602 Automatic sprinkler systems.

602.1 General. An approved automatic sprinkler system shall be installed when required by the authority having jurisdiction.

603 Defensible space.

603.2 Fuel modification. Buildings or structures, constructed in compliance with the conforming defensible space category of Table 503.1, shall comply with the fuel modification distances contained in Table 603.2. For all other purposes the fuel modification distance shall be not less than 30 feet (9144 mm) or to the lot line, whichever is less.

Distances specified in Table 603.2 shall be measured on a horizontal plane from the perimeter or projection of the building or structure as shown in Figure 603.2. Distances specified in Table 603.2 are allowed to be increased by the code official because of a site specific analysis based on local conditions and the fire protection plan.

EXCEPTIONS:

1. Buildings or structures constructed, altered, relocated, or repaired in compliance with sections 501.4 through 501.8.
2. Existing buildings or structures in compliance with section 101.4.
3. Additions and alterations in compliance with section 101.5.
4. Within urban growth areas designated under RCW 36.70A.110 the jurisdictions code official may exempt buildings or structures with a conforming water supply based on either section 402.1 or Section 404 and in conformance with 2021 International Fire Code section 507.

TABLE 603.2
Conforming Defensible Space For Table 503.1

| Wildland-Urban Interface Area | Fuel Modification Distance (feet)^a |
|--------------------------------------|--|
| <u>Moderate Hazard</u> | <u>30</u> |
| <u>High Hazard</u> | <u>50</u> |
| <u>Extreme Hazard</u> | <u>100</u> |

For SI: 1 foot = 304.8 mm.

a. Distances are allowed to be increased due to site-specific analysis based on local conditions and the fire protection plan.

603.2.2 Trees. Trees are allowed within the defensible space, provided that the horizontal distance between crowns of trees and structures, or overhead electrical facilities is not less than 10 feet (3048 mm).

603.2.3 Ground cover. Deadwood and litter shall be regularly removed from mature trees to a height of six feet (1828 mm). Where ornamental vegetative fuels or cultivated ground cover, such as green grass, ivy, succulents or similar plants are used as ground cover, they are allowed to be within the designated defensible space, provided they do not form a means of transmitting fire from the native growth to any structure.

WSR 24-02-068
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed January 2, 2024, 8:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-096.

Title of Rule and Other Identifying Information: Independent medical examination—Recording notification process—Accompanying person; chapter 296-23 WAC, Radiology, radiation therapy, nuclear medicine, pathology, hospital, chiropractic, physical therapy, drugless therapeutics and nursing—Drugless therapeutics, etc.: WAC 296-23-364 Definition of notification process required for workers to record independent medical examinations (IME) and 296-23-366 Independent medical examination (IME)—Recording notification time frame; and amending WAC 296-23-362 Independent medical examination (IME)—Accompanying person.

Hearing Location(s): On February 6, 2024, at 2:00 p.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501, Auditorium; or join electronically <https://lni-wa.gov.zoom.us/j/9361655337>, Meeting ID 936 165 5337; or join by phone (audio only) 253-215-8782 US (Tacoma). Find your local number <https://lni-wa.gov.zoom.us/j/9361655337>. The hybrid meeting starts at 2:00 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: March 26, 2024.

Submit Written Comments to: Suzy Campbell, L&I, Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, email suzanne.campbell@lni.wa.gov, fax 360-902-5029, by February 6, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Cristina Gaffoglio, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email cristina.gaffoglio@lni.wa.gov, by January 30, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: L&I is creating new rules in chapter 296-23 WAC and amending WAC 296-23-362. The new rules will define the recording notification process for when a worker wants to record IMEs requested by L&I and self-insured employers.

Reasons Supporting Proposal: SHB 1068, from the 2023 legislative session, allows a worker to audio and visually record an IME, and includes an observer may be present for all examinations with the worker. The updated statute, RCW 51.36.070, requires L&I create rules defining the notification process the worker must follow when they want to record an IME. Existing rule, WAC 296-23-362, states an observer may not attend a psychiatric examination. This rule must be updated as the amended statute includes an observer may be present for all examinations.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, and 51.36.070.

Statute Being Implemented: RCW 51.36.070.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Sarah Jackson, Tumwater, Washington, 360-902-5118; and Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Suzy Campbell, L&I, Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, phone 360-902-5003, fax 360-902-5029, email suzanne.campbell@Lni.wa.gov.

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

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. L&I conducted a thorough assessment of the proposed rules' impact on both businesses and workers affected. Recording is optional for workers, as is bringing a companion to an IME. The time frame is clarified and gives options for providers. According to L&I's estimation, the proposed changes will not result in any additional costs to the impacted parties.

January 2, 2024

Joel Sacks

Director

OTS-4992.5

AMENDATORY SECTION (Amending WSR 04-04-029, filed 1/27/04, effective 3/1/04)

WAC 296-23-362 (~~(May a worker bring someone with them to an independent medical examination (IME)?)~~) **Independent medical examination (IME)—Accompanying person.** (1) Workers can bring an adult (~~(friend or family member)~~) observer to the IME to provide comfort and reassurance. (~~(That accompanying person may attend the physical examination but may not attend a psychiatric examination.~~

~~(2))~~) The accompanying person (~~(cannot)~~) will not be compensated for attending the examination by (~~(anyone in any manner)~~) the department or self-insured employer. The accompanying person must be unobtrusive at all times. Obtrusive behavior includes, but is not limited to, verbally or physically interrupting, interfering, or obstructing the examination in any way.

~~((3))~~) (2) The worker may not bring an interpreter to the examination. If interpretive services are needed, the department or self-insurer will provide an interpreter.

~~((4) The purpose of the IME is to provide information to assist in the determination of the level of any permanent impairment not to conduct an adversarial procedure. Therefore,)~~) (3) The accompanying person cannot be:

(a) The worker's attorney, paralegal, any other legal representative, or any other personnel employed by the worker's attorney or legal representative; or

(b) The worker's attending (~~(doctor)~~) provider, any other provider involved in the worker's care, or any other personnel employed by

the attending ((~~doctor~~)) provider or other provider involved in the worker's care.

The department may designate other conditions under which the accompanying person is allowed to be present during the IME.

