

WSR 25-11-002

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed May 8, 2025, 8:02 a.m., effective June 8, 2025]

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

Purpose: WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions; this rule updated the federal regulations publication date from 2024 to the most recently adopted 2025 version previously adopted by reference. This amendment makes no changes to any requirements previously adopted, but is required for the department of health to receive delegation of the Radionuclide Air Emissions Program from the United States Environmental Protection Agency.

Citation of Rules Affected by this Order: Amending WAC 246-247-035.

Statutory Authority for Adoption: RCW 70A.388.040 and 70A.388.050(5).

Adopted under notice filed as WSR 25-07-071 on March 14, 2025.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: May 6, 2025.

Kristin Peterson, JD
Deputy Chief of Policy
for Jessica Todorovich, MS
Acting Secretary of Health

RDS-6192.1

AMENDATORY SECTION (Amending WSR 24-15-096, filed 7/21/24, effective 8/21/24)

WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions. (1) In addition to other requirements of this chapter, the following federal standards, as in effect on July 1, ((2024)) 2025, are adopted by reference except as provided in subsection (2) of this section.

(a) For federal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart H - National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.

(iii) 40 C.F.R. Part 61, Subpart I - National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.

(iv) 40 C.F.R. Part 61, Subpart Q - National Emission Standards for Radon Emissions From Department of Energy Facilities.

(b) For nonfederal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart B - National Emission Standards for Radon Emissions From Underground Uranium Mines.

(iii) 40 C.F.R. Part 61, Subpart K - National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants.

(iv) 40 C.F.R. Part 61, Subpart R - National Emissions Standards for Radon from Phosphogypsum Stacks.

(v) 40 C.F.R. Part 61, Subpart T - National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings.

(vi) 40 C.F.R. Part 61, Subpart W - National Emission Standards for Radon Emissions From Operating Mill Tailings.

(2) References to "Administrator" or "EPA" in 40 C.F.R. Part 61 include the department of health except in any section of 40 C.F.R. Part 61 for which a federal rule or delegation indicates that the authority will not be delegated to the state.

WSR 25-11-005

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed May 8, 2025, 10:16 a.m., effective July 1, 2025]

Effective Date of Rule: July 1, 2025.

Purpose: This is a new chapter that provides limited coverage for certain services for incarcerated individuals up to 90 days before their expected release date. This rule making aligns with Washington's medicaid transformation project, in accordance with Section 1115(a) of the Social Security Act and the Consolidated Appropriations Act, 2023.

Citation of Rules Affected by this Order: New WAC 182-563-050, 182-563-100, 182-563-200, 182-563-300, 182-563-400, 182-563-500, 182-563-600, 182-563-700, and 182-563-800.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, and 71.24.715.

Adopted under notice filed as WSR 25-08-063 on April 1, 2025.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
WAC 182-563-050(1)		
Proposed	(1) The medicaid agency covers reentry services under the following authorities: (a) Under the authority of the reentry demonstration initiative, which is part of the agency's section 1115 medicaid demonstration waiver known as the medicaid transformation project 2.0 (MTP 2.0). Subject to available funds, the agency covers a limited set of services for incarcerated individuals who are eligible for medicaid or children's health insurance program (CHIP) benefits for up to 90 days before their release from carceral facilities within Washington state; and	Changed "subject to available funds" to "subject to the availability of amounts appropriated for this specific purpose" to comply with language recommendations in the Washington state office of the code reviser's Bill Drafting Guide published in 2025.
Adopted	(1) The medicaid agency covers reentry services under the following authorities: (a) Under the authority of the reentry demonstration initiative, which is part of the agency's section 1115 medicaid demonstration waiver known as the medicaid transformation project 2.0 (MTP 2.0). Subject to the availability of amounts appropriated for this specific purpose, the agency covers a limited set of services for incarcerated individuals who are eligible for medicaid or children's health insurance program (CHIP) benefits for up to 90 days before their release from carceral facilities within Washington state; and	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 9, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 0, Repealed 0.

Date Adopted: May 8, 2025.

Wendy Barcus
Rules Coordinator

RDS-6188.4

Chapter 182-563 WAC
REENTRY SERVICES

NEW SECTION

WAC 182-563-050 General. This chapter contains rules regarding reentry services.

(1) The medicaid agency covers reentry services under the following authorities:

(a) Under the authority of the reentry demonstration initiative, which is part of the agency's section 1115 medicaid demonstration waiver known as the medicaid transformation project 2.0 (MTP 2.0). Subject to the availability of amounts appropriated for this specific purpose, the agency covers a limited set of services for incarcerated individuals who are eligible for medicaid or children's health insurance program (CHIP) benefits for up to 90 days before their release from carceral facilities within Washington state; and

(b) Under sections 5121 and 5122 of the Consolidated Appropriations Act (CAA), 2023, a federal bill that created exceptions to the inmate exclusion policy and requires states to provide certain services while an eligible juvenile is incarcerated in a public institution.

(2) Reentry benefits are based on carceral facilities' eligibility to participate and successful completion of an agency-specific readiness assessment.

(3) Reentry benefits available under CAA vary based upon whether the eligible juvenile is preadjudication or postadjudication.

(a) Preadjudication benefits (section 5122 of CAA, 2023) include the following for eligible juveniles that are incarcerated in public institutions pending disposition:

(i) Medicaid and CHIP benefits; and

(ii) Reentry targeted case management (RTCM) if the individual is expected to be released in less than 90 days; and

(b) Postadjudication benefits (section 5121 of CAA, 2023), which include:

(i) Clinical assessment and evaluation for eligible juveniles (diagnostic services and medical, behavioral, and dental screenings) provided within 30 days prerelease or no later than one week postrelease; and

(ii) Thirty days of RTCM prerelease and for at least 30 days postrelease.

NEW SECTION

WAC 182-563-100 Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter.

"Adjudication" - A legal process that involves reviewing evidence and arguments to reach a decision. The decision is based on applying a standard set of guidelines to an individual's specific circumstances.

"Carceral facility" - A place of confinement or detention, such as a prison, jail, or correctional institution, where individuals are held because of legal convictions, awaiting trial, or serving sentences for criminal offences.

"Consolidated Appropriations Act (CAA), 2023" - Enacted as P.L. 117-328, section 5121 requires postadjudication services and section 5122 allows preadjudication services for eligible juveniles within a public institution.

"Eligible juvenile" - An incarcerated individual who is either:

(a) An apple health client covered under medicaid or the children's health insurance program (CHIP) who is 20 years of age or younger; or

(b) An individual between the ages of 18 and 26 who is eligible under the mandatory former foster care children group.

"Lived experience" - Having first-hand knowledge and insight gained from navigating challenges similar to those faced by the people in the community. This can include shared experiences like cultural backgrounds, socioeconomic status, health conditions, or barriers accessing the health and social service systems.

"Medicaid transformation project 2.0 (MTP 2.0)" - Washington's section 1115 medicaid demonstration waiver between the medicaid agency and the centers for medicare and medicaid services (CMS). Under MTP 2.0, the agency's goals are to:

(a) Expand coverage and access to care;

(b) Advance whole-person primary, preventive, and home-based and community-based care; and

(c) Accelerate care delivery and payment innovation focused on health-related social needs.

"Preadjudication" - The period before a court has entered the disposition of a juvenile's case.

"Postadjudication" - The status of a case after a juvenile has been found guilty of an offense.

"Reentry demonstration initiative" - Part of MTP 2.0, Washington state's section 1115 medicaid demonstration waiver, this initiative allows payment for targeted reentry services in situations where medicaid law would typically prohibit such payment.

"Reentry services" - A targeted set of apple health services provided before an individual's estimated release from a carceral facility.

"Reentry targeted case management (RTCM)" - A person-centered, recovery-focused approach to address the health of justice-involved apple health clients. RTCM is a mandatory service for carceral facilities.

"Warm handoff" - A process in which one professional or service provider personally introduces a client or patient to another professional or service provider, ensuring a smooth transition of care or services. A warm handoff involves an active exchange of information, often face-to-face or through a direct, personal communication (e.g., phone call or video conference), to ensure continuity, clarity, and a more seamless experience for the client or patient. This approach is intended to help build trust, minimize gaps in care, and ensure that the client is supported throughout the process.

NEW SECTION

WAC 182-563-200 Provider eligibility requirements. Under this chapter, to provide reentry services, providers must:

- (1) Be enrolled as a provider with the medicaid agency; and
- (2) Meet the requirements for an enrolled provider under chapter 182-502 WAC.

NEW SECTION

WAC 182-563-300 Carceral facility requirements. (1) The following carceral facilities may provide reentry services when they meet the requirements in this chapter:

- (a) State prisons operated by the department of corrections (DOC);
 - (b) City, county, and regionally operated adult jails;
 - (c) Tribal jails; and
 - (d) The following youth correctional facilities:
 - (i) Juvenile rehabilitation centers operated by the department of children, youth, and families (DCYF); and
 - (ii) City, county, and regionally operated youth correctional facilities; juvenile detention centers; and other penal/correctional settings.
- (2) Carceral facilities who are either serving eligible juveniles or are participating in MTP 2.0 are required to:
- (a) Ensure access to mandatory reentry services when medically necessary;
 - (b) Conduct apple health eligibility screening within 24 hours of intake, or at the earliest practicable opportunity thereafter, and within 90 days of prerelease and assist an individual in applying, if appropriate;
 - (c) Conduct a reentry health screening upon intake and within 90 days prerelease (30 days for eligible juveniles); and
 - (d) Follow the processes, procedures, and operational requirements found in the agency's reentry policy and operations guide, which is located on the agency's website.
- (3) Reentry health screenings may be completed by nonclinical staff and must address the following components:
- (a) Medical, mental health, and substance use disorder (SUD); and
 - (b) If a health care need is identified, the client's interest in engaging in reentry targeted case management (RTCM).
- (4) Carceral facilities are required to arrange for access to RTCM services by one of the following delivery systems:
- (a) By the carceral facility, if the facility is a qualified medicaid provider according to this chapter; or
 - (b) By a qualified medicaid provider in the community; or
 - (c) If neither of the options in (a) and (b) in this subsection are selected by the carceral facility to the agency with 90 days' notice:
 - (i) By the agency's reentry third-party administrator for fee-for-services clients; or
 - (ii) By the managed care organization (MCO) for clients enrolled in an agency-contracted MCO.

NEW SECTION

WAC 182-563-400 Covered services. (1) The following reentry benefits available under CAA vary based upon whether the eligible juvenile is preadjudication or postadjudication:

(a) Preadjudication benefits (section 5122 of CAA, 2023) include the following for eligible juveniles that are incarcerated in public institutions pending disposition:

(i) Medicaid and CHIP benefits; and

(ii) Reentry targeted case management (RTCM) if the individual is expected to be released in less than 90 days.

(b) Postadjudication benefits (section 5121 of CAA, 2023) include:

(i) Clinical assessment and evaluation for eligible juveniles (diagnostic services and medical, behavioral, and dental screenings) provided within 30 days prerelease or no later than one week postrelease; and

(ii) Thirty days of RTCM prerelease and for at least 30 days postrelease.

(2) Reentry services outlined in this section are identified as either mandatory or optional. Clients may choose whether to receive reentry services. Reentry services include:

(a) **Mandatory services.** Carceral facilities must provide the following:

(i) RTCM;

(ii) Reentry substance use disorder (SUD) treatment, including clinical assessment and evaluation to screen, assess, evaluate, and diagnose SUD and medications for SUD; and

(iii) Reentry pharmacy services at release, which include:

(A) Vaccines and vaccine administration;

(B) Provider-administered drugs and administration; and

(C) A 30-day supply of prescriptions and over-the-counter drugs covered within the apple health preferred drug list and pharmacy-supplied medical supplies, or a shorter supply:

(I) When required by applicable law, regulation, or agency policy; or

(II) As prescribed by a treating provider;

(iv) Preadjudication services for eligible juveniles, which include services available under the client's program benefit package, as defined in WAC 182-501-0060, when appropriate to provide in a carceral setting; and

(v) Postadjudication services for eligible juveniles, which include clinical assessment and evaluation to screen, assess, evaluate, and diagnose health conditions in addition to the other mandatory services listed in this section; and

(b) **Optional services.** Carceral facilities may choose to provide the following reentry services:

(i) Ninety days prerelease pharmacy services, which include vaccines and vaccine administration, provider-administered drugs and administration, and prescriptions and over-the-counter drugs covered within the apple health preferred drug list and pharmacy-supplied medical supplies;

(ii) Laboratory services;

(iii) Radiology services;

(iv) Services by providers with lived experience;

(v) Clinical assessment and evaluation to screen, assess, evaluate, and diagnose health conditions for clients age 21 and older who are not CAA eligible; and

(vi) Medical equipment and supplies not covered by the mandatory reentry services.

(3) For the purposes of this chapter, services not listed in this section are not covered and are not eligible for approval under exception to rule under WAC 182-501-0160(2).

NEW SECTION

WAC 182-563-500 Documentation requirements. Providers must fulfill the documentation requirements found in:

- (1) WAC 182-502-0020; and
- (2) Applicable medicaid agency billing guides.

NEW SECTION

WAC 182-563-600 Payment and billing. (1) The medicaid agency pays for the reentry services described in this chapter when they are:

- (a) Provided and billed according to the agency's rules, reentry policy and operations guide, and applicable agency billing guides; and
- (b) Documented in the client's record or chart per WAC 182-563-500.

(2) The agency pays providers for covered services provided to eligible clients using the agency's published fee schedules.

(3) Payment for covered reentry services described in this chapter are based on existing applicable payment methodologies described in Title 182 WAC.

(4) Providers must meet the billing requirements found in:

- (a) Chapter 182-502 WAC; and
- (b) Applicable medicaid agency billing guides.

NEW SECTION

WAC 182-563-700 Grievance, hearings, and appeal. (1) The medicaid agency gives fee-for-service (FFS) clients written notice of an agency action under chapter 182-518 WAC.

(2) FFS clients have the right to appeal the agency's adverse action according to chapter 182-526 WAC.

(3) Refer to WAC 182-538-110 for information about the grievance and appeal system and the right to an agency administrative hearing for clients enrolled in one of the agency's managed care organizations.

(4) Any appeals, independent rereview, or agency administrative hearing process related to a request to authorize or pay for a service will terminate when the available funding for the reentry demonstration initiative is exhausted since services cannot be authorized or paid for without funding, regardless of medical necessity.

NEW SECTION**WAC 182-563-800 Reentry targeted case management (RTCM).** (1)

The medicaid agency pays for reentry targeted case management (RTCM):

(a) As part of a limited set of services under:

(i) CAA reentry preadjudication (section 5122 of CAA, 2023) for eligible juveniles that are incarcerated in public institutions pending disposition; and

(ii) CAA reentry postadjudication (section 5121 of CAA, 2023) 30 days prerelease and for at least 30 days postrelease; and

(b) As part of the mandatory services required under the initiative that carceral facilities must provide.

(2) RTCM must include:

(a) A reentry health assessment;

(b) A reentry care plan;

(c) Reentry coordination; and

(d) A warm handoff when the care manager changes.

**WSR 25-11-007
PERMANENT RULES
HEALTH CARE AUTHORITY**

[Filed May 8, 2025, 11:06 a.m., effective July 1, 2025]

Effective Date of Rule: July 1, 2025.

Purpose: Under Washington's medicaid transformation project 2.0 in accordance with Section 1115(a) of the Social Security Act, the health care authority is amending these sections to allow eligibility for reentry services before the beneficiary's expected date of release.

Citation of Rules Affected by this Order: Amending WAC 182-503-0010, 182-503-0070, and 182-503-0505.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, and 71.24.715.

Adopted under notice filed as WSR 25-08-065 on April 1, 2025.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
WAC 182-503-0070(4)		
Proposed	Your Washington apple health coverage may not begin on the first day of the month if: (a) Subsection (3) of this section applies to you. In that case, your coverage would start on: (i) The first day of your hospital stay; or (ii) When you are determined to be eligible for prerelease reentry services; (b) You must meet a medically needy spenddown liability (see WAC 182-519-0110). In that case, your coverage would start on the day your spenddown is met; or (c) You are eligible under the Washington apple health alien emergency medical program (see WAC 182-507-0115). In that case, your coverage would start on the day your emergent hospital stay begins.	The word "Washington" in front of "apple health" in the intro of subsection (4) and in subsection (4)(c) is unnecessary.
Adopted	Your apple health coverage may not begin on the first day of the month if: (a) Subsection (3) of this section applies to you. In that case, your coverage would start on: (i) The first day of your hospital stay; or (ii) When you are determined to be eligible for prerelease reentry services; (b) You must meet a medically needy spenddown liability (see WAC 182-519-0110). In that case, your coverage would start on the day your spenddown is met; or (c) You are eligible under the apple health alien emergency medical program (see WAC 182-507-0115). In that case, your coverage would start on the day your emergent hospital stay begins.	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

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

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

Date Adopted: May 8, 2025.

Wendy Barcus
Rules Coordinator

RDS-6183.2

AMENDATORY SECTION (Amending WSR 20-01-117, filed 12/16/19, effective 1/16/20)

WAC 182-503-0010 Washington apple health—Who may apply. (1)

You may apply for Washington apple health for yourself.

(2) You may apply for apple health for another person if you are:

(a) A legal guardian;

(b) An authorized representative (as described in WAC 182-503-0130);

(c) A parent or caretaker relative of a child age 18 or younger;

(d) A tax filer applying for a tax dependent;

(e) A spouse; or

(f) A person applying for someone who is unable to apply on their own due to a ~~((medical))~~ health condition and who ~~((is in need of))~~ needs long-term care services.

(3) If you reside in an institution of mental diseases (as defined in WAC 182-500-0050(1)) or a public institution (as defined in WAC 182-500-0050(4)), including a Washington state department of corrections facility, city~~((, tribal,))~~ or county jail, tribal jail, juvenile confinement facility, or secure community transition ~~((facility))~~ or total confinement facility (as defined in RCW 71.09.020), you, your representative, or the facility may apply for you to get the apple health coverage for which you are determined eligible.

(4) You are automatically enrolled in apple health and do not need to ~~((submit an application))~~ apply if you are a:

(a) Supplemental security income (SSI) recipient;

(b) Person deemed to be an SSI recipient under 1619(b) of the SSA;

(c) Newborn as described in WAC 182-505-0210; or

(d) Child in foster care placement as described in WAC 182-505-0211.

(5) You are the primary applicant on an application if you complete and sign the application on behalf of your household.

(6) If you are an SSI recipient, then you, your authorized representative as defined in WAC 182-500-0010, or another person applying on your behalf as described in subsection (2) of this section, must turn in a signed application to apply for long-term care services as described in WAC 182-513-1315.

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

WAC 182-503-0070 Washington apple health ~~((WAH))~~—When coverage begins. (1) Your Washington apple health ~~((WAH))~~ coverage starts on the first day of the month you applied for and we decided you are eligible to receive coverage, unless one of the exceptions in subsection (4) of this section applies to you.

(2) Sometimes we can start your coverage up to three months before the month you applied (see WAC 182-504-0005).

(3) If you are confined or incarcerated as described in WAC 182-503-0010, your coverage cannot start before the day you are discharged, except when:

(a) You are hospitalized during your confinement ~~((+))~~ and ~~((+))~~ the hospital requires you to stay overnight; or

(b) You are determined to be eligible for prerelease reentry services.

(4) Your ~~((WAH))~~ apple health coverage may not begin on the first day of the month if:

(a) Subsection (3) of this section applies to you. In that case, your coverage would start on:

(i) The first day of your hospital stay; or

(ii) When you are determined to be eligible for prerelease reentry services;

(b) You must meet a medically needy spenddown liability (see WAC 182-519-0110). In that case, your coverage would start on the day your spenddown is met; or

(c) You are eligible under the ~~((WAH))~~ apple health alien emergency medical program (see WAC 182-507-0115). In that case, your coverage would start on the day your emergent hospital stay begins.

(5) For long-term care, the date your services start is described in WAC 388-106-0045.

AMENDATORY SECTION (Amending WSR 19-08-029, filed 3/27/19, effective 4/27/19)

WAC 182-503-0505 Washington apple health—General eligibility requirements. (1) When you apply for Washington apple health programs established under chapter 74.09 RCW, you must meet the eligibility criteria in chapters 182-500 through 182-527 WAC.

(2) When you apply for apple health, we first consider you for federally funded or federally matched programs. We consider you for state-funded programs after we have determined that you are ineligible for federally funded and federally matched programs.

(3) Unless otherwise specified in a program-specific WAC, the eligibility criteria for each program are as follows:

(a) Age (WAC 182-503-0050);

(b) Residence in Washington state (WAC 182-503-0520 and 182-503-0525);

(c) Citizenship or immigration status in the United States (WAC 182-503-0535);

(d) Possession of a valid Social Security account number (WAC 182-503-0515);

(e) Assignment of medical support rights to the state of Washington (WAC 182-503-0540);

(f) Application for medicare and enrollment into medicare's prescription drug program if:

(i) You are likely entitled to medicare; and

(ii) We have authority to pay medicare cost sharing as described in chapter 182-517 WAC.

(g) If your eligibility is not based on modified adjusted gross income (MAGI) methodology, your countable resources must be within specific program limits (chapters 182-512, 182-513, 182-515, 182-517, and 182-519 WAC); and

(h) Countable income within program limits:

(i) For MAGI-based programs, see WAC 182-505-0100;

(ii) For the refugee program, see WAC 182-507-0130;

(iii) For the medical care services program, see WAC 182-508-0005;

(iv) For the health care for workers with disabilities (HWD) program, see WAC 182-511-1000;

(v) For the SSI-related program, see WAC 182-512-0010;

(vi) For long-term care programs, see chapters 182-513 and 182-515 WAC;

(vii) For medicare savings programs, see WAC 182-517-0100; and

(viii) For the medically needy program, see WAC 182-519-0050.

(4) In addition to the general eligibility requirements in subsection (3) of this section, each program has specific eligibility requirements as described in applicable WAC.

(5) If you are in a public institution, including a correctional facility, you are not eligible for full scope apple health coverage, except in the following situations:

(a) If you are age 21 or younger or age 65 or older and are a patient in an institution for mental disease (see WAC 182-513-1317(5)); or

(b) You receive inpatient hospital services outside of the public institution or correctional facility.

(6) We limit coverage for people who become residents in a public institution, under subsection (5) of this section, until they are determined to be eligible for prerelease reentry services or released.

(7) If you are terminated from SSI or lose eligibility for categorically needy (CN) or alternative benefits plan (ABP) coverage, you receive coverage under the apple health program with the highest scope of care for which you may be eligible while we determine your eligibility for other health care programs. See WAC 182-504-0125.

WSR 25-11-013
PERMANENT RULES
NORTHWEST CLEAN
AIR AGENCY

[Filed May 8, 2025, 4:26 p.m., effective June 8, 2025]

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

Purpose:

- Update the adoption-by-reference date to allow implementation of the most recent version of the referenced state and federal rules; add 40 C.F.R. 60 Subparts Kc, La, VVb, XXa, IIIa, NNNa, RRRa, and OOOOb to the list. (Northwest Clean Air Agency (NWCAA) Section 104)
- Update the daily maximum penalty to \$26,000 from \$19,000 to remain constant over time given inflationary factors. (NWCAA Section 133)
- Correct typo in RCW citation within the definition of "Order." (NWCAA Section 200)
- Update to reflect correct section citations. (NWCAA Section 466)
- Correct an RCW and a NWCAA regulation citation. (NWCAA Section 502)
- Remove incorrect conversion regarding sulfur compounds in fuel. (NWCAA Section 520)
- Delete section because it duplicates other sections in rule. (NWCAA 580.11)
- Deleting section because it is vague and is no longer necessary due to applicability of federal programs. (NWCAA 580.23)
- Correct conversion to match the federal rule. (NWCAA 580.3)

Citation of Rules Affected by this Order: Repealing Subsection 580.11 of the Regulation of the NWCAA; and amending Sections 104, 133, 200, 466, 502, 520, and 580 of the Regulation of the NWCAA.

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

Adopted under notice filed as WSR 25-06-090 on March 5, 2025.

Date Adopted: May 8, 2025.

Mark Buford
Executive Director

AMENDATORY SECTION

SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of the following state rules that are in effect as of March 15, 2025 (~~October 18, 2023~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: chapter 173-400 WAC, (except - -025, -030, -035, -036, -040(1) & (7), -045, -075, -099, -100, -101, -102, -103, -104, -105(7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-476 WAC, chapter 173-480 WAC, chapter 173-481 WAC, chapter 173-485 WAC, chapter 173-491 WAC. The requirements of the NWCAA Regulation apply in addition to the statewide regulations adopted and enforced under this paragraph.

104.2 All provisions of the following federal rules that are in effect as of March 15, 2025 (~~October 18, 2023~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementa-

tion Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, Ga, H, I, J, Ja, K, Ka, Kb, Kc, L, La, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, AAb, CC, DD, EE, GG, HH, KK, KKa, LL, MM, MMA, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, VVb, WW, XX, XXa, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, IIIa, JJJ, KKK, LLL, NNN, NNNa, OOO, PPP, QQQ, RRR, RRRa, SSS, TTT, TTTa, UUU, VVV, WWW, XXX, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, OOOO, OOOOb, QQQQ, and Appendix A - I; 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF; 40 CFR Part 62 (Approval and Promulgation of State Plans for Designated Facilities and Pollutants) Subparts LLL and OOO; 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, LLLL, MMMM, NNNN, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, WWWW, YYYY, ZZZZ, BBBB, CCCC, EEEE, FFFF, GGGG, HHHH, JJJJ, MMMM, NNNN, OOOO, QQQQ, SSSS, TTTT, VVVV, WWWW, XXXXX, ZZZZZ, AAAAAA, DDDDDD, EEEEE, and HHHHHH; and 40 CFR Parts 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013, September 11, 2014, August 13, 2015, August 11, 2016, September 13, 2018, April 11, 2019, May 14, 2020, June 10, 2021, February 10, 2022, November 10, 2022, December 14, 2023, May 8, 2025

AMENDATORY SECTION

SECTION 133 - CIVIL PENALTY

133.1 In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter 70A.15 RCW, or any of the rules in force pursuant thereto, including the Regulation of the NWCAAmay incur a civil penalty in an amount not to exceed \$26,000 (~~(\$19,000)~~) per day for each violation. Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order shall be liable for a civil penalty of not more than \$26,000 (~~(\$19,000)~~) for each day of continued noncompliance.

133.2 The penalty is due and payable 30 days after a notice is served unless an appeal is filed with the Pollution Control Hearings Board (PCHB).

(A) Within 30 days after the Notice is served, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. Upon receipt of the application the Control Officer shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstance such as the presence of information or factors not considered in setting the original penalty.

(B) If such penalty is not paid to the NWCAA within 30 days after such payment is due, the Board or Control Officer may direct the attorney for the NWCAA to bring an action to recover the penalty in Superior Court.

(C) Any judgment will bear interest as provided by statute until satisfied.

133.3 Penalties incurred but not paid shall accrue interest, beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020. If penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the State Office of the Economic and Revenue Forecast Council.

133.4 In addition to other penalties, persons knowingly under-reporting emissions or other information used to set fees, persons required to pay emission or permit fees who are more than 90 days late with such payments, or persons failing to file a relocation notice to relocate into NWCAA jurisdiction with required registration fee under NWCAA 514.3 may be assessed a penalty equal to 3 times the amount of the original fee owed.

133.5 The suspended portion of any civil penalty, issued under Section 133 of this Regulation, shall be due and payable in the event of future penalties against the same person within 5 years from the date of said suspension. After 5 years the suspended portion of the Penalty shall be considered void and of no force or effect.