NEW SECTION

WAC 296-23-364 Definition of notification process required for workers to record independent medical examinations (IME). (1) After receipt of the IME appointment/assignment letter, but no less than seven calendar days before the date of the examination, the worker or their representative must provide written notice to the IME firm or an examiner not in a firm, as listed in the appointment/assignment letter, to inform of their intent to record the examination.

(2) Written notification of the workers' intent to record must be given for each IME appointment.

NEW SECTION

WAC 296-23-366 Independent medical examination (IME)—Recording notification time frame. If notice is received less than seven calendar days prior to the IME, a worker may record the examination **only if** the IME provider waives the seven calendar day notification requirement. If notification is received after 5:00 p.m., in the time zone of the examination location, the notification is considered received the next calendar day.

WSR 24-02-070
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
(Board of Boiler Rules)
[Filed January 2, 2024, 8:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-21-043.

Title of Rule and Other Identifying Information: Board of boiler rules: WAC 296-104-020 Administration—What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation?, 296-104-102 Inspections—What are the standards for in-service inspection?, 296-104-200 Construction—What are the standards for new construction?, 296-104-255 Installation—What are the required clearances for boilers?, 296-104-260 Installation—What are the required clearances for unfired pressure vessels?, and 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?

Hearing Location(s): On February 21, 2024, at 10:20 a.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501; or join electronically (Zoom) <https://lni-wa.gov.zoom.us/j/87878811300?pwd=NjZGWwtJMEVVUplVDE5enhxNjdNZz09>, Passcode 8.Lzpi?w; or join by phone (audio only) 253-215-8782, Meeting ID 878 7881 1300, Passcode 73603315. The in-person and virtual/telephonic hearing starts at 10:20 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: April 16, 2024.

Submit Written Comments to: Meagan Edwards, L&I, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, email Meagan.Edwards@lni.wa.gov, fax 360-902-6134, by 5 p.m. on February 13, 2024.

Assistance for Persons with Disabilities: Contact Meagan Edwards, phone 360-522-0125, fax 360-902-6134, email Meagan.Edwards@lni.wa.gov, by February 7, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to propose amendments to the boiler rule under chapter 296-104 WAC. The changes affect safety codes, installer and clearance requirements, and fees for boilers and pressure vessels. The amendments are needed to ensure the rule is consistent with national boiler and unfired pressure vessel safety standards and industry practice.

Proposed amendments to the chapter are as follows:

WAC 296-104-020 Administration—What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation?

- Adds a new subsection that installers are responsible for correcting deficiencies found on initial permit inspection and paying subsequent inspection fees.
- Renumbers subsections and converts spelled numbers to numerals for formatting.

WAC 296-104-102 Inspection—What are the standards for in-service inspection?

- Removes the National Board Inspection Code (NBIC), current edition Part 4, Section 6, Supplement 3 from the nonmandatory guidelines for pressure relief devices for consistency with the code.

WAC 296-104-200 Construction—What are the standards for new construction?

- Adds new Section XIII from the 2023 edition of the American Society of Mechanical Engineers (ASME) to the standards for new construction of boilers and pressure vessels for consistency with the code.
- Converts a spelled number to a numeral for formatting.

WAC 296-104-255 Installation—What are the required clearances for boilers?

- Allows for clearances less than 18 inches for boilers when recommended by the manufacturer's instructions to provide better direction for clearances.
- Rearranges the existing requirements and renumbers subsections for formatting.

WAC 296-104-260 Installation—What are the required clearances for unfired pressure vessels?

- Adds a new exception that allows for side clearances less than 18 inches for pressure vessels when recommended by the manufacturer's instructions and it does not inhibit inspection, maintenance, or repair to provide better direction for clearances. This also includes:
 - o Notating that exceptions must be documented in the state's jurisdictional database.
 - o Clarifying the access requirements for manholes.

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?

- Increases fees by the fiscal growth factor rate of 6.40 percent to support operating expenses for the boiler program.

Reasons Supporting Proposal: This rule making is needed to ensure that Washington's rules are clear and consistent to improve public safety, and that inspection fees will support the boiler program's operating expenses. According to RCW 70.79.330 and 70.79.350, a fee schedule for inspections is to be set by the board of boiler rules and the fees are to be used to administer the boiler program.

Statutory Authority for Adoption: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Statute Being Implemented: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Mike Carlson, Program Manager, Tumwater, Washington, 360-902-5270; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Meagan Edwards, L&I, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-522-0125, fax 360-902-6134, email Meagan.Edwards@Lni.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions:

| | Proposed WAC Sections | This proposed rule section is not exempt - Analysis is required. | This proposed rule section is exempt. Provide RCW to support this exemption. |
|----|--|---|---|
| 1. | WAC 296-104-020 Administration—What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation? | X | |
| 2. | WAC 296-104-102 Inspection—What are the standards for in-service inspection? | <input type="checkbox"/> | This section is exempt under RCW 34.05.310 (4)(c) because it adopts national consensus codes that generally establish industry standards. |
| 3. | WAC 296-104-200 Construction—What are the standards for new construction? | <input type="checkbox"/> | This section is exempt under RCW 34.05.310 (4)(c) because it adopts national consensus codes that generally establish industry standards. |
| 4. | WAC 296-104-255 Installation—What are the required clearances for boilers? | X | |
| 5. | WAC 296-104-260 Installation—What are the required clearances for unfired pressure vessels? | X | |
| 6. | WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? | <input type="checkbox"/> | This section is exempt under RCW 34.05.310 (4)(f) because it sets or adjusts fees under the authority of RCW 19.02.075. |

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Most of the rule changes are exempt from the small business economic impact analysis [statement] (SBEIS) under RCW 19.85.025. Those changes that are not exempt from the SBEIS requirement are the following:

- Making the installer responsible for correcting deficiencies found during installation inspection and paying subsequent rein-

spection fees: Current rule requires boiler and pressure vessel installations to pass inspection to obtain a certificate of inspection to operate the equipment. As such, where corrective action is required following an initial inspection before the boiler or pressure vessel installation can be considered to pass inspection, the installer must make the corrective action and have a reinspection. Under the current rule, the owner is responsible for inspection fees for installations inspected by state inspectors, including reinspections. This change makes the installer responsible for any subsequent reinspection fees as a result of a noncompliant installation, rather than the owner. While rules setting fees are exempt from the SBEIS requirement under RCW 34.05.310 (4)(f), as the installer works for the owner, the installer has the ability to negotiate their pay for the work they perform.