PASSED: January 8, 1969 AMENDED: November 14, 1984, April 14, 1993, September 8, 1993, October 13, 1994, February 8, 1996, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, August 13, 2015, February 10, 2022, August 8, 2024, May 8, 2025

AMENDATORY SECTION

SECTION 200 - DEFINITIONS

The terms used in the Regulation of the NWCAA are defined in this section as follows:

ORDER - Any order issued by the NWCAA pursuant to chapter 70A.15 RCW, including, but not limited to RCW (~~(70.15A.3010)~~) 70A.15.3010, 70A.15.2210, 70A.15.2220, 70A.15.2230, and 70A.15.2040(3), and includes, where used in the generic sense, the terms order, compliance order, order of approval, and regulatory order.

PASSED: January 8, 1969 AMENDED: October 31, 1969, September 3, 1971, June 14, 1972, July 11, 1973, February 14, 1973, January 9, 1974, October 13, 1982, November 14, 1984, October 13, 1994, February 8, 1996, May 9, 1996, March 13, 1997, November 12, 1998, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, November 17, 2011, March 14, 2013, August 13, 2015, August 11, 2016, September 13, 2018, April 11, 2019, February 10, 2022, December 14, 2023, August 8, 2024, May 8, 2025

AMENDATORY SECTION

SECTION 466 - PORTLAND CEMENT PLANTS

466.1 It shall be unlawful for the owner or operator of any portland cement plant to cause or allow to be discharged into the atmosphere from:

466.11 Any sources any emission which:

466.111 Contains particulate matter in excess of 0.60 pounds/ton (0.3kg/metric ton) of dry feed to the kiln.

466.112 Contains particulate matter in excess of 0.1 grains per dry cubic foot of exhaust gas.

466.113 Exhibits greater than 20% opacity for a period(s), aggregating more than 3 minutes in any hour.

466.12 Any source any emission which does not meet the provisions of Section 530 and 550. These sections will be deemed to have been violated if the suspended particulate ambient sample concentration exceeds 100 micrograms per cubic meter of air at any sampling station located off the plant site and the Control Officer, after investigation of pertinent data, including meteorological data, determines if there is reasonable probability that the particulate emissions from the source resulted in the 100 microgram/cubic meter concentration being exceeded.

466.2 The owner or operator of any portland cement plant shall:

466.21 Record and report the daily production rates, kiln feed rates, fuel type and rates and such other information as the Control Officer may reasonably request.

466.22 Install, calibrate, maintain and operate a transmissometer or other opacity detector as approved by the Control officer to continuously monitor and record the opacity of the gases to be discharged into the atmosphere from any kiln.

466.221 Report all hourly periods in which there are one or more 3 minute periods during which the opacity of the gas discharge to the atmosphere from any kiln exceeds 20%.

466.3 Methods and procedures provided for in NWCAA Section((§) 367 and Appendix A ((180, 360, 365, and 366)), except as provided for in this subsection, or determined equivalent by the Control Officer, shall be used to determine compliance.

466.31 Gas Analysis.

466.331 The minimum sampling time and minimum sampling volume for each sampling run, except when process variables or other facts justify otherwise to the satisfaction of the Control Officer, shall be 60 minutes and 30.0 dscf (0.85 m³) for the kiln.

466.332 Total kiln feed rate (except fuels) expressed in tons per hour on a dry basis, shall be determined during each testing period by suitable approved methods and shall be confirmed by a material balance over the production system.

PASSED: May 11, 1977 AMENDED: August 9, 1978, ((April 14, 1993)) May 8, 2025

AMENDATORY SECTION

SECTION 502 - OUTDOOR BURNING

502.1 PURPOSE. This section establishes a program to implement the limited burning policy authorized by sections of the Washington Clean Air Act (chapter 70A.15 RCW as referenced in NWCAA 104.1) pertaining to outdoor burning.

502.2 APPLICABILITY.

(A) This section specifically applies to:

(1) Residential burning.

- (2) Land clearing burning.
- (3) Recreational fires.
- (4) Indian ceremonial fires.
- (5) Weed abatement fires.
- (6) Firefighting instruction fires.
- (7) Rare and endangered plant regeneration fires.
- (8) Storm or flood debris burning.
- (9) Tumbleweed burning.
- (10) Other outdoor burning.

(B) This section does not apply to:

(1) Agricultural burning (which is governed by chapter 173-430 WAC as referenced in NWCAA 104.1);

(2) Any outdoor burning on lands within the exterior boundaries of Indian reservations (unless provided for by intergovernmental agreements); and

(3) Silvicultural burning (which is governed by chapter 332-24 WAC, the Washington state smoke management plan, and various laws including chapter 70A.15 RCW as referenced in NWCAA 104.1).

502.3 DEFINITIONS. Unless a different meaning is clearly required by context, words and phrases used in this section shall have the following meanings:

AGRICULTURAL BURNING - Fires regulated under chapter 173-430 WAC as referenced in NWCAA 104.1, including, but not limited to, any incidental agricultural burning or agricultural burning for pest or disease control.

AIR POLLUTION EPISODE - A period when a forecast, alert, warning, or emergency air pollution stage is declared, as stated in chapter 173-435 WAC as referenced in NWCAA 104.1.

CONSTRUCTION/DEMOLITION DEBRIS - All material manufactured for or resulting from the construction, renovation, or demolition of buildings, roads, and other man-made structures.

FIREFIGHTING INSTRUCTION FIRES - Fires for instruction in methods of firefighting, including, but not limited to, training to fight structural fires, aircraft crash rescue fires, and forest fires.

FIREWOOD - Bare, untreated wood used as fuel in a solid fuel burning device, Indian ceremonial fire, or recreational fire.

IMPAIRED AIR QUALITY - A first or second stage impaired air quality condition declared by Ecology or the NWCAA in accordance with WAC 173-433-140 as referenced in NWCAA 104.1.

INDIAN CEREMONIAL FIRE - Fires necessary for Native American ceremonies (i.e., conducted by and for Native Americans) if part of a religious ritual.

LAND CLEARING BURNING - Outdoor burning of trees, stumps, shrubbery or other natural vegetation from land clearing projects (i.e., projects that clear the land surface so it can be developed, used for a different purpose, or left unused).

NATURAL VEGETATION - Unprocessed plant material from herbs, shrubbery, and trees, including grass, weeds, leaves, clippings, prunings, brush, branches, roots, stumps, and trunk wood.

NONATTAINMENT AREA - A clearly delineated geographic area designated by the Environmental Protection Agency at 40 CFR Part 81 as exceeding (or that contributes to ambient air quality in a nearby area that exceeds) a National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

NONURBAN AREAS - Unincorporated areas within a county that are not designated as an urban growth area.

NUISANCE - For purposes of outdoor burning, an emission of smoke or any other air contaminant from an outdoor fire that unreasonably interferes with the use and enjoyment of the property upon which it is deposited.

OTHER OUTDOOR BURNING - Outdoor burning other than residential burning, land clearing burning, storm or flood debris burning, tumbleweed burning, weed abatement fires, firefighting instruction fires, rare and endangered plant regeneration fire, Indian ceremonial fires, and recreational fires. It includes, but is not limited to, any outdoor burning necessary to protect public health and safety.

OUTDOOR BURNING - The combustion of any material in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion. Outdoor burning means all types of outdoor burning except agricultural burning, burning on lands within the exterior boundaries of Indian reservations (unless provided for by intergovernmental agreements), and silvicultural burning.

PERMITTING AGENCY - The agency responsible for issuing permits for a particular type of outdoor burning (including adopting a general permit) and/or enforcing all requirements of this section unless another agency agrees to be responsible for certain enforcement activities in accordance with WAC 173-425-060 (1)(a) and (6) as referenced in NWCAA 104.1.

POLLUTANTS EMITTED BY OUTDOOR BURNING - Carbon monoxide, carbon dioxide, particulate matter, sulfur dioxide, nitrogen oxides, lead, and various volatile organic compounds and toxic substances.

RARE AND ENDANGERED PLANT REGENERATION FIRES - Fires necessary to promote the regeneration of rare and endangered plants found within natural area preserves as identified in chapter 79.70 RCW.

REASONABLE ALTERNATIVE - A method for disposing of organic refuse (such as natural vegetation) that is available, reasonably economical, and less harmful to the environment than burning, including, but not limited to, waste reduction, recycling, energy recovery or incineration, and landfill disposal.

RECREATIONAL FIRE - Cooking fires, campfires, and bonfires using charcoal or firewood that occur in designated areas or on private property for cooking, pleasure, or ceremonial purposes. Fires used for debris disposal purposes are not considered recreational fires.

RESIDENTIAL BURNING - The outdoor burning of leaves, clippings, prunings and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by a responsible person.

RESPONSIBLE PERSON - Any of the following:

- (1) Any person who has applied for and received a permit for outdoor burning, or
- (2) Any person allowing, igniting or attending to an outdoor fire, or
- (3) Any person who owns or controls property on which an outdoor fire occurs.

SILVICULTURAL BURNING - Fires relating to the following activities for the protection of life or property and/or the public health, safety, and welfare:

- (1) Abating a forest fire hazard;
- (2) Prevention of a forest fire hazard;
- (3) Instruction of public officials in methods of forest firefighting;

(4) Any silvicultural operation to improve the forest lands of the state; and

(5) Silvicultural burning used to improve or maintain fire-dependent ecosystems for rare plants or animals within the state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

STORM OR FLOOD DEBRIS BURNING - Fires consisting of natural vegetation deposited on lands by storms or floods that have occurred in the previous two years and resulted in an emergency being declared or proclaimed in the area by the city, county, or state government and burned on such lands by a responsible person.

TUMBLEWEED BURNING - Outdoor burning to dispose of dry plants (typically Russian Thistle and Tumbleweed Mustard plants) that have been broken off and rolled about by the wind.

URBAN GROWTH AREA - Land, generally including and associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.030.

WEED ABATEMENT FIRES - Outdoor burning to dispose of weeds that is not regulated under chapter 173-430 WAC as referenced in NWCAA 104.1, the Agricultural Burning rule.

502.4 PROHIBITIONS AND RESTRICTIONS APPLYING TO ALL OUTDOOR BURNING. The following general requirements apply to all outdoor burning regulated by this section, including any outdoor burning allowed without a permit, unless a specific exception is stated in this section. A fire protection agency, county, or conservation district may enforce its own controls that are stricter than those set forth in this section.

(A) No person may cause or allow an outdoor fire in an area where the type of burning involved is prohibited under NWCAA 502.6, or where it requires a permit under NWCAA 502.5(B), unless a permit has been issued and is in effect.

(B) **PROHIBITED MATERIALS.** It shall be unlawful for any person to cause or allow any outdoor fire containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction/demolition debris, metal or any substance (other than natural vegetation) that normally releases toxic emissions, dense smoke, or obnoxious odors when burned except as follows:

(1) Aircraft crash rescue training fires approved and conducted in compliance with RCW 70A.15.5090 as referenced in NWCAA 104.1 may contain uncontaminated petroleum products.

(2) Ecology or the NWCAA may allow the limited burning of prohibited materials for other firefighting instruction fires, including those that are exempt from permits under NWCAA 502.5 (B)(6).

(3) Other outdoor burning necessary to protect public health and safety.

(C) **HAULED MATERIAL.**

(1) No outdoor fire may contain material (other than firewood) that has been hauled from an area where outdoor burning of the material is prohibited.

(2) Any outdoor burning of material hauled from areas where outdoor burning of the material is allowed requires an appropriate permit. Any property used for this purpose on an on-going basis must be:

(a) Limited to the types of burning listed in WAC 173-351-200

(5)(b) as referenced in NWCAA 104.1 (criteria for municipal solid waste landfills), and

(b) Approved in accordance with other laws, including chapter 173-304 WAC as referenced in NWCAA 104.1 (minimum functional standards

for solid waste handling) and chapter 173-400 WAC as referenced in NWCAA 104.1 (general regulations for air pollution sources).

(D) CURTAILMENTS. During episodes or periods of impaired air quality, a responsible person for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions for each day.

(1) No outdoor fire shall be ignited in a geographical area where:

(a) Ecology has declared an air pollution episode;

(b) Ecology or the NWCAA has declared an impaired air quality condition for the county; or

(c) The appropriate fire protection authority has declared a fire danger burn ban, unless the NWCAA grants an exception.

(2) A responsible person for an outdoor fire shall extinguish the fire when an air pollution episode, an impaired air quality condition, or fire danger burn ban that applies to the burning is declared.

(a) Smoke visible from all types of outdoor burning, except land clearing burning, after a time period of three hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared shall constitute prima facie evidence of unlawful outdoor burning.

(b) Smoke visible from land clearing burning after a time period of eight hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared shall constitute prima facie evidence of unlawful outdoor burning.

(E) UNLAWFUL OUTDOOR BURNING/NUISANCE. It is unlawful for any person to cause or allow outdoor burning that causes an emission of smoke or any other air contaminant that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance.

(F) BURNING IN OUTDOOR CONTAINERS. Outdoor containers (such as burn barrels and other wood waste incinerators not regulated under NWCAA Section 458, used for outdoor burning, must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings not larger than 0.5 inch, and they may only be used in compliance with this section.

(G) OTHER GENERAL REQUIREMENTS.

(1) A person capable of extinguishing the fire must attend it at all times and the fire must be extinguished before leaving it.

(2) No fires are to be within 50 feet of structures.

(3) Permission from a landowner or owner's designated representative must be obtained before starting an outdoor fire.

502.5 OUTDOOR BURNING PERMIT PROGRAM/REQUIREMENTS

(A) PERMIT PROGRAM.

(1) The NWCAA may consult with fire protection authorities, conservation districts, or counties to determine if any of these agencies are capable and willing to serve as the permitting agency and/or enforcing agency for particular types of burning.

(2) The NWCAA may enter into agreements with any capable agencies to identify the permitting agencies and enforcing agencies for each type of burning and determine the type of permit appropriate for each where a permit is required.