- Allowing for clearances of boilers of less than 18 inches when recommended by the manufacturer: For owners, the proposed amendment results in a cost savings by not having to complete and submit a variance request form to L&I for installation approval and allowing for clearances of pressure vessels of less than 18 inches when recommended by the manufacturer.
- Allowing for side clearances of less than 18 inches for pressure vessels when recommended by the manufacturer's instructions clarifies L&I's existing practices of documenting exceptions for clearance requirements and providing safe access for manholes. For owners, the proposed amendment results in a cost savings by not having to complete and submit a variance request form to L&I for installation approval and clarifies L&I existing practices; therefore, it does not add a substantive change.

These changes will either result in a cost savings to customers or no increased costs over current practice or the baseline.

According to the Regulatory Fairness Act under RCW 19.85.030 (1)(a), an agency shall prepare an SBEIS: (i) If the proposed rule will impose more-than-minor costs¹ on businesses in an industry; or (ii) if requested to do so by a majority vote of the joint administrative rules review committee within 45 days of receiving the notice of proposed rule making under RCW 34.05.320. As the portions of the rule amendments not meeting exemptions will either result in a cost savings to customers or no increased costs over current practice or the baseline, the proposed amendments are not expected to impose more-than-minor costs, so an SBEIS is not required.

¹ Minor cost is defined under RCW 19.85.020 as a cost per business that is less than three-tenths of one percent of annual revenue or income, or \$100, whichever is greater, or one percent of annual payroll.

January 2, 2024
Tim Barker, Chair
Board of Boiler Rules

OTS-5060.3

AMENDATORY SECTION (Amending WSR 18-01-113, filed 12/19/17, effective 1/31/18)

WAC 296-104-020 Administration—What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation?

(1) "Boiler/pressure vessel, water heater installation or reinstallation permit" shall mean a permit approved by the chief inspector and submitted by the installer prior to starting installation or reinstallation of any boiler/pressure vessel or water heater within the jurisdiction of Washington.

(2) The "installer" is any entity or person who physically or mechanically installs a boiler, pressure vessel or water heater that meets the in-service inspection requirements of this chapter. The installer is responsible for the installation/reinstallation permit fee per WAC 296-104-700.

(3) If a nonconformance condition or deficiency is found on the initial permit inspection, the installer will be responsible for implementing immediate corrective action and any subsequent inspection fees after corrections per the fee schedule in WAC 296-104-700.

(4) The following pressure retaining items, as defined in WAC 296-104-010, require a boiler/pressure vessel and water heater installation or reinstallation permit:

- Expansion tanks;
- Historical boilers and unfired pressure vessels;
- Hot water heaters;
- Indirect water heaters;
- Jacketed steam kettles;
- Low pressure boilers;
- Nonstandard boilers and unfired pressure vessels;
- Pool heaters;
- Power boilers;
- Reinstalled boilers and unfired pressure vessels;
- Secondhand boilers and unfired pressure vessels;
- Standard boilers and unfired pressure vessels;
- Unfired pressure vessels;
- Unfired steam boilers.

~~((4))~~ (5) The installer shall notify the chief inspector utilizing the permit form to request a permit inspection not less than ~~((ten))~~ 10 working days prior to placing equipment in operation. Equipment shall not be operated other than for testing, prior to an inspection being conducted which finds the boiler or pressure vessel to be in compliance with this chapter.

~~((5))~~ (6) If an emergency installation (due to leakage, failure, etc.) situation occurs, the installer will notify the chief inspector within ~~((forty-eight))~~ 48 hours after installation, utilizing the permit form to request an immediate inspection of the installation.

~~((6))~~ (7) The installer may be subject to civil penalties per WAC 296-104-701 for failure to comply with the filing requirements of the installation permit.

AMENDATORY SECTION (Amending WSR 18-23-092, filed 11/20/18, effective 1/1/19)

WAC 296-104-102 Inspection—What are the standards for in-service inspection? Where a conflict exists between the requirements of the standards listed below and this chapter, this chapter shall prevail. The duties of the in-service inspector do not include the installation's compliance with other standards and requirements (environmental, construction, electrical, undefined industrial standards, etc.), for which other regulatory agencies have authority and responsibility to oversee.

(1) The standard for inspection of nonnuclear boilers and unfired pressure vessels is the National Board Inspection Code (NBIC), current edition Part 2, excluding Section 6, Supplements 1, 5, 6, and 7 which may be used as nonmandatory guidelines.

(2) The standard for installation, in-service inspection, and repair of pressure relief devices is the National Board Inspection Code (NBIC), current edition Part 4, excluding Section 6, Supplement((s)) 1 ((and 3)) which may be used as nonmandatory guidelines.

(3) The standard for inspection of historical steam boilers of riveted construction preserved, restored, or maintained for hobby or demonstration use, shall be Part 2, Section 6, Supplement 2 of the National Board Inspection Code (NBIC) current edition.

(4) The standard for inspection of nuclear items is ASME section XI. The applicable ASME Code edition and addenda shall be as specified in the owner in-service inspection program plan.

(5) Where a petroleum or chemical process industry owner/user inspection agency so chooses, the standard for inspection of unfired pressure vessels used by the owner shall be the API-510 Pressure Vessel Inspection Code, current edition. This code may be used on or after the date of issue.

(6) TAPPI TIP 0402-16, revised 2011 may be used for both pulp dryers and paper machine dryers when requested by the owner. When requested by the owner, this document becomes a requirement and not a guideline.

AMENDATORY SECTION (Amending WSR 13-10-018, filed 4/23/13, effective 6/1/13)

WAC 296-104-200 Construction—What are the standards for new construction? The standards for new construction are:

(1) ASME Boiler and Pressure Vessel Code, current edition, Sections I, III, IV, VIII, Division 1, 2, 3, X, XII, XIII;

(2) ASME PVHO-1 Safety Standard for Pressure Vessels for Human Occupancy, current edition; and

(3) Standards of construction approved by the chief inspector and meeting the National Board Criteria for Registration of Boilers, Pressure Vessels and Other Pressure Retaining Items.

These codes and standards may be used on or after the date of issue and become mandatory ((twelve)) 12 months after adoption by the board as specified in RCW 70.79.050(2). ASME Code Cases may be approved for use when accepted by the chief inspector. The board recognizes that the ASME Code states that new editions of the code become mandatory six months after the date of issue. For nuclear systems,

components and parts the time period for addenda becoming mandatory is defined in the Code of Federal Regulations.

AMENDATORY SECTION (Amending WSR 06-24-042, filed 11/30/06, effective 1/1/07)

WAC 296-104-255 Installation—What are the required clearances for boilers? When boilers are replaced or new boilers installed in either existing or new buildings, a minimum top clearance as specified below shall be provided between the top of boiler proper and ceiling. Sufficient access must be provided for inspection, maintenance, operations, and repair. Required clearances shall be:

~~(1) (Minimum clearance on top of power boilers having a steam generating capacity in excess of 5,000 pounds per hour or having a heating surface in excess of 1,000 sq. ft. or input in excess of 5,000,000 btu per hour shall be. 7 feet.~~

~~(2) Minimum clearance on top of low pressure heating boilers which exceed any one of the following limits: 5,000,000 btu input; 5,000 lbs. steam per hour capacity or 1,000 sq. ft. heating surface; and power boilers which do not exceed any of the following limits: 5,000,000 btu input; 5,000 lbs. steam per hour capacity or 1,000 sq. ft. heating surface; shall be. 3 feet.~~

~~(3) Minimum clearance on top of boilers which do not exceed the above limits and miniature boilers; shall be. 2 feet.~~

~~(4) Minimum clearance from manhole openings and any wall, ceiling, or piping that will prevent a person from entering the boiler shall be. 5 feet.~~

~~(5) Minimum clearances at sides, front and back wall shall be the manufacturers' recommendations, but in no case less than eighteen inches.) Minimum clearances at sides, front, and back wall shall be the manufacturers' service clearance recommendations. If no recommendations are stated by the manufacturer, then 18 inches shall be the minimum clearance.~~

(2) Minimum clearance from manhole openings and any wall, ceiling, or piping that will prevent a person from entering the boiler shall be. 5 feet.

(3) Minimum clearance on top of power boilers having a steam generating capacity in excess of 5,000 pounds per hour or having a heat surface in excess of 1,000 sq. ft. or input in excess of 5,000,000 btu per hour shall be. 7 feet.

(4) Minimum clearance on top of low pressure heating boilers which exceed any one of the following limits: 5,000,000 btu input; 5,000 lbs. steam per hour capacity or 1,000 sq. ft. heating surface; and power boilers which do not exceed any of the following limits: 5,000,000 btu input; 5,000 lbs. steam per hour capacity or 1,000 sq. ft. heating surface shall be. 3 feet.

(5) Minimum clearance on top of boilers which do not exceed the above limits and miniature boilers shall be. 2 feet.

AMENDATORY SECTION (Amending WSR 02-23-036, filed 11/13/02, effective 12/14/02)

WAC 296-104-260 Installation—What are the required clearances for unfired pressure vessels? When unfired pressure vessels are replaced or new vessels are installed in either existing or new buildings, (~~manufacturers' recommendations shall be used, but in no case less than eighteen inches shall be provided between the top of the unfired pressure vessel and the ceiling and adjacent walls or other structures. All unfired pressure vessels having manholes shall have five feet clearance from manhole openings and any wall, ceiling, or piping that will prevent a person from entering the unfired pressure vessel~~) clearances shall be provided to allow access for safe operation, inspection, maintenance, and/or repair. Passageways around all sides of pressure vessels shall have an unobstructed width of not less than 18 inches. Exception: Unfired pressure vessels may be installed with a side clearance of less than 18 inches if the lesser clearance does not violate the manufacturer's installation instructions or inhibit inspection, maintenance, and/or repair. Any exception shall be notated in object comments in the jurisdictional database. All unfired pressure vessels having a manhole shall have five foot clearance at the manhole opening to allow an individual to have safe access to the inside of the vessel to perform inspection and/or maintenance.

AMENDATORY SECTION (Amending WSR 22-09-062, filed 4/19/22, effective 7/1/22)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

The boiler and pressure vessel installation/reinstallation permit fee of (~~(\$69.60)~~) \$74.00 shall be paid by the installer, as defined in WAC 296-104-010.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is (~~(\$29.90)~~) \$31.80.

Hot water heaters per RCW 70.79.090, inspection fee: (~~(\$8.90)~~) \$9.40.

The department shall assess a (~~(\$7.30)~~) \$7.70 fee, per object, for processing of jurisdictional inspection reports to any authorized in-service inspection agency or inspector who does not file the report directly into the department's electronic inspection report system.

| Heating boilers: | Internal | External |
|---|--|--|
| Cast iron—All sizes | ((\$50.60)) <u>\$53.80</u> | ((\$40.50)) <u>\$43.00</u> |
| All other boilers less than 500 sq. ft. | ((\$50.60)) <u>\$53.80</u> | ((\$40.50)) <u>\$43.00</u> |
| 500 sq. ft. to 2500 sq. ft. | ((\$101.30)) <u>\$107.70</u> | ((\$50.60)) <u>\$53.80</u> |
| Each additional 2500 sq. ft. of total heating surface, or any portion thereof | ((\$40.50)) <u>\$43.00</u> | ((\$19.70)) <u>\$20.90</u> |
| Power boilers: | Internal | External |