(3) Permitting agencies may use a verbal, electronic, written, or general permit established by rule for any type of outdoor burning that requires a permit.

(4) A written permit should be used, where feasible, for land clearing burning, storm or flood debris burning in areas where residential burning and land clearing burning are prohibited under NWCAA 502.6 (A), (B), or (C), and other outdoor burning (except any other outdoor burning necessary to protect public health and safety).

(5) Any person having an outstanding penalty obligation to the NWCAA as a result of a violation of Section 502, except under appeal to the Pollution Control Hearings Board (PCHB) or other judicial body, shall be denied additional outdoor burning permits until the remaining balance is paid.

(B) TYPES OF BURNING THAT REQUIRE A PERMIT. Except as otherwise stated, a permit is required for the following types of outdoor burning:

(1) Residential burning (except in nonurban areas of any county with an unincorporated population of less than 50,000);

(2) Land clearing burning;

(3) Storm or flood debris burning;

(4) Tumbleweed burning (except in counties with a population of less than 250,000);

(5) Weed abatement fires;

(6) Firefighting instruction fires for training to fight structural fires in urban growth areas and cities with a population over 10,000, and all other firefighting instruction fires, except:

(a) Firefighting instruction fires for training to fight structural fires as provided in RCW 52.12.150;

(b) Aircraft crash rescue fires as provided in RCW 70A.15.5180 (~~(70.94.650(5) as referenced in NWCAA 104.1)~~); and

(c) Forest fires;

(7) Rare and endangered plant regeneration fires;

(8) Indian ceremonial fires (except on lands within the exterior boundaries of Indian reservations unless provided for by intergovernmental agreement);

(9) Recreational fires with a total fuel area greater than three feet in diameter and/or two feet in height (except in the nonurban areas of counties with an unincorporated population of less than 50,000); and

(10) Other outdoor burning if specifically authorized by the NWCAA.

(C) FEES.

The fee for outdoor burning permits shall be as established in NWCAA 324.10. The amount of the fee will not exceed the level necessary to recover the costs of administering and enforcing a permit program.

(D) REQUIREMENTS FOR RESIDENTIAL BURNING.

The following conditions apply to all residential burning allowed without a permit under NWCAA 502.5 (B)(1) or allowed under a general, verbal, written, or electronic permit. Persons unable to meet these requirements and the requirements in NWCAA 502.4 must apply for and receive a written permit before burning. Failure to comply with all applicable requirements voids any applicable permit.

(1) A responsible person for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions of each day.

(2) A fire may not be ignited, and must be extinguished, if an air pollution episode, impaired air quality condition, or fire danger burn ban that applies to the burning, is declared for the area.

(3) The fire must not include prohibited materials as listed in NWCAA 502.4(B).

(4) The fire must not include materials hauled from another property.

(5) If any emission from the fire is detrimental to the health, safety, or welfare of any person, if it causes damage to property or business, or if it causes a nuisance, the fire must be extinguished immediately.

(6) A person capable of extinguishing the fire must attend it at all times and the fire must be extinguished before leaving it.

(7) No fires are to be within 50 feet of structures.

(8) Permission from a landowner, or owner's designated representative, must be obtained before starting an outdoor fire.

(9) Any burn pile must not be larger than four feet in diameter and three feet high.

(10) Only one pile at a time may be burned, and each pile must be extinguished before lighting another.

(11) If an outdoor container is used for burning, it must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings not larger than 0.5 inch.

(12) No fire is allowed within 500 feet of forest slash.

(E) FIELD RESPONSE AND ENFORCEMENT

(1) Any agency that issues permits, or adopts a general permit for any type of burning in an area, is responsible for field response to outdoor burning complaints and enforcement of all permit conditions and requirements unless another agency has agreed to be responsible.

(2) Except for enforcing Section 502.4 (D)(1)(c) (~~((E)(1)(d))~~), the NWCAA will be responsible for enforcing any requirements that apply to burning that are prohibited or exempt from permits in areas of its jurisdiction, unless another agency agrees to be responsible.

(3) Permitting agencies and enforcing agencies may require that corrective action be taken, and may assess penalties to the extent allowed if they discover noncompliance.

502.6 AREAS AND TYPES OF PROHIBITED OUTDOOR BURNING.

(A) NONATTAINMENT AREAS. Residential burning and land clearing burning shall not occur in any areas that exceed federal or state ambient air quality standards for pollutants emitted by outdoor burning. These areas are limited to all nonattainment areas and former nonattainment areas for carbon monoxide, particulate matter (PM₁₀ and PM_{2.5}), sulfur dioxide, nitrogen dioxide, and lead.

(B) URBAN GROWTH AREAS. No person shall cause or allow residential burning and land clearing burning in any urban growth areas.

(C) CITIES OVER 10,000 POPULATION. Residential burning and land clearing burning shall not occur in any cities having a population greater than 10,000 people. Cities having this population must be identified by using the most current population estimates available for each city.

(D) HIGH DENSITY AREAS. Land clearing burning shall not occur in any area having a general population density of 1,000 or more persons per square mile. All areas having this density must be identified by using the most current population data available for each census block group and dividing by the land area of the block group in square miles.

(E) AREAS WITH A REASONABLE ALTERNATIVE TO BURNING. Residential burning, land clearing burning, storm or flood debris burning, tumbleweed burning, weed abatement fires and other outdoor burning of organic refuse shall not occur in any area, including the areas identified in subsections 502.6(A) through 502.6(D), when a reasonable alternative for that type

of burning is found to exist in the area for that type of burning. A reasonable alternative for a particular type of burning exists when the alternative is available and reasonably economical and less harmful to the environment as defined in WAC 173-425-040(5) as referenced in NWCAA 104.1.

(F) No person shall cause or allow outdoor burning at permanently-located business establishments excluding land clearing operations.

PASSED: January 8, 1969 AMENDED: June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, September 11, 2014, August 8, 2024, May 8, 2025

AMENDATORY SECTION

SECTION 520 - SULFUR COMPOUNDS IN FUEL

520.1 It shall be unlawful for any person to burn, sell, or make available for sale for burning in fuel burning equipment, or refuse burning equipment, within the jurisdiction of the NWCAA, any fuel containing a weight of sulfur in excess of that allowed by Subsection 520.11, 520.12, 520.13, 520.14 and 520.15.

520.11 Distillate fuel oil classified as Grade No. 1 (ASTM designation: D396-69) shall contain three tenths percent (0.3%) or less sulfur by weight.

520.12 Distillate fuel oil classified as Grade No. 2 (ASTM Designation: D396-69) shall contain five-tenths percent (0.5%) or less sulfur by weight.

520.13 All other grades or kinds of fuel oil intended for use in fuel oil burning equipment including ASTM Designation: D396-69 Grades No. 4, 5, and 6 shall contain two percent (2.0%) or less sulfur by weight.

520.14 Gaseous fuel shall contain 50 grains (~~((412 ppm @ standard conditions))~~) or less sulfur per 100 standard cubic feet except that this subsection shall not apply to those sources subject to Section 460.

520.15 Solid fuel (such as, but not limited to, coal, coke, and refuse) shall contain two percent (2.0%) or less sulfur by weight.

520.2 This section does not apply to:

- a. Ocean going vessels;
- b. Used oil burned in space heaters that have a maximum heat input of less than 0.4 million BTU/hr; and
- c. Persons in the business of collecting used oil from residences authorized by a city, county, or the Utilities and Transportation Commission.

AMENDED: April 14, 1993, May 11, 1995, May 9, 1996, May 8, 2025

AMENDATORY SECTION

SECTION 580.2 - Petroleum Refineries

580.21 This section shall apply to all petroleum refineries with a crude oil or feed stock capacity greater than three hundred eighteen thousand liters (2,000 barrels) per day.

580.22 It shall be unlawful for any person to cause or allow the disposal of VOC from the vacuum producing systems covered under this subsection except as follows:

580.221 Noncondensable VOC shall be piped to an appropriate fire-box, incinerator or to a closed refinery system.

580.222 Hot wells associated with contact condensers shall be tightly covered and the collected VOC introduced into a closed refinery

580.23 Reserved (~~It shall be unlawful for any person to cause or allow the operation of a wastewater separator with annual VOC emissions estimated by the NWCAA to exceed 25 tons, when such operation does not comply as follows.~~

~~580.231 Wastewater separator forebays shall incorporate a floating pontoon or fixed solid cover with all openings sealed totally enclosing the compartmented liquid contents, or a floating pontoon or a double deck type cover equipped with closure seals between the cover edge and compartment wall. Collected vapors shall not be discharged to the atmosphere.~~

~~580.232 Accesses for gauging and sampling shall be designed to minimize VOC emissions during actual use. All access points shall be closed with suitable covers when not in use.)~~

580.24 It shall be unlawful for any person to cause or allow a process unit turnaround which does not comply with the following conditions:

580.241 The VOC contained in a process unit to be depressurized for turnaround shall be introduced to a closed refinery system, combusted by a flare, or vented to a disposal system.

580.242 The VOC pressure in a process unit following depressurization for turnaround shall be less than five pounds per square inch gauge (psig) before venting to the ambient air.

580.243 The owner or operator shall keep a record of each process unit turnaround not in compliance with 580.242.

580.244 The owner or operator shall keep a record of each process unit turnaround listing the date the unit was shut down, the estimated vessel VOC concentration when the VOC was first emitted, and the estimated total quantity of VOC emitted.

580.25 Equipment for the reduction, collection or disposal of VOC shall be maintained and operated in a manner commensurate with accepted industrial practices.

580.26 Any petroleum refinery process unit, storage facility or other operation (including drains) subject to federal VOC or HAP standards (NSPS, Benzene Waste NESHAP, Petroleum Refinery NESHAP, etc.) is exempt from the requirements of NWCAA 580.3 through NWCAA 580.10. Such exemption shall take effect upon the date of required compliance with the federal standard.

PASSED: December 13, 1989 AMENDED: February 8, 1996, May 8, 2025

REPEALER

NWCAA Section 580.11 (Scope, Registration, Reporting and Notice of Construction) is being repealed.

AMENDATORY SECTION

580.3 High Vapor Pressure Volatile Organic Compound Storage Tanks

580.31 Subsections 580.32 through 580.37 shall apply to all tanks which store volatile organic compounds with a true vapor pressure as stored greater than 10.5 kilopascals (~~((Kpa))~~) (kPa) (1.5 pounds per square inch (psia)), but less than (~~(77.7 Kpa)~~) 76.6 kPa (11.1 psia) at calendar-month average storage temperatures and have a capacity greater than one hundred fifty thousand liters (40,000 gallons).

580.32 It shall be unlawful for any person to cause or allow storage of volatile organic compounds as specified in Section 580.31 unless each storage tank or container:

580.321 Meets the equipment specifications and maintenance requirements of the Federal Standards of Performance for New Stationary Sources Storage Vessels for Petroleum Liquids (40 CFR 60, subpart Kb); or

580.322 Is retrofitted with a floating roof or internal floating cover using a metallic seal or a nonmetallic resilient seal at least meeting the equipment specifications of the Federal standards referred to in 580.321 of this subsection, or its equivalent; or

580.323 Is fitted with a floating roof or internal floating cover meeting manufacturers equipment specifications in effect when it was installed.

580.33 All seals used with equipment subject to this section are to be maintained in good operating condition and the seal fabric shall contain no visible holes, tears or other openings.

580.34 All openings not related to safety are to be sealed with suitable closures.

580.35 Tanks used for the storage of gasoline in bulk gasoline plants and equipped with vapor balance systems as required in 580.52 shall be exempt from the requirements of this section.

580.36 All tanks not exempted by subsection 580.26 shall meet the monitoring, recordkeeping and reporting requirements of 40 CFR 60 Subpart Kb, with the exception of the monitoring report submittal requirements of 60.115b (b) (2). Compliance with subsection 580.36 shall be no later than December 31, 1999.

580.37 All tanks exempt by subsection 580.26 and all tanks subject to Section 580.3 or 580.9 shall be exempt from Section 560 of this Regulation.

580.38 All tanks storing volatile organic compounds with a true vapor pressure greater than ((77.7)) 76.6 kPa (11.1 psia) shall be equipped with a vapor recovery system.

PASSED: December 13, 1989 AMENDED: May 14, 1998, November 12, 1998, May 8, 2025

WSR 25-11-019

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed May 12, 2025, 8:50 a.m., effective June 12, 2025, and October 1, 2025]

Effective Date of Rule: WAC 246-809-010, 246-809-049, 246-809-096, 246-809-110, 246-809-210, 246-809-220, 246-809-221, 246-809-230, 246-809-310, 246-809-330, and 246-809-990 are effective 31 days after filing; and WAC 246-809-130, 246-809-630, and 246-809-632 are effective October 1, 2025, consistent with statutory authority.

Purpose: To reduce barriers to licensure and streamline the credentialing process for the mental health counselor, marriage and family therapist, and social worker professions.

The department of health (department) is adopting permanent rules to implement recent legislation, including sections of 2SHB 1724 (chapter 425, Laws of 2023) and E2SHB 2247 (chapter 371, Laws of 2024).

The rules aim to:

- (1) Establish the application process for licensure, including provisions for foreign degrees and credential evaluations.
- (2) Lower the requirement for licensure by endorsement from five years of licensure in a substantially equivalent state to one year.
- (3) Reduce the clinical experience requirement for supervising marriage and family therapists from five years to two years.
- (4) Allow professional experience as an alternative to the practicum or internship requirement for licensure.
- (5) Reduce the number of continuing education (CE) hours required to renew a license.
- (6) Mandate that two of the required CE hours be in professional roles and boundaries.
- (7) Remove limitations on the number of renewals authorized for an associate level credential.
- (8) Make small typographical and clarifying edits to the existing rule language.

Citation of Rules Affected by this Order: New WAC 246-809-096; and amending WAC 246-809-010, 246-809-049, 246-809-110, 246-809-130, 246-809-210, 246-809-220, 246-809-221, 246-809-230, 246-809-310, 246-809-330, 246-809-630, 246-809-632, and 246-809-990.