| | | |
|--|--|--|
| Less than 100 sq. ft. | (\$50.60) <u>\$53.80</u> | (\$40.50) <u>\$43.00</u> |
| 100 sq. ft. to less than 500 sq. ft. | (\$61.30) <u>\$65.20</u> | (\$40.50) <u>\$43.00</u> |
| 500 sq. ft. to 2500 sq. ft. | (\$101.30) <u>\$107.70</u> | (\$50.60) <u>\$53.80</u> |
| Each additional 2500 sq. ft. of total heating surface, or any portion thereof | (\$40.50) <u>\$43.00</u> | (\$19.70) <u>\$20.90</u> |
| Pressure vessels: | | |
| Square feet shall be determined by multiplying the length of the shell by its diameter. | | |
| | Internal | External |
| Less than 15 sq. ft. | (\$40.50) <u>\$43.00</u> | (\$29.90) <u>\$31.80</u> |
| 15 sq. ft. to less than 50 sq. ft. | (\$60.10) <u>\$63.90</u> | (\$29.90) <u>\$31.80</u> |
| 50 sq. ft. to 100 sq. ft. | (\$70.20) <u>\$74.60</u> | (\$40.50) <u>\$43.00</u> |
| For each additional 100 sq. ft. or any portion thereof | (\$70.10) <u>\$74.50</u> | (\$19.70) <u>\$20.90</u> |
| Nonnuclear shop inspections, field construction inspections, and special inspection services: | | |
| For each hour or part of an hour up to 8 hours | (\$61.30) | <u>\$65.20</u> |
| For each hour or part of an hour in excess of 8 hours | (\$91.60) | <u>\$97.40</u> |
| Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit: | | |
| For each hour or part of an hour up to 8 hours | (\$91.60) | <u>\$97.40</u> |
| For each hour or part of an hour in excess of 8 hours | (\$143.50) | <u>\$152.60</u> |
| Nonnuclear triennial shop survey and audit: | | |
| When state is authorized inspection agency: | | |
| For each hour or part of an hour up to 8 hours | (\$61.30) | <u>\$65.20</u> |
| For each hour or part of an hour in excess of 8 hours | (\$91.60) | <u>\$97.40</u> |
| When insurance company is authorized inspection agency: | | |
| For each hour or part of an hour up to 8 hours | (\$91.60) | <u>\$97.40</u> |
| For each hour or part of an hour in excess of 8 hours | (\$143.50) | <u>\$152.60</u> |

Examination fee: A fee of (~~(\$113.40)~~) \$120.60 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: A fee of (~~(\$61.20)~~) \$65.10 for initial work card. A fee of (~~(\$38.00)~~) \$40.40 for annual renewal.

If a special inspector changes companies: A work card fee of (~~(\$61.20)~~) \$65.10.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of (~~(\$571.90)~~) \$608.50 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

WSR 24-02-073

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed January 2, 2024, 9:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-010.

Title of Rule and Other Identifying Information: Waivers of tuition.

Hearing Location(s): On February 8, 2024, at 8:00 a.m., at 215A Tawanka Commons, Cheney, WA 99004.

Date of Intended Adoption: February 23, 2024.

Submit Written Comments to: Annika Scharosch, 211 Tawanka [Commons], Cheney, WA 99004, email ascharosch@ewu.edu, website <https://inside.ewu.edu/policies>, by February 8, 2024.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, email ascharosch@ewu.edu, by February 6, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Add a cross-reference to an Eastern Washington University (EWU) policy offering a partial tuition waiver for EWU employees' dependents and spouses.

Reasons Supporting Proposal: See above.

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

Statute Being Implemented: RCW 28B.15.740.

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

Name of Proponent: EWU, governmental.

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

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

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

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

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

January 2, 2024

Annika Scharosch

Associate Vice President for Civil Rights
Compliance and Enterprise Risk Management

OTS-5106.1

AMENDATORY SECTION (Amending WSR 21-07-010, filed 3/4/21, effective 4/4/21)

WAC 172-11-040 Waiver of tuition. (1) The board of trustees is authorized to grant tuition waivers to students pursuant to RCW 28B.15.910 and the laws identified therein. A number of these statutes authorize, but do not require, the board of trustees to grant waivers for different categories of students and provide waivers of different fees. For waivers that are authorized but not required by state law, the board of trustees delegates to the president or designee the authority to implement voluntary tuition waivers. The permissive waivers that EWU has implemented are identified below in subsection (3) of this section. A full list of permissive waivers and mandatory waivers is available from EWU's financial aid and scholarships office. These waivers may be modified at any time. Eligibility is based on the term for which the student is seeking a waiver and both the waiver and eligibility criteria may be subsequently modified or revoked with or without notice to a student. Awarding of a waiver for one term is not a guarantee that the waiver will be awarded in a subsequent term.

(2) Even if EWU has implemented a permissive waiver, the university, for specific reasons and a general need for flexibility in the management of its resources, may choose not to award waivers to all students who may be eligible under the terms of the laws due to funding limitations and enrollment strategies. The university may modify its restrictions or requirements pursuant to changes in state or federal law, changes in programmatic requirements, or in response to financial or other considerations, which may include, but are not limited to, the need to adopt fiscally responsible budgets, the management of the overall levels and mix of enrollments, management initiatives to modify enrollment demand for specific programs, and management decisions regarding the array of academic programs offered. The university may choose not to exercise the full funding authority granted under RCW 28B.15.910 and may limit the total funding available under RCW 28B.15.915.

(3) Pursuant to RCW 28B.15.910, EWU adopts the following tuition waivers with the following limitations. These limitations are in addition to any limitations set forth in state or federal law.

(a) RCW 28B.15.014(1);

(b) RCW 28B.15.014(2). Waivers under this subsection for the non-resident tuition fee differential shall be restricted to three quarters within the first year from the employee's initial date of employment with EWU. The employee must be employed on or before the first day of the quarter for which the waiver is requested;

(c) RCW 28B.15.544. Applicants must meet initial enrollment and academic eligibility requirements available on the financial aid office's website;

(d) RCW 28B.15.556. Limitations are included in specific student exchange agreements;

(e) RCW 28B.15.558. All waivers authorized by RCW 28B.15.558 shall be subject to additional limitations as determined by the university. The details of EWU's program of tuition waivers for state, teachers and other certificated instructional staff, and K-12 classified staff are set forth in EWU Policy 409-04. As authorized by RCW 28B.15.558(5), waivers may be awarded to eligible EWU employees before considering waivers for eligible persons who are not employed by EWU. These waivers are not available for self-support courses or individualized instruction;

(f) RCW 28B.15.615;

(g) RCW 28B.15.621(2). This waiver is limited to Washington residents who are enrolled full-time and pursuing their first undergraduate degree and is only a partial waiver. Information about eligibility for this waiver is available on the financial aid office's website. To qualify as an eligible veteran or National Guard member, the person seeking the waiver must provide proof of domicile in Washington state and either a DD Form 214 or other documentation establishing they meet the criteria in RCW 28B.15.621(8);

(h) RCW 28B.15.740 (1) and (2); (~~and~~)

(i) RCW 28B.70.050; and

(j) Pursuant to the general authority granted in RCW 28B.15.740(1), an employee dependent children and spouses' tuition waiver as detailed in EWU Policy 405-01.