Statutory Authority for Adoption: RCW 18.225.040.

Other Authority: 2SHB 1724 (chapter 425, Laws of 2023) and E2SHB 2247 (chapter 371, Laws of 2024); RCW 18.225.090 and 18.225.145.

Adopted under notice filed as WSR 25-06-068 on March 3, 2025.

Changes Other than Editing from Proposed to Adopted Version: The department made clarifying changes to WAC 246-809-220 (5)(b) to directly connect the 600 hours of supervised experience with the agency-affiliated counselor credential required in subsection (5)(a). Since the language of the proposed rule could cause confusion, the adopted rule now explicitly states this requirement.

A final cost-benefit analysis is available by contacting Lana Crawford, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, phone 564-669-1455, TTY 711, email Lana.Crawford@doh.wa.gov, website www.doh.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 11, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 13, Repealed 0.

Date Adopted: May 12, 2025.

Kristin Peterson, JD
Chief of Policy
for Jessica Todorovich, MS
Acting Secretary of Health

RDS-6108.2

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-809-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Associate" means a prelicensure candidate who is working towards full licensure in their profession, has a graduate degree in a mental health field under RCW 18.225.090 and is gaining the supervision and supervised experience necessary to become a licensed independent clinical social worker, a licensed advanced social worker, a licensed mental health counselor, or a licensed marriage and family therapist. Associates may not independently provide social work, mental health counseling, or marriage and family therapy for a fee, monetary or otherwise. Associates must work under the supervision of an approved supervisor.

(2) (~~"Independent social work, mental health counseling, or marriage and family therapy" means the practice of these disciplines without being under the supervision of an approved supervisor.~~

~~(3))~~ "Department" means the department of health.

(3) "Independent social work, mental health counseling, or marriage and family therapy" means the practice of these disciplines without being under the supervision of an approved supervisor.

(4) "Licensed counselor" means a licensed marriage and family therapist, licensed mental health counselor, licensed advanced social worker, or licensed independent clinical social worker regulated under chapter 18.225 RCW. Licensed counselor does not mean an associate-level credential.

(5) "Out-of-state" means any state, the District of Columbia, or territory of the United States.

(6) "Probationary license" means a temporary license issued to out-of-state applicants qualifying for licensure reciprocity in Washington state under the restrictions and conditions of RCW 18.225.140 and this chapter.

(7) "Reciprocity" means licensure of out-of-state licensed counselors based on substantial equivalence between Washington state scope of practice and the scope of practice of the other state, the District of Columbia, or territory, subject to a probationary licensure period to complete outstanding Washington state licensure requirements as determined necessary by the secretary to gain full licensure.

(8) "Secretary" means the secretary of the department of health.

AMENDATORY SECTION (Amending WSR 17-13-082, filed 6/16/17, effective 7/17/17)

WAC 246-809-049 Sexual misconduct. The definitions and prohibitions on sexual misconduct described in WAC 246-16-100 apply to licensed counselors and associates, except a licensed counselor or associate shall never engage, or attempt to engage, in the activities listed in WAC 246-16-100 (1) and (2) with a current or former patient, client, or key party, inside or outside the health care setting.

NEW SECTION

WAC 246-809-096 Application. (1) An applicant for licensure as a mental health counselor, marriage and family therapist, or social worker, or associate licensure for one of these professions shall submit to the department:

- (a) A completed application on forms provided by the department;
- (b) Official transcripts, sent directly to the department, to verify completion of education requirements for the applicant's practice area;
- (c) Unless applying for an associate license, verification of supervised experience on forms provided by the department;
- (d) Official verification, sent directly to the department, of passing the examination for the applicant's practice area; and
- (e) The fee(s) required under WAC 246-809-990.

(2) (a) For degree(s) obtained outside the United States, the District of Columbia, and territories of the United States, the applicant must have the transcript translated and evaluated by:

- (i) An organization that is a current member of the National Association of Credential Evaluation Services (NACES);
- (ii) An organization that is a current member of the Association of International Credential Evaluators, Inc. (AICE); or
- (iii) For an applicant for licensure as a social worker or social worker associate, the Council on Social Work Education.

(b) The evaluating organization must validate the degree to determine its equivalence to an academic program approved by the Council for Higher Education Accreditation (CHEA) or the United States Department of Education (USDOE).

AMENDATORY SECTION (Amending WSR 23-23-150, filed 11/20/23, effective 1/1/24)

WAC 246-809-110 Definitions. The ~~((following terms))~~ definitions in this section apply to the licensure of marriage and family therapists and marriage and family therapist associates, in WAC 246-809-100 through 246-809-140 unless the context clearly requires otherwise.

(1) "Approved educational program" means:

(a) Any college or university accredited by a national or regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation or its successor; or

(b) A program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE), at the time the applicant completed the required education.

(2) "Approved supervisor" means a licensed marriage and family therapist, or an equally qualified licensed mental health practitioner.

(3) "Equally qualified licensed mental health practitioner" means a licensed mental health counselor, licensed clinical social worker, licensed psychologist, licensed physician practicing as a psychiatrist, or licensed psychiatric nurse practitioner ~~((, who has completed:~~

~~(a) Three hundred clock hours in graduate or postgraduate marriage and family education, or continuing education in marriage and family therapy or supervision by an approved marriage and family therapist supervisor in marriage and family therapy or any combination of these; and~~

~~(b) Five years of clinical practice that includes the equivalent of one year of clinical practice working with couples and families).~~

(4) "Group supervision" means face-to-face or virtual supervision with an approved supervisor, involving one supervisor and no more than six licensure candidates.

(5) "Licensure candidate" means an individual who is accruing supervised clinical experience required for licensure.

(6) "One-on-one supervision" means face-to-face or virtual supervision with an approved supervisor, involving one supervisor and no more than two licensure candidates.

(7) "Peer" means a coworker who is not the licensure candidate's employer or supervisor.

(8) "Supervised experience requirement" means experience that is obtained under an approved supervisor who meets the requirements described in WAC 246-809-134.

(9) "Supervision of supervision" means supervision by an approved supervisor for the purpose of training and qualifying a license holder to act as an approved supervisor for purposes of chapter 18.225 RCW and WAC 246-809-134.

AMENDATORY SECTION (Amending WSR 23-23-150, filed 11/20/23, effective 1/1/24)

WAC 246-809-130 Supervised postgraduate experience. (1) The experience requirements for the marriage and family therapist applicant's practice area include successful completion of a supervised experience requirement. ~~((Applicants who have))~~ An applicant who has

held an active marriage and family therapy license for the past (~~five consecutive years or more~~) year in another state, the District of Columbia, or territory, without a disciplinary record or disqualifying criminal history, (~~are~~) is deemed to have met the supervised experience requirements for Washington state licensure in subsection (3) of this section.

(2) In accordance with RCW 18.225.090 and 18.225.095, for an applicant(~~s~~) who can demonstrate they have practiced as a substance use disorder professional for at least three years within 10 years from the date their application for a marriage and family therapist license is submitted to the department, the department shall reduce the total required supervised hours from 3,000 hours to 2,700 hours. The requirements in subsection (3)(a) through (e) of this section shall apply regardless of the reduction of total required hours.

(3) Total experience requirements include a minimum of 3,000 hours to include the following:

(a) One thousand hours of direct client contact with at least 500 hours gained in diagnosing and treating couples and families;

(b) At least 200 hours of qualified supervision with an approved supervisor.

(i) Of the 200 hours, 100 hours must be with a licensed marriage and family therapist with at least (~~five~~) two years of clinical experience; the other 100 hours may be with an equally qualified licensed mental health practitioner;

(ii) At least 100 of the 200 hours must be one-on-one supervision; and

(iii) The remaining hours may be in one-on-one or group supervision.

(c) Applicants who have completed a master's program accredited by the Commission on Accreditation for Marriage and Family Therapy Education of the American Association for Marriage and Family Therapy boards will be credited with 500 hours of direct client contact and 100 hours of qualified supervision with an approved supervisor;

(d) Licensed marriage and family therapist associate applicants are not required to have supervised postgraduate experience prior to becoming an associate; and

(e) Licensed marriage and family therapist associate applicants must declare they are working towards full licensure.

AMENDATORY SECTION (Amending WSR 23-23-150, filed 11/20/23, effective 1/1/24)

WAC 246-809-210 Definitions. The following definitions apply to the licensure of mental health counselors and mental health counselor associates, in WAC 246-809-200 through 246-809-240.

(1) "Approved educational program" means any college or university accredited by an accreditation body recognized by the Council for Higher Education Accreditation (CHEA) or United States Department of Education.

(2) "Approved setting" includes facilities, agencies or private practice where an applicant works with individuals, families, couples or groups under the supervision of an approved supervisor.

(3) "Approved supervisor" means a qualified licensed mental health counselor or equally qualified licensed mental health practi-

tioner who has been licensed without restrictions for at least two years.

(4) "Equally qualified licensed mental health practitioner" means a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, licensed physician practicing as a psychiatrist, or licensed psychiatric nurse practitioner.

(5) "Group supervision" means face-to-face or virtual supervision with an approved supervisor, involving one supervisor and no more than six licensure candidates.

(6) "Immediate supervision" means a meeting with an approved supervisor, involving one supervisor and no more than two licensure candidates.

(7) "Licensure candidate" means an individual that is accruing supervised clinical experience required for licensure.

(8) "Peer" means a co-worker who is not the licensure candidate's employer or supervisor.

(9) "Supervision of supervision" means supervision by an approved supervisor for the purpose of training and qualifying a licensee to act as an approved supervisor for purposes of chapter 18.225 RCW and WAC 246-809-234.

AMENDATORY SECTION (Amending WSR 17-13-082, filed 6/16/17, effective 7/17/17)

WAC 246-809-220 Education requirements. (1) To meet the education requirement for licensure as a mental health counselor or mental health counselor associate, an applicant must have a master's or doctoral degree in mental health counseling or a master's or doctoral degree in a behavioral science field relating to mental health counseling from an approved school. Fields recognized as relating to mental health counseling include counseling, psychology, social work, nursing, education, pastoral counseling, rehabilitation counseling, or social sciences. Any field of study qualifying as related to mental health counseling must satisfy course work equivalency requirements included in WAC 246-809-221. An official transcript must be provided as evidence of fulfillment of the course work required.

(2) Any supplemental course work must be from an approved school.

(3) (~~Applicants who hold~~) An applicant who holds a behavioral science master's or doctoral degree in a related field may complete supplemental course work through an approved educational program to satisfy any missing program equivalencies. Postgraduate experience hours acquired concurrently with the additional course work counts toward the supervised postgraduate experience under WAC 246-809-230.

(4) A person who is a Nationally Certified Counselor (NCC) or a Certified Clinical Mental Health Counselor (CCMHC) through the National Board of Certified Counselors (NBCC) is considered to have met the education requirements of this chapter. Verification must be received by the department directly from NBCC.

(5) An applicant is considered to have met the counseling practicum component of the educational requirements if they:

(a) Have held an agency affiliated counselor credential for the past year in good standing; and

(b) Have used this credential to complete at least 600 hours of supervised clinical experience under a mental health professional. This experience must demonstrate competency in applying principles of

human development, learning theory, psychotherapy, group dynamics, or dysfunctional behavior in the delivery of direct clinical care.

AMENDATORY SECTION (Amending WSR 17-13-082, filed 6/16/17, effective 7/17/17)

WAC 246-809-221 Behavioral sciences—Program equivalency. (1)

Behavioral science in a field relating to mental health counseling includes a core of study relating to counseling theory and counseling philosophy.

(2) Either a counseling practicum, or a counseling internship, or both, must be included in the core of study unless otherwise permitted in WAC 246-809-220(5). Exclusive use of an internship or practicum used for qualification must have incorporated supervised direct client contact.

(3) This core of study must include seven of the content areas listed in (a) through (q) of this subsection. Five of the content areas must be from (a) through (h) of this subsection:

- (a) Assessment/diagnosis.
- (b) Ethics/law.
- (c) Counseling individuals.
- (d) Counseling groups.
- (e) Counseling couples and families.
- (f) Developmental psychology (may be child, adolescent, adult or life span).
- (g) Psychopathology/abnormal psychology.
- (h) Research and evaluation.
- (i) Career development counseling.
- (j) Multicultural concerns.
- (k) Substance/chemical abuse.
- (l) Physiological psychology.
- (m) Organizational psychology.
- (n) Mental health consultation.
- (o) Developmentally disabled persons.
- (p) Abusive relationships.
- (q) Chronically mentally ill.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-809-230 Supervised postgraduate experience. (1) The experience requirements for the mental health counselor applicant's practice area include successful completion of a supervised experience requirement. (~~Applicants who have~~) An applicant who has held an active mental health counselor license for the past (~~five consecutive years or more~~) year in another state, the District of Columbia, or territory, without a disciplinary record or disqualifying criminal history, (~~are~~) is deemed to have met the supervised experience requirements for Washington state licensure in subsection (3) of this section.

(2) In accordance with RCW 18.225.090 and 18.225.095, for an applicant(~~s~~) who can demonstrate they have practiced as a substance

use disorder professional for at least three years within ~~((ten))~~ 10 years from the date their application for mental health counselor licensure is submitted to the department, the department shall reduce the minimum total required supervised hours from ~~((three thousand))~~ 3,000 hours to ~~((two thousand seven hundred))~~ 2,700 hours. The requirements in subsection (3)(b)(i) and (ii) of this section shall apply regardless of the reduction of total required hours.

(3)(a) The experience requirement consists of a minimum of ~~((thirty-six))~~ 36 months full-time counseling or ~~((three thousand))~~ 3,000 hours of postgraduate mental health counseling under the supervision of a qualified licensed mental health counselor or equally qualified licensed mental health practitioner in an approved setting.