(4) Any waivers identified in subsection (3) of this section only apply to the operating portion of tuition for state supported courses or programs, unless otherwise required by law. They do not apply to self-support courses or programs.

(5) Additional procedures and requirements for the waivers identified in subsection (3) of this section may be included in EWU policies. EWU may offer additional waivers at its discretion under RCW 28B.15.915.

(6) Information about fee waivers is available from (~~Student Financial Services~~) Financial Aid & Scholarships Office, ((202)) 102 Sutton Hall, Cheney, WA 99004, phone ((509-359-6372)) 509-359-2314.

WSR 24-02-087

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed January 3, 2024, 8:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-23-178.

Title of Rule and Other Identifying Information: Chapter 308-81 WAC, Transportation network companies.

Hearing Location(s): On February 6, 2024, at 11:00 a.m., via Zoom meeting <https://dol-wa.zoom.us/j/82799891989?pwd=IqDJECbtQN2cCSrY6oywbZ6hUGgAVg.1>, Meeting ID 827 9989 1989, Pass-

code 009454; or One-tap mobile +12532158782,,82799891989#,,,,*009454# US (Tacoma), +12532050468,,82799891989#,,,,*009454# US, Meeting ID 827 9989 1989, Passcode 009454. Find your local number <https://dol-wa.zoom.us/j/82799891989?pwd=IqDJECbtQN2cCSrY6oywbZ6hUGgAVg.1>. If you are having difficulty joining the Zoom meeting at the time of the public hearing, please call 360-902-0131. An in-person option is available at the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: February 7, 2024.

Submit Written Comments to: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by February 6, 2024.

Assistance for Persons with Disabilities: Contact Kelsey Stone, phone 360-902-0131, email rulescoordinator@dol.wa.gov, by January 27, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 308-81 WAC is a new chapter of rule that will establish transportation network company record inspections under HB 2076 passed during the 2022 legislative session. The rules will support auditing of company records per chapter 46.72B RCW.

Reasons Supporting Proposal: The department of licensing (DOL) is creating a new rule chapter to support implementation of HB 2076 regarding transportation network companies per the requirements of chapter 46.72B RCW, by specifying the process for auditing company records to create uniform regulation for transportation network companies.

Statutory Authority for Adoption: RCW 46.72B.160 Rules.

Statute Being Implemented: WAC 308-81-010.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Evelyn Manley-Rodriguez, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-688-8253.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required because DOL is not imposing additional costs. This rule making offers transportation network companies different methods for providing records to DOL for inspection.

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

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. A cost-benefit analysis is not required because DOL is not imposing additional costs. This rule making offers trans-

portation network companies different methods for providing records to DOL for inspection.

January 3, 2024
Ellis Starrett
Rules and Policy Manager

OTS-5128.1

**Chapter 308-81 WAC
TRANSPORTATION NETWORK COMPANIES**

NEW SECTION

WAC 308-81-010 Record inspection. Record inspection may be conducted through different modalities including in-person or remote record inspection, based on available technology options. In-person record inspections will only take place during business hours.

WSR 24-02-094
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed January 3, 2024, 10:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-160.

Title of Rule and Other Identifying Information: WAC 314-02-1071

What is "trade area"?

Hearing Location(s): On February 14, 2024, at 10:00 a.m. All public board activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The boardroom at the headquarters building in Olympia (1025 Union Avenue, Olympia, WA 98504) will be open for in-person attendance. The public may also log in using a computer or device, or call in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the boardroom will be staffed during a meeting, board members and agency participants may continue to appear virtually. For more information about board meetings, please visit <https://lcb.wa.gov/Boardmeetings/Boardmeetings>.

Date of Intended Adoption: No earlier than February 28, 2024.

Submit Written Comments to: Daniel Jacobs, Rules and Policy Coordinator, P.O. Box 43080, Olympia, WA 98504-3080, email rules@lcb.wa.gov, fax 360-704-5027, by February 7, 2024.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email anita.bingham@lcb.wa.gov, by February 7, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed amended language is to clarify the language in WAC 314-02-1071 regarding exceptions to trade area requirements for spirits retailers in locations that are primarily accessed by boat, and to exempt businesses on tribal land and owned by tribal enterprises from the 20 mile travel distance requirement in WAC 314-02-1071(1). The proposed changes, as described below, define the terms "Tribe" and "tribal enterprise," as well as move around some of the language of existing WAC 314-02-1071 to enable better flow and readability of the rule language overall. It is anticipated to allow a small number of spirits retailers to open on tribal land that have historically not been able to open due to regulatory requirements.

Reasons Supporting Proposal: WAC 314-02-1071 has not been revised since it was originally promulgated in 2013. The board undertook the rule project to explore whether modernizing language was appropriate in the context of statewide demographic shifts and current socioeconomic factors. Extensive outreach to stakeholders and tribal partners has been conducted, first in July 2023, and again in November 2023. After circulating draft language in July 2023, the board received feedback from existing licensees and from several of the state's tribes and tribal partners on suggestions to the rule language. Revised draft language was developed between July and November 2023, and feedback was gathered during two tribal engagement sessions and a stakeholder engagement session in November. The proposed draft rule language was generally supported by the participants of the various

rule workshops, and that is, by and large, the language that is being filed with this proposal. Some proposed edits received from industry groups have not been incorporated into the proposed rule language as they were viewed to be beyond the intentionally narrow scope of this rule making.