(b) Of the ~~((three thousand))~~ 3,000 hours:

(i) One hundred hours spent in immediate supervision with the qualified licensed mental health counselor or equally qualified licensed mental health practitioner; and

(ii) At least ~~((one thousand two hundred))~~ 1,200 hours must be direct counseling with individuals, couples, families, or groups.

(4) ~~((Applicants who have))~~ An applicant who has completed a master's or doctoral program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) will be credited with ~~((fifty))~~ 50 hours of postgraduate supervision and ~~((five hundred))~~ 500 hours of postgraduate experience.

(5) ~~((Applicants))~~ An applicant for licensed mental health counselor associate ~~((are))~~ is not required to have supervised postgraduate experience prior to becoming an associate.

(6) A licensed mental health counselor associate applicant ~~((s))~~ must declare they are working toward full licensure.

AMENDATORY SECTION (Amending WSR 23-23-150, filed 11/20/23, effective 1/1/24)

WAC 246-809-310 Definitions. The following definitions apply to the licensure of independent clinical and advanced social workers and independent clinical and advanced social work associates, in WAC 246-809-300 through 246-809-340.

(1) "Approved educational program" means a master's or doctoral educational program in social work accredited by the Council on Social Work Education.

(2) "Approved supervisor" means a licensed independent clinical social worker (LICSW), licensed advanced social worker (LASW) (for LASWs only), or an equally qualified licensed mental health practitioner.

(3) "Equally qualified licensed mental health practitioner" means a licensed mental health counselor, licensed marriage and family therapist, licensed psychologist, licensed physician practicing as a psychiatrist, or licensed psychiatric nurse practitioner.

(4) "Group supervision" means face-to-face or virtual supervision with an approved supervisor, involving one supervisor and no more than six licensure candidates.

(5) "Licensure candidate" means an individual that is accruing supervised clinical experience required for licensure.

(6) "Nationally recognized standards" means the *Educational Policy and Accreditation Standards*, revised October 2004 published by the

Council on Social Work Education revised October 2004 or any future revisions.

(7) "One-on-one supervision" means face-to-face or virtual supervision with an approved supervisor, involving one supervisor and one licensure candidate.

(8) "Peer" means a co-worker who is not the licensure candidate's employer or supervisor.

(9) "Supervision of supervision" means supervision by an approved supervisor for the purpose of training and qualifying a licensee to become an approved supervisor for purposes of chapter 18.225 RCW and WAC 246-809-334.

AMENDATORY SECTION (Amending WSR 23-23-150, filed 11/20/23, effective 1/1/24)

WAC 246-809-330 Supervised postgraduate experience requirements.

(1) Licensed advanced social worker.

(a) (~~(Applicants who have)~~) An applicant who has held an active advanced social worker license for the past ((five consecutive years)) year or more in another state, the District of Columbia, or territory, without a disciplinary record or disqualifying criminal history, ((are)) is deemed to have met the supervised experience requirements for Washington state licensure in subsection (1)(c) of this section.

(b) In accordance with RCW 18.225.090 and 18.225.095, for an applicant(~~s~~) who can demonstrate they have practiced as a substance use disorder professional for at least three years within 10 years from the date their application for an advanced social worker license is submitted to the department, the department shall reduce the total required supervised hours from 3,200 hours to 2,880 hours. The requirements in subsection (3)(c)(i) through (iii) of this section shall apply regardless of the reduction of total required hours.

(c) The supervised experience requirement consists of a minimum of 3,000 hours with 90 hours of supervision by a licensed independent clinical social worker or a licensed advanced social worker who has been licensed or certified for at least two years. Of those hours:

(i) Eight hundred hours must be in direct client contact; and

(ii) Ninety hours must be in direct supervision

under the supervision of a licensed independent clinical social worker, a licensed advanced social worker, or an equally qualified licensed mental health professional. Of those hours of direct supervised experience at least:

(A) Forty hours must be in one-to-one supervision; and

(B) Fifty hours may be in one-to-one or group supervision.

(2) Licensed independent clinical social worker.

(a) (~~(Applicants who have)~~) An applicant who has held an active independent clinical social worker license for the past ((five consecutive years)) year or more in another state, the District of Columbia, or territory, without a disciplinary record or disqualifying criminal history, ((are)) is deemed to have met the supervised experience requirements for Washington state licensure in (c) of this subsection.

(b) In accordance with RCW 18.225.090 and 18.225.095, for an applicant(~~s~~) who can demonstrate they have practiced as a substance use disorder professional for at least three years within 10 years from the date their application for an independent clinical social worker license is submitted to the department, the department shall

reduce the total required supervised hours from 3,000 hours to 2,600 hours. The requirements in subsection (2)(c)(i) and (ii) of this section shall apply regardless of the reduction of total required hours.

(c) The experience requirement consists of a minimum of 3,000 hours of experience, over a period of not less than two years. Of those 3,000 hours:

(i) One thousand hours must be direct client contact supervised by a licensed independent clinical social worker;

(ii) One hundred hours of direct supervision as follows:

(A) Seventy hours must be with an independent clinical social worker;

(B) The remaining hours may be with an equally qualified licensed mental health practitioner as defined in WAC 246-809-310(3); and

(C) Sixty hours of the 100 hours of direct supervision must be in one-to-one supervision. The remaining hours may be in one-to-one supervision or group supervision.

(3) Licensed social worker associate-advanced and licensed social worker associate-independent clinical applicants are not required to have supervised postgraduate experience prior to becoming an associate.

(4) Licensed social worker associate-advanced and licensed social worker associate-independent clinical applicants (~~must~~) shall declare they are working toward full licensure.

AMENDATORY SECTION (Amending WSR 23-23-150, filed 11/20/23, effective 1/1/24)

WAC 246-809-630 Continuing education requirements. (1) An associate (~~must~~) shall complete (~~18~~) 16 hours of continuing education as required in WAC 246-809-632.

(2) A licensed social worker associate advanced and licensed social worker associate independent clinical (~~must~~) shall complete six hours of suicide assessment, treatment, and management CE as required in WAC 246-809-632.

(3) A licensed counselor (~~must~~) shall complete (~~36~~) 32 hours of continuing education (CE) every two years.

(a) At least six of the (~~36~~) 32 hours must be in professional ethics and law, which may include topics under RCW 18.130.180.

(b) At least two of the 32 hours must be in professional roles and boundaries. These hours must be taken separate from the requirements in (a) of this subsection.

(c) All licensed counselors (~~must~~) shall complete a minimum of two hours in health equity continuing education training every four years. The training content must be consistent with requirements established in WAC 246-12-830.

(~~e~~) (d) Beginning January 1, 2014, at least once every six years a licensed marriage and family therapist, licensed mental health counselor, and licensed social worker (~~must~~) shall complete at least six hours of training in suicide assessment, treatment, and management.

(i) The first training (~~must~~) shall be completed during the (~~first full CE reporting period after January 1, 2014, or the~~) first full CE period after initial licensure (~~(, whichever occurs later)~~).

(ii) Beginning July 1, 2017, a qualifying suicide prevention training must be selected from the department's model list, as required in WAC 246-809-615.

(iii) Beginning July 1, 2021, a subsequent qualifying training must be selected from the department's model list, as required in WAC 246-809-615.

(iv) The hours spent completing training in suicide assessment, treatment, and management count toward the total (~~(36)~~) 32 hours of CE.

(v) An individual applying for initial licensure as a licensed marriage and family therapist, licensed mental health counselor, or licensed social worker on or after January 1, 2014, may delay completion of the first training required for six years after initial licensure if he or she can demonstrate completion of six hours of training in suicide assessment, treatment, and management that:

(A) Was completed no more than six years prior to the application for initial licensure; and

(B) Meets the qualifications listed in WAC 246-809-615.

AMENDATORY SECTION (Amending WSR 23-23-150, filed 11/20/23, effective 1/1/24)

WAC 246-809-632 Licensed associate continuing education. (1)

All licensed associates (~~(must)~~) shall complete a total of (~~(18)~~) 16 hours of continuing education (CE) every year in order to renew their license. The CEs must be completed in accordance with this chapter. An associate (~~(must)~~) shall attest to completing the CE every year during the renewal.

(2) Professional ethics and law CE for all licensed associates. All licensed associates (~~(must)~~) shall include six hours of CE in professional ethics and law every two years. The associates (~~(must)~~) shall attest to completing the CE during the second renewal, fourth renewal, and sixth renewal. These six CE hours may be completed any time within the two-year period before each of these renewals. The six hours may contribute to the total (~~(18)~~) 16 hours of CE for the year in which the CE was completed.

(3) All licensed associates shall complete a minimum of two hours in professional roles and boundaries. These hours must be taken separate from the requirements in subsection (2) of this section.

(4) All licensed associates (~~(must)~~) shall complete a minimum of two hours in health equity continuing education training every four years. The training content must be consistent with requirements established in WAC 246-12-830.

(~~(4)~~) (5) Suicide assessment, treatment, and management CE only for licensed social worker associate advanced and licensed social worker associate independent clinical.

(a) A licensed social worker associate advanced and a licensed social worker associate independent clinical (~~(must)~~) shall complete:

(i) Six hours of suicide assessment, treatment, and management CE after initial licensure and before the first renewal in accordance with WAC 246-809-615 and 246-809-630; and

(ii) Six hours of subsequent training per WAC 246-809-615 and 246-809-630 in the following six-year period.

(b) (~~The~~) A licensed social worker associate advanced and licensed social worker associate independent clinical may delay complet-

ing the first training if ((he or she)) they can demonstrate completion of the training no more than six years before gaining their initial license.

(c) The hours spent completing training in suicide assessment, treatment, and management count toward the total 18 hours of CE.

FEEES

AMENDATORY SECTION (Amending WSR 23-07-057, filed 3/9/23, effective 6/1/23)

WAC 246-809-990 Licensed counselor, and associate—Fees and renewal cycle. (1) Except for a probationary license as described in WAC 246-809-095, a license must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC.

(2) An associate license((s are)) is valid for one year and must be renewed every year on the date of issuance. ((The associate license may be renewed no more than six times, except as provided in RCW 18.225.145.))

(3) The following nonrefundable fees will be charged:

Title	Fee
Licensed marriage and family therapist	
Original application	
Application and initial license	\$290.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	180.00
Late renewal penalty	90.00
Expired license reissuance	85.00
UW online access fee (HEAL-WA)	16.00
Retired active license renewal	
Renewal	70.00
Late renewal penalty	35.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	10.00
Verification of license	25.00
Licensed marriage and family therapy associate	
Original application	
Application	65.00
UW online access fee (HEAL-WA)	16.00
Renewal	
Renewal	50.00
UW online access fee (HEAL-WA)	16.00

Title	Fee
Late renewal penalty	50.00
Expired license reissuance	40.00
Duplicate license	10.00
Verification of license	25.00
Licensed mental health counselor	
Original application	
Application	95.00
Initial license	80.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	125.00
Late renewal penalty	65.00
Expired license reissuance	65.00
UW online access fee (HEAL-WA)	16.00
Retired active license renewal	
Renewal retired active	70.00
Late renewal penalty	35.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	10.00
Verification of license	25.00
Licensed mental health counselor associate	
Original application	
Application	35.00
Renewal	
Renewal	25.00
Late renewal penalty	25.00
Expired license reissuance	40.00
Duplicate license	10.00
Verification of license	25.00
Licensed advanced social worker and licensed independent clinical social worker	
Original application	
Application and initial license	170.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	70.00
Late renewal penalty	50.00
Expired license reissuance	72.50
UW online access fee (HEAL-WA)	16.00
Retired active license renewal	
Renewal retired active	65.00
Late renewal penalty	30.00
UW online access fee (HEAL-WA)	16.00
Duplicate license	10.00
Verification of license	25.00
Licensed advanced social worker associate and licensed independent clinical social worker associate	

Title	Fee
Original application	
Application	35.00
UW online access fee (HEAL-WA)*	16.00
Renewal	
Renewal	25.00
Late renewal penalty	25.00
UW online access fee (HEAL-WA)*	16.00
Expired license reissuance	40.00
Duplicate license	10.00
Verification of license	25.00

* Surcharge applies to independent clinical social worker associate only.

(4) For a probationary license as described under WAC 246-809-095, the following nonrefundable fees will be charged:

Title	Fee
Licensed marriage and family therapist	
Original application	
Application and initial license	\$290.00
Active license renewal	
Renewal	180.00
Late renewal penalty	90.00
Expired license reissuance	85.00
Duplicate license	10.00
Verification of license	25.00
Licensed mental health counselor	
Original application	
Application and initial license	175.00
Active license renewal	
Renewal	90.00
Late renewal penalty	50.00
Expired license reissuance	65.00
Duplicate license	10.00
Verification of license	25.00
Licensed advanced social worker and licensed independent clinical social worker	
Original application	
Application and initial license	200.00
Active license renewal	
Renewal	100.00
Late renewal penalty	50.00
Expired license reissuance	72.50
Duplicate license	10.00
Verification of license	25.00

WSR 25-11-021
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Home and Community Living Administration)

[Filed May 13, 2025, 9:34 a.m., effective June 13, 2025]

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

Purpose: The purposes of the adoption in WAC 388-112A-1240 What are the minimum qualifications for community instructors for adult education training using DSHS curriculum? and 388-112A-1250 What is the minimum qualifications for community instructors for adult education training using DSHS? are related to the minimum qualifications for an instructor for adult education, nurse delegation core, and specialized diabetes trainings when the instructor only teaches at the facility or corporation where they are employed. Other necessary changes and corrections to numerical representation, consistency, and inclusive language are also included.

Citation of Rules Affected by this Order: Amending WAC 388-112A-1240 and 388-112A-1250.

Statutory Authority for Adoption: RCW 18.88B.010, 18.88B.021, 18.88B.041, 74.08.090, 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.076, and 74.39A.341.

Adopted under notice filed as WSR 25-04-083 on February 3, 2025.

A final cost-benefit analysis is available by contacting Dave Chappell, P.O. Box 45600, Lacey, WA 98504-5600, phone 360-725-2516, TTY 711 relay service, email david.chappell@dshs.wa.gov.