| Subsection | Current Rule Language | Proposed New Language | Rule Necessity |
|------------|--|--|---|
| Title | What is "trade area"? | Trade area. | Improving clarity without changing effect. |
| (2) | The board will use the following criteria when determining to accept a spirits retail license application where the proposed premises location is less than ten thousand square feet of fully enclosed retail space: (a) There is no spirits retail license holder or auction title holder within twenty travel miles at the time of license application; and (b) The board will determine travel distance by a publicly available mapping tool which may be accessed on the board's website. The web address of this site at the time of rule adoption is http://wslcb.maps.arcgis.com/home/ . | For a spirits retail license application where the proposed premises is less than 10,000 square feet of fully enclosed retail space, the board will determine if there is an existing spirits retailer within 20 travel miles at the time of license application. | Improving clarity without changing effect. Removing reference to outdated mapping technology. This is no longer necessary due to widespread availability of public mapping tools such as Google Maps, etc. |
| (3) | Former contract liquor stores and title holders by those who purchased a state store at auction are exempt from the ten thousand square foot minimum required by law. Should either choose to locate within an established trade area and they are in compliance with board relocation criteria, they may be issued a license. | Former contract or state liquor stores owners are exempt from the 10,000 square foot minimum required by law. If either entity chooses to locate within a trade area as defined in this section, they may be issued a license [license] as long as they are in compliance with relocation criteria established by the board. | Improving clarity without changing effect. |
| (4) | The board may make an exception to the twenty mile travel distance for the following: A spirits retail license application is for a location where the significant mode of travel is other than by automobile. | (5) The board may make an exception to the 20-mile travel distance requirement for a spirits retail license application where access to the proposed location is by means of travel other than automobile. | Improving clarity without changing effect. This has been renumbered as subsection (5) with the new language being new subsection (4) to ease the flow and readability of the rule. |
| N/A | N/A | (4) Stores owned and operated by a tribe or its tribal enterprise, located in Indian country as defined by 18 U.S.C. Sec. 1151, including reservation and all lands held in trust by the United States for the Tribe or its members, are exempt from the 20-mile travel distance requirement. (a) For purposes of this subsection, "Tribe" means a federally recognized tribe as defined by 25 U.S.C. Sec. 4103 (13)(B). (b) For purposes of this subsection, "tribal enterprise" means a wholly owned business enterprise of the tribe. | Returning oversight of entities on tribal land to tribes. |
| All | (Changed written numbers to numeric form.) | | Improving clarity without changing effect. |

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.24.630.

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

Name of Proponent: Washington state liquor and cannabis board (LCB), governmental.

Name of Agency Personnel Responsible for Drafting: Daniel Jacobs, Rules and Policy Coordinator, 1025 Union Avenue, Olympia, WA 98504, 360-480-1238; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98504, 360-664-1753; and Enforcement: Chandra Wax, Director of Enforcement and Education, 1025 Union Avenue, Olympia, WA 98504, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed amended rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). LCB is not a listed agency under RCW 34.05.328 (5) (a) (i), so the cost-benefit analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328 (5) (a) (ii).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Agencies are required to consider costs imposed on business and costs associated with compliance with proposed rules. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance. Here, LCB considered potential administrative costs that a licensee may incur complying with the proposed rules.

LCB applied the North American Industry Classification System (NAICS) codes 445310 for Beer, Wine, and Liquor Stores. This is defined by NAICS as follows: Establishments primarily engaged in retailing packaged alcoholic beverages, such as ale, beer, wine and liquor. The industry description for this code is presented in the table below, and can be accessed at <https://www.census.gov/naics/>.

LCB applied a default estimated compliance cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This reflects a generously estimated two hours of administrative time at \$50 per hour, for a total of \$100. The agency assumes this activity would involve reviewing the revised rules and considering the implications when applying for a spirits retail license. Existing spirits retail licensees have no reason or need to review the revised rules, but if they decide to, they too will expend no more than \$100.

| <u>2022 Industry NAICS Code</u> | <u>Estimated Cost of Compliance</u> | <u>Industry Description</u> | <u>NAICS Code Title</u> | <u>Minor Cost Estimate</u> | <u>1% of Avg Annual Payroll (Threshold)</u> | <u>0.3% of Avg Annual Gross Business Income (Threshold)</u> |
|---------------------------------|-------------------------------------|-------------------------------|-------------------------------|----------------------------|---|---|
| 445310 | \$100 | Beer, Wine, and Liquor Stores | Beer, Wine, and Liquor Stores | \$2,645.36 | \$1,970.63 2021 Dataset pulled from ESD | \$2,645.36 2021 Dataset pulled from DOR |

As the table demonstrates, the estimated cost of compliance does not exceed the threshold for spirits retailers, classified by NAICS as beer, wine, and liquor stores. Therefore, implementation of this amended rule is not anticipated to result in more-than-minor costs on businesses as defined in RCW 19.85.020(2).

ESD - Washington state employment security department.

DOR - Washington state department of revenue.

January 3, 2024
David Postman
Chair

OTS-5059.3

AMENDATORY SECTION (Amending WSR 13-20-148, filed 10/2/13, effective 11/2/13)

WAC 314-02-1071 (~~((What is "trade area"?)~~) **Trade area.** (1)

"Trade area" as used in RCW 66.24.630 means an area where there is no spirits retail license within a (~~(twenty)~~) 20-mile travel distance at the time of license application.

(2) (~~(The board will use the following criteria when determining to accept)~~) For a spirits retail license application where the proposed premises (~~(location)~~) is less than (~~(ten thousand)~~) 10,000 square feet of fully enclosed retail space(~~(+~~

~~(a) There is no spirits retail license holder or auction title holder)~~, the board will determine if there is an existing spirits retailer within (~~(twenty)~~) 20 travel miles at the time of license application(~~(+ and~~

~~(b) The board will determine travel distance by a publicly available mapping tool which may be accessed on the board's website. The web address of this site at the time of rule adoption is <http://wsleb.maps.aregis.com/home/>)~~.

(3) ~~Former contract or state liquor store(~~(s and title holders by those who purchased a state store at auction)~~)~~ owners are exempt from the (~~(ten thousand)~~) 10,000 square foot minimum required by law. (~~(Should)~~) If either entity chooses to locate within (~~(an established)~~) a trade area (~~(and)~~) as defined in this section, they may be issued a license as long as they are in compliance with (~~(board)~~) relocation criteria(~~(, they may be issued a license)~~) as established by the board.

(4) Spirits retailers owned and operated by a tribe or its tribal enterprise, located in Indian country as defined by 18 U.S.C. Sec. 1151, including reservation and all lands held in trust by the United States for the tribe or its members, are exempt from the 20-mile travel distance requirement.

(a) For purposes of this subsection, "tribe" means a federally recognized tribe as defined by 25 U.S.C. Sec. 4103 (13) (B).

(b) For purposes of this subsection, "tribal enterprise" means a wholly owned business enterprise of the tribe.