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

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

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

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

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

Date Adopted: May 12, 2025.

Katherine I. Vasquez
Rules Coordinator

SHS-5071.1

AMENDATORY SECTION (Amending WSR 24-16-082, filed 8/1/24, effective 9/1/24)

WAC 388-112A-1240 What are the minimum qualifications for an instructor for core basic, population specific, on-the-job, residential care administrator, nurse delegation core, and specialized diabetes trainings? An instructor for core basic, population specific, on-the-

job, residential care administrator, nurse delegation core, and nurse delegation specialized diabetes trainings must meet the following minimum qualifications:

- (1) Be at least 21 years of age;
- (2) Has not had a professional health care, adult family home, assisted living facility, or social services license or certification revoked in Washington state;
- (3) Meets one or more of the following education or work experience requirements upon initial approval or hire:
 - (a) Is a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting;
 - (b) Has an associate degree or higher degree in the field of health or human services and six months professional or caregiving experience within the last five years in a community-based setting or an adult family home, enhanced services facility, assisted living facility, supported living through the developmental disabilities administration (DDA), or home care setting; or
 - (c) Has a high school diploma or equivalent and one year of professional or caregiving experience within the last five years in an adult family home, enhanced services facility, assisted living, supported living through DDA, or home care setting;
- (4) Meets one or more of the following teaching experience requirements:
 - (a) 100 hours of experience teaching adults in an appropriate setting on topics directly related to basic training or basic training topics that may be offered as continuing education;
 - (b) 40 hours of teaching basic training while being mentored by an instructor who is approved to teach basic training; or
 - (c) Instructors with adult family homes, enhanced services facilities, and assisted living facilities who do not have the experience described in (a) or (b) of this subsection, must have and attest to the following experience and plans in their application:
 - (i) 40 hours of informal teaching experiences unrelated to basic training topics such as guest lecturing, team teaching, and volunteer teaching with parks, local high schools, 4-H groups, English as a second language (ESL) groups, senior organizations, or religious organizations;
 - (ii) Three adult learning techniques that the instructor will implement in the long-term care worker training; and
 - (iii) Three ways the instructor plans on improving instructional skills and the method the instructor will use to measure improvement such as submitting the continuous improvement plan feedback from the DSHS adult education class;
- (5) Except for instructors for nurse delegation core and diabetes training, completion of a class on adult education that meets the requirements of WAC 388-112A-1297;
- (6) The instructor must be experienced in caregiving practices and demonstrate competency for teaching the course content or units being taught;
- (7) Instructors who will administer tests must have experience or training in assessment and competency testing; and
- (8) (~~Community instructors~~) Instructors for nurse delegation core and diabetes training must have a current Washington or multi-state registered nurse (RN) license in good standing without practice restrictions (~~and~~).

(9) ~~((Facility instructors must be approved and contracted by the department as a community instructor in order to be approved to teach the following classes:~~

~~(a) Nurse delegation core;~~

~~(b) Nurse delegation specialized diabetes training; or~~

~~(c) DSHS adult education training curriculum)~~ Instructors for nurse delegation core and specialized diabetes trainings who intend to teach students beyond the facility or corporation where they are employed and approved must be contracted with the Department of Social and Health Services as a community instructor.

AMENDATORY SECTION (Amending WSR 23-01-022, filed 12/9/22, effective 1/9/23)

WAC 388-112A-1250 What are the minimum qualifications for ((community)) instructors for adult education training using DSHS curriculum? (1) The minimum qualifications for ((community)) instructors of adult education training using DSHS curriculum, in addition to the general qualifications in WAC 388-112A-1240 (1) and (2), include:

(a) The instructor must be experienced in adult education practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Has a bachelor's degree or is a registered nurse with at least one year of education in seminars, conferences, continuing education, or in college classes in subjects directly related to adult education, such as, but not limited to, English as a second language (ESL), adult basic education, and adult secondary education (one year of education equals 24 semester credits in a semester system, 36 quarter credits in a quarter system, or at least 80 hours of seminars, conferences, and continuing education); and

(ii) Successful completion of the DSHS adult education training curriculum prior to beginning to train others;

(c) Meets one or more of the following teaching experience requirements:

(i) Two years experience teaching long-term care workers; or

(ii) 200 hours experience teaching adult education or closely related subjects; and

(d) Successful completion of the DSHS instructor qualification/demonstration process ~~(; and~~

~~(e) Instructor approved and contracted by the department as a community instructor).~~

(2) Instructors ~~((that))~~ who administer tests must have experience or training in assessment and competency testing.

(3) Instructors for adult education who intend to teach students beyond the facility or corporation where they are employed and approved must be contracted with the Department of Social and Health Services as a community instructor.

WSR 25-11-040
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed May 14, 2025, 2:19 p.m., effective June 14, 2025]

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

Purpose: To establish official pay dates for state officers and employees for calendar year 2025 [2026].

Citation of Rules Affected by this Order: Amending WAC 82-50-021.

Statutory Authority for Adoption: RCW 42.16.010(1) and 42.16.017.

Adopted under notice filed as WSR 25-04-107 on February 4, 2025.

Date Adopted: May 14, 2025.

Nathan Sherrard
Legal Affairs Counsel
Rules Coordinator

AMENDATORY SECTION (Amending WSR 24-11-046, filed 5/9/24, effective 6/9/24)

WAC 82-50-021 Official lagged, semimonthly pay dates established. Unless exempted otherwise under the provisions of WAC 82-50-031, the salaries of all state officers and employees are paid on a lagged, semimonthly basis for the official twice-a-month pay periods established in RCW 42.16.010(1). The following are the official lagged, semimonthly pay dates for calendar years (~~(2024 and)~~) 2025 and 2026:

CALENDAR YEAR 2024	CALENDAR YEAR 2025
Wednesday, January 10, 2024	Friday, January 10, 2025
Thursday, January 25, 2024	Friday, January 24, 2025
Friday, February 9, 2024	Monday, February 10, 2025
Monday, February 26, 2024	Tuesday, February 25, 2025
Monday, March 11, 2024	Monday, March 10, 2025
Monday, March 25, 2024	Tuesday, March 25, 2025
Wednesday, April 10, 2024	Thursday, April 10, 2025
Thursday, April 25, 2024	Friday, April 25, 2025
Friday, May 10, 2024	Friday, May 9, 2025
Friday, May 24, 2024	Friday, May 23, 2025
Monday, June 10, 2024	Tuesday, June 10, 2025
Tuesday, June 25, 2024	Wednesday, June 25, 2025
Wednesday, July 10, 2024	Thursday, July 10, 2025
Thursday, July 25, 2024	Friday, July 25, 2025
Friday, August 9, 2024	Monday, August 11, 2025
Monday, August 26, 2024	Monday, August 25, 2025
Tuesday, September 10, 2024	Wednesday, September 10, 2025
Wednesday, September 25, 2024	Thursday, September 25, 2025
Thursday, October 10, 2024	Friday, October 10, 2025
Friday, October 25, 2024	Friday, October 24, 2025
Friday, November 8, 2024	Monday, November 10, 2025
Monday, November 25, 2024	Tuesday, November 25, 2025

~~Tuesday, December 10, 2024~~~~Tuesday, December 24, 2024~~CALENDAR YEAR 2025Friday, January 10, 2025Friday, January 24, 2025Monday, February 10, 2025Tuesday, February 25, 2025Monday, March 10, 2025Tuesday, March 25, 2025Tuesday, April 10, 2025Friday, April 25, 2025Friday, May 9, 2025Friday, May 23, 2025Tuesday, June 10, 2025Wednesday, June 25, 2025Thursday, July 10, 2025Friday, July 25, 2025Monday, August 11, 2025Monday, August 25, 2025Wednesday, September 10, 2025Thursday, September 25, 2025Friday, October 10, 2025Friday, October 24, 2025Monday, November 10, 2025Tuesday, November 25, 2025Wednesday, December 10, 2025Wednesday, December 24, 2025~~Wednesday, December 10, 2025~~~~Wednesday, December 24, 2025~~CALENDAR YEAR 2026Friday, January 9, 2026Monday, January 26, 2026Tuesday, February 10, 2026Wednesday, February 25, 2026Tuesday, March 10, 2026Wednesday, March 25, 2026Friday, April 10, 2026Friday, April 24, 2026Monday, May 11, 2026Friday, May 22, 2026Wednesday, June 10, 2026Thursday, June 25, 2026Friday, July 10, 2026Friday, July 24, 2026Monday, August 10, 2026Tuesday, August 25, 2026Thursday, September 10, 2026Friday, September 25, 2026Friday, October 9, 2026Monday, October 26, 2026Tuesday, November 10, 2026Wednesday, November 25, 2026Thursday, December 10, 2026Thursday, December 24, 2026

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

WSR 25-11-047

PERMANENT RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed May 15, 2025, 9:40 a.m., effective June 15, 2025]

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

Purpose: To update language in chapter 495B-140 WAC to provide clarification to students, employees, and visitors.

Citation of Rules Affected by this Order: New WAC 495B-140-115 and 495B-140-120; and amending WAC 495B-140-005, 495B-140-010, 495B-140-020, 495B-140-030, 495B-140-035, 495B-140-040, 495B-140-045, 495B-140-050, 495B-140-060, 495B-140-070, 495B-140-080, 495B-140-090, 495B-140-100, 495B-140-105, and 495B-140-110.

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

Adopted under notice filed as WSR 25-07-074 on March 17, 2025.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 15, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 15, Repealed 0.

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

Date Adopted: May 15, 2025.

Ronda Laughlin
Executive Assistant to the President

RDS-6176.4

AMENDATORY SECTION (Amending WSR 12-21-061, filed 10/17/12, effective 11/17/12)

WAC 495B-140-005 Definitions. (1) "Business day" means any day, Monday through Friday (excluding holidays), during which college offices are open.

(2) "College" means Bellingham Technical College.

(3) "College group (~~(s shall mean individuals, or combination of individuals, who are)~~) or individual" means a group or individual that has a formal relationship with the college, such as a recognized employee group, a registered student group or organization, or an individual acting on behalf of the group or organization, as well as an individual who is a currently enrolled student (~~(s)~~) or current employee (~~(s of Bellingham Technical College or who are affiliated with a recognized student organization or a recognized employee group of the college)~~).

(~~(+2)~~) (4) "College property" or "college facilities" (~~(include)~~) means all buildings, structures, grounds, office space, (~~(and parking lots)~~) or assets owned or controlled by the college, and the

streets, sidewalks, parks, parking lots, and roadways within the boundaries of the property owned or controlled by the college.

~~((3) "Limited public forum areas" means those areas of each campus that the college has chosen to open as places for expressive activities protected by the first amendment, subject to reasonable time, place, or manner restrictions. This area is identified in the college facilities use policy and may change from time to time as decided by the college president.~~

~~(4) Noncollege groups shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of Bellingham Technical College or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.~~

~~(5) "Expressive activity" includes, but is not limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of assemblies to share information, perspective or viewpoints.)~~ (5) "Noncollege group or individual" means a group or individual who does not have a formal relationship with the college including members of the general public. The term also includes members of these groups who are individually affiliated with the college who desire to use college property for personal, private, or noncollege group related activities.

(6) "Nonpublic areas" include, but are not limited to, classrooms, offices, meeting rooms, labs, shops, closets, and other workspaces primarily dedicated to college operations, and other areas designated by the college as a restricted access area to protect safety, security, or confidentiality.

(7) "Public area" refers to spaces on college property that are generally open to the public, such as primary entrance lobbies of buildings, exterior spaces, and lawns.

(8) "Restricted access areas" are locations on college property that are not open to the public and may or may not be marked with signage or other indicators.

AMENDATORY SECTION (Amending WSR 12-21-061, filed 10/17/12, effective 11/17/12)

WAC 495B-140-010 Use of college facilities. Bellingham Technical College is an educational institution provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities, and other activities directly related to the educational mission of the college. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest extent possible. In keeping with this general purpose, the college believes that facilities should be available for a variety of uses which are of benefit to the general public if such general uses do not interfere with the educational mission of the college. ~~((However,))~~ The college intends to open its facilities to non-college groups to a lesser extent as set forth herein, while acknowledging that a state agency is under no obligation to make its public facilities available to the community for private purposes.

~~((The purpose of the time, place, and manner restrictions set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups and noncollege groups who are interested in using the campus for purposes of constitutionally protected speech, assembly, or expression. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein.))~~ For groups and individuals seeking to use college property under rights afforded by the first amendment of the Constitution of the United States and Article I, Sections 4 and 5 of the Washington state Constitution, see chapter 495B-150 WAC for time, place, and manner restrictions.

AMENDATORY SECTION (Amending WSR 17-23-113, filed 11/16/17, effective 12/17/17)

WAC 495B-140-020 Limitation of the use ~~((to))~~ of college facilities for school activities.

(1) When allocating use of college facilities, the highest priority is always given to activities specifically related to the college's mission. No arrangements will be made that may interfere with or operate to the detriment of, the college's own teaching, research, or public service programs. In particular, college ~~((buildings, properties, and))~~ facilities, including those assigned to student programs, are used primarily for:

(a) The regularly established teaching, research, or public service activities of the college and its departments or related agencies;

(b) Cultural, educational, or recreational activities of the students, ~~((faculty, or staff))~~ employees, or contracted partners;

(c) Short courses, conferences, seminars, or similar events, conducted either in the public service or for the advancement of specific departmental professional interests, when arranged under the sponsorship of the college ~~((or))~~, its departments, associated student body, or contracted partners;

(d) Public events of a cultural or professional nature brought to the campus at the request of college departments or committees and presented with their ~~((active))~~ official sponsorship and active participation;

(e) Activities or programs sponsored by educational institutions, by state or federal agencies, by charitable agencies ~~((or))~~, civic groups, or community organizations whose activities are of widespread public service and of a character appropriate to the college.