(5) The board may make an exception to the (~~(twenty)~~) 20-mile travel distance requirement for (~~(the following+)~~) a spirits retail license application (~~(is for a location)~~) where (~~(the significant mode)~~) access to the proposed location is by means of travel (~~(is)~~) other than (~~(by)~~) automobile.

WSR 24-02-096

PROPOSED RULES

SECRETARY OF STATE

[Filed January 3, 2024, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-012.

Title of Rule and Other Identifying Information: General elections rule updating the initial filing process for initiatives.

Hearing Location(s): On February 6, 2024, at 10:30 a.m., at the Washington Secretary of State, Washington State Library, 6880 Capitol Boulevard S.E., Tumwater, WA 98501. When attending the hearing in person, walk into the front lobby of the Washington State Library. You will be escorted to the conference room at 10:29 a.m. to be present when the hearing begins at 10:30 a.m. If you arrive after that time, there will be a staff member available in the lobby to escort you to the conference room.

Date of Intended Adoption: February 7, 2024.

Submit Written Comments to: Dave Piersma, P.O. Box 40229, Olympia, WA 98504, email dave.piersma@sos.wa.gov, fax 360-664-4619, by February 5, 2024.

Assistance for Persons with Disabilities: Contact Dave Piersma, phone 360-902-4172, fax 360-664-4619, email dave.piersma@sos.wa.gov, by February 5, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposals is to institute random assignment of initiative numbers and update the filing fee.

Reasons Supporting Proposal: The filing fee has been unchanged since 1913. The filing fee will be updated using the rate of inflation. Changing the numbering system will clarify the difference between the two types of initiatives and employ a randomly assigned number.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 29A.72.010, 29A.72.020, 29A.72.040.

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

Name of Proponent: Office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stuart Holmes, Olympia, 360-902-4151.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is fully exempt.

January 3, 2024

Amanda Doyle
Chief of Staff

OTS-4871.5

AMENDATORY SECTION (Amending WSR 17-12-090, filed 6/6/17, effective 7/7/17)

WAC 434-379-005 Filing of an initiative or referendum—Fee—Required documents. (1) A person desiring to file with the secretary of state a proposed initiative to the people, initiative to the legislature, or referendum measure may do so by filing the following documents:

~~((1))~~ (a) A legible copy of the measure proposed, or the act or part of such act on which a referendum is desired;

~~((2) An))~~ (b) A signed affidavit declaring under penalty of perjury:

~~((a))~~ (i) That the person submitting the proposed measure is over ~~((eighteen))~~ 18 years of age and competent to testify;

~~((b))~~ (ii) That the person submitting the proposed measure is a registered voter in the state of Washington;

~~((c))~~ (iii) Whether the proposed measure is an initiative to the people, initiative to the legislature, or referendum; and

~~((d))~~ (iv) The subject of the initiative, or the bill number of the legislation being referred; and

~~((3))~~ (c) A nonrefundable filing fee of ~~((five dollars))~~ \$156 for each measure submitted.

(2) The secretary may update the amount of the filing fee in subsection (1) (c) of this section at the beginning of each calendar year prior to the first day for initial filing of proposed initiatives to the people for that year.

(a) The filing fee amount may be updated by applying the federal bureau of labor statistics consumer price index inflation calculator rate, or its successor, to the original filing fee of five dollars set in 1913 for the state initiative and referendum process.

(b) Once the year's filing fee is determined, it shall be rounded down to the nearest whole dollar amount and posted online on the office of the secretary of state website, prior to the first day for initiative filing of proposed initiatives for that year.

(c) This filing fee amount shall be used for all initiative and referendum filings until the next fee adjustment is made.

(3) The proposed measure is not considered filed with the secretary of state until all documents and fees are filed, including any original versions required.

(4) Once the proposed text to an initiative or referendum is filed, the secretary of state shall submit the text with required information to the code reviser within one business day.

OTS-4888.3

Option BNEW SECTION

WAC 434-379-0071 Maintenance of initiative and referendum series and assignment of serial numbers. (1) The secretary of state shall maintain a separate series of serial numbers for initiatives to the people, initiatives to the legislature, referendum bills, and referendum measures.

(a) The series for initiatives to the legislature shall be eight characters in length, commencing with the letters IL, followed by the last two digits of the calendar year in which the initiative to the legislature will be heard by the legislature and/or voted upon by the people, a hyphen after the last two digits of the calendar year, followed by a unique, randomly-selected three-digit number, as prescribed by subsection (2) of this section.

(b) The series for initiatives to the people shall be eight characters in length, commencing with the letters IP, followed by the last two digits of the calendar year in which the initiative to the legislature will be heard by the legislature and/or voted upon by the people, a hyphen after the last two digits of the calendar year, followed by a unique, randomly-selected three-digit number, as prescribed by subsection (2) of this section.

(c) The series for referendum measures shall commence with the letters RM, followed by a unique number which is the next on the list of referendum measure numbers sequentially.

(d) The series for referendum bills shall commence with the letters RB, followed by a unique number which is the next on the list of referendum bill numbers sequentially.

(2) For each annual series of serial numbers, there are 1,000 potential numbers to assign. The randomly-selected three-digit number shall be added to the five characters identifying the initiative type, year, and hyphen. As each available number is assigned, it shall be removed from the list. The secretary of state shall select the random three-digit serial number for each initiative to the legislature and initiative to the people using one of the following processes:

(a) A roll of three 10-sided dice numbered zero through nine shall determine the number for each digit of the number starting with the one's place, then the 10s place, and then the 100s place. Once selected, this number shall be used in creating the serial number for the proposed initiative following the two-character designation (IL or IP) and year, and the hyphen.

(i) If the digit zero is rolled for the one's, the 10s place, and the 100s place, the dice shall be rolled again to select a number between one and 999.

(ii) If the selected number has been previously assigned and is no longer available on the list, the roll of the dice must be repeated until a unique number is selected; or

(b) Another method approved by the secretary of state.

(3) Random number selection shall not occur until the final text has been submitted by the sponsor and prior to transmitting the proposed initiative to the attorney general per WAC 434-379-0073.

(a) The dice roll shall be conducted at the office of the secretary of state and recorded.

(b) The recording showing the dice roll shall be posted online to the secretary of state website.