(2) College facilities ~~((shall))~~ may be assigned to student organizations for regular business meetings, social functions and for programs open to the public. Any college recognized ~~((campus))~~ student organization may invite speakers from outside the college community to speak on campus, subject to the availability of facilities and in compliance with college policies and procedures on the use of college facilities and expressive speech. The appearance of an invited speaker on campus does not represent an endorsement by the college, its students, ~~((faculty, administration))~~ employees, or the board of trustees, implicitly or explicitly, of the speaker's views.

(a) (~~Student organizations officially recognized by the college may invite speakers to the campus to address their own membership and other interested students and faculty if suitable space is available and there is no interference with the regularly scheduled program of the college. Although properly allowed by the college, the appearance of such speakers on the campus implies neither approval nor disapproval of them or their viewpoints.~~) In case of speakers who are candidates for political office, equal opportunities shall be available to opposing candidates if desired by them. Speakers are subject to the normal consideration for law and order and to the specific limitations imposed by the state constitution regarding religious worship, exercise, or instruction on state property.

(b) In order to ensure an atmosphere of open exchange and to ensure that the educational objectives of the college are not obscured, the president, in a case attended by strong emotional feeling, may prescribe conditions for the conduct of the meeting including, but not limited to, the time, the manner, and the place for the conduct of such a meeting. Likewise, the president may require permission for comments and questions from the floor and/or may encourage the appearance of one or more additional speakers at a meeting or at a subsequent meeting so that other points of view may be expressed.

(3) Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of requests, of space assigned, time of use, and to ensure the proper maintenance of the facilities. Subject to the same limitations, (~~college facilities shall be made available for assignment to~~) individuals or groups within the college community may request use of college facilities. Arrangements by both organizations and individuals must be made through the designated administrative officer as per college policies and procedures. (~~Allocation of space shall be made in accordance with college rules and on the basis of time, space, priority of request and the demonstrated needs of the applicant.~~)

(4) The college may restrict an individual's or ((a)) group's use of college facilities if that person or group has, in the past, (~~physically abused~~) damaged or destroyed college facilities, or through their own or other associated individual's actions which negatively impacted campus operations. (~~Monetary~~) Charges may be imposed for any damage, theft, or for any unusual costs for the use of facilities. The individual, group, or organization requesting space will be required to state in advance the general purpose of any meeting.

(5) (~~Commercial activities.~~) College facilities will not be used for any commercial solicitation, advertising or promotional activities, except when such activities clearly serve an educational objective including, but not limited to, the display of books of interest to the academic community or the display or demonstration of technical or research equipment and when such commercial activities relate to educational objectives and are conducted under the sponsorship or at the request of the college or the student association if such solicitation does not interfere with or operate to the detriment of the conduct of college affairs or the free flow of vehicular or pedestrian traffic. For the purpose of this regulation, the term "commercial activities" does not include handbills, leaflets, newspapers, and similarly related materials as regulated in WAC 495B-140-045.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-140-030 Statement of intentions. The college neither intends nor desires to compete with any local agency or private enterprise in making its facilities available to the community. Privately operated facilities exist which are well qualified to best meet many community needs. The college encourages the community to patronize local businesses or agencies. With this approach, the college will work cooperatively with local private enterprise to the mutual benefit of all concerned.

The college reserves the right to deny applications for facility use when the administration and/or the board of trustees feel a commercial facility should be patronized. At no time will use of a college facility be granted for a commercial activity at a rental rate or upon terms less than the full and fair rental value of the premises used.

AMENDATORY SECTION (Amending WSR 12-21-061, filed 10/17/12, effective 11/17/12)

WAC 495B-140-035 Additional requirements for noncollege groups.

(1) College buildings and rooms may be rented by noncollege groups or individuals in accordance with the college's facilities use policy. Noncollege groups or individuals may otherwise use ~~((college facilities as identified in this policy))~~ the campus' limited public forum area as identified in chapter 495B-150 WAC.

~~(2) ((Noncollege groups that seek to use the campus limited forums to engage in first amendment activities shall provide notice to the campus public safety department no later than forty-eight hours prior to the event along with the following information:~~

~~(a) The name, address, and telephone number of the individual, group, entity, or organization sponsoring the event (hereinafter "the sponsoring organization");~~

~~(b) The name, address, and telephone number of a contact person for the sponsoring organization;~~

~~(c) The date, time, and requested location of event;~~

~~(d) The nature and purpose of the event;~~

~~(e) The estimated number of people expected to participate in the event;~~

~~(f) Noncollege groups must have received a confirmation of the receipt of their notice.~~

~~(3))~~ Noncollege group events shall not last longer than five hours from beginning to end and shall fall between the hours of 7:00 a.m. and 10:00 p.m.

~~((4))~~ (3) The college president or designee is authorized to make exceptions to the policies limiting use in the case of noncollege ~~((group))~~ events and/or activities. The college president or designee may also specify reasonable additional fire, safety, law enforcement, sanitation, cleanup, insurance, and other risk- or impact-mitigating requirements for the use of college facilities, and the group or individual utilizing college facilities must meet those requirements.

AMENDATORY SECTION (Amending WSR 17-23-113, filed 11/16/17, effective 12/17/17)

WAC 495B-140-040 ~~((General policies limiting use.))~~ **Restrictions on the use of college facilities.** These rules shall apply equally to college and noncollege groups and individuals using college facilities.

(1) Primary consideration shall always be given to activities related to the college's mission. No arrangements shall be made that interfere with, or operate to the detriment of, the college's own teaching, research, or public service programs.

(2) College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office except for student-sponsored activities or public forums ((as provided for in WAC 495B-140-020)).

~~((2))~~ (3) Materials may be distributed only in designated areas on the campus where, and at times when, such distribution shall not interfere with the orderly administration of the college's affairs or the free flow of traffic. Any distribution of materials as authorized by the designated administrative officer shall not be construed as support or approval of the content by the college community or board of trustees.

(4) Activities of a political or commercial nature will not be approved if they involve the use of promotional signs or posters on buildings, trees, walls, or bulletin boards, or the distribution of samples outside the rooms or facilities to which access has been granted.

(5) Religious groups shall not ~~((, under any circumstances,))~~ use ~~((the))~~ college facilities as a permanent meeting place. Use may be intermittent only.

~~((3))~~ (6) The college reserves the right to prohibit the use of college facilities by groups which restrict membership or participation in a manner inconsistent with the college's commitment to nondiscrimination as set forth in its written policies and rules.

~~((4) Activities of a political or commercial nature will not be approved if they involve the use of promotional signs or posters on buildings, trees, walls, or bulletin boards, or the distribution of samples outside the rooms or facilities to which access has been granted.~~

~~(5) These rules shall apply to college and noncollege groups using college facilities.~~

~~(6))~~ (7) Use of ~~((audio))~~ sound amplifying equipment such as bullhorns, microphones, or loudspeakers is not permitted. Exceptions ~~((can))~~ may be made by ~~((college administration))~~ the designated administrative officer in locations and at times ~~((which))~~ that will not interfere with ~~((the normal conduct of college affairs as determined by the appropriate administrative officer.~~

~~(7) No person or group may use or enter onto college facilities having in their possession firearms or weapons, except as prescribed by law. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive devices, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:~~

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

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

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

~~This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense))~~
normal college operations.

~~(8) The college will not provide any utility connections or hook-ups.~~

~~(9) The right of peaceful dissent within the college community will be preserved. The college retains the right to take steps to ((insure)) ensure the safety of individuals, the continuity of the educational process, and the protection of property. While peaceful dissent is acceptable, violence or disruptive behavior is not a legitimate means of dissent and may result in legal charges by the college against groups or individuals. Should any person, group, or organization attempt to resolve differences by means of violence, the college and its officials need not negotiate while such methods are employed.~~

~~((+9)) (10) Orderly picketing and other forms of peaceful dissent are protected activities on and about college premises; however, interference with free passage ((of vehicles, cyclists, pedestrians, or other traffic)) through areas where members of the college community have a right to be, interference with ingress and egress to college facilities, interruption of classes, injury to persons, or damage to property exceeds permissible limits and is not permitted. ((The event must not create safety hazards or pose unreasonable safety risks to college students, employees, or invitees of the college.~~

~~(+10)) Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.~~

~~(11) Where college space is used for an authorized function (such as a class or a public or private meeting under approved sponsorship, administrative functions, or service related activities), groups must obey and comply with directions of the designated college administrator, designee, or individual in charge of the ((meeting)) function.~~

~~((+11)) (12) If a college facility abuts a public area or street, and if ((group)) an activity, although on public property, unreasonably interferes with ingress and egress to college ((buildings)) property, or creates a disruption for the neighbors bordering the college, the college may choose to impose its own sanctions on any individual on college property who violates this chapter, although remedies might also be available through local law enforcement agencies.~~

~~((+12) Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.))~~

~~(13) College groups or individuals are asked to obtain authorization from the designated administrator no later than ((twenty-four)) 24 hours in advance of an event. Events shall not last longer than eight hours from beginning to end.~~

~~(14) ((College group events shall not last longer than eight hours from beginning to end. Noncollege group events shall not last longer than five hours from beginning to end.~~

~~(15) The college has designated an area as the sole limited public forum area for first amendment activities on campus. This area is~~

identified in the college facilities use policy and may change from time to time as decided by the college president.

~~(16))~~ All sites must be cleaned up and left in their original condition after use and may be subject to inspection by a college representative (~~of the college~~) after the event. Reasonable charges may be assessed against (~~the sponsoring organization for extraordinary costs including, but not limited to, clean-up, security, or for the repair or replacement~~) a group or individual for the costs of cleaning up the condition of the property beyond reasonable wear and tear or for the repair of damaged property.

~~((17))~~ (15) The event must not create safety hazards or pose unreasonable safety risks to college students, employees, or visitors to the college. All fire, safety, sanitation, or special regulations specified for the event are to be obeyed. (~~The college cannot and will not provide utility connections or hook-ups.~~

~~(18) Subject to the regulations of this policy, both college and noncollege groups may use the campus limited forums for first amendment activities between the hours of 7:00 a.m. and 10:00 p.m. throughout the year except during the following days of the year:~~

~~(a) The first week and the final exam week of each term;~~

~~(b) Advising day;~~

~~(c) Kickoff and convocation weeks, or in other words, the two weeks immediately preceding each quarter;~~

~~(d) Campus events.~~

~~(19) There shall be no overnight camping on college facilities or grounds, including off-campus facilities owned or leased by the college. Camping is defined to include sleeping outside, sleeping in vehicles, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation. However, the college president or designee is authorized to make exceptions in the case of college sponsored events and/or instructional activities.~~

~~(20) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:~~

~~(a) Such activities serve educational purposes of the college; and~~

~~(b) Such activities are under the sponsorship of a college department or office or officially chartered student club.~~

~~(21) The event must also) (16) All activities shall be conducted in accordance with ((any other applicable college policies and regulations, college,) local, ((ordinances, and)) state ((or)), and federal laws, including college policies.~~

~~((22)) (17) The college president or designee is authorized to make exceptions to the policies limiting use in the case of college-sponsored events and/or instructional activities.~~

~~((23) Free movement on campus. The president is authorized to prohibit the entry of or to withdraw the privileges of any person or group of persons to enter onto or remain upon any portion of the college campus if he/she deems that an individual or group of individuals disrupts the ingress or egress of others from the college facilities. The president may act through the vice president of administrative services or any other person he/she may designate.)~~

AMENDATORY SECTION (Amending WSR 17-23-113, filed 11/16/17, effective 12/17/17)

WAC 495B-140-045 Distribution of materials. Information may be distributed as long as it is not obscene or libelous or does not advocate or incite imminent unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups or individuals may distribute materials only ~~((at the site designated for noncollege groups and))~~ as authorized by the college. All postings must first be reviewed by a designated administrative officer as per college policy. Any distribution of materials as authorized by the designated administrative officer shall not be construed as support or approval of the content by the college community or the board of trustees.

~~((1) Handbills, leaflets, newspapers and similar materials may be distributed free of charge by any student or students, or by members of recognized student organizations at locations specifically designated by the vice president of student services, provided such distribution does not interfere with the ingress or egress of persons or interfere with the instructional process or the free flow of vehicular or pedestrian traffic.~~

~~(2) Such handbills, leaflets, newspapers and related matter must bear identification as to the publishing agency and distributing organization or individual.~~

~~(3) All nonstudents shall register with the vice president of student services prior to the distribution of any handbill, leaflet, newspaper or related matter. Such distribution must not interfere with the instructional process or the free flow of vehicular or pedestrian traffic.~~

~~(4) Any person or persons who violate provisions of subsections (1) and (2) or (3) of this section will be subject to disciplinary action.)~~

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-140-050 Administrative control. The college board hereby delegates authority to the college president ~~((authority))~~ to set up administrative policies and procedures for the use of college facilities; to establish, within the framework of these policies, regulations governing such use; and to establish rental schedules where appropriate. The college reserves the right to determine if an infraction of these rules has been committed.

AMENDATORY SECTION (Amending WSR 17-23-113, filed 11/16/17, effective 12/17/17)

WAC 495B-140-060 Trespass. (1) Individuals who are not students ~~((or members of the faculty or staff)),~~ employees, or contracted partners and who violate these rules will be advised of the specific na-

ture of the violation, and if they persist in the violation, they will be requested by the president ((~~r~~)) or ((~~his or her~~)) designee ((~~r~~)) to leave the college property. Such a request prohibits the entry of ((~~and~~)), withdraws the license or privilege to enter onto, or remain upon any portion of the college facilities by the person or group of persons requested to leave ((~~. Such~~)), and subject such persons ((~~shall be subject~~)) to arrest under the provisions of chapter 9A.52 RCW.

~~(2) ((Students who violate proscriptions within these regulations (chapter 495B-140 WAC) will be disciplined in accordance with the campus code of conduct (chapter 495B-120 WAC).~~

~~(3) Faculty and staff who violate proscriptions within these regulations (chapter 495B-140 WAC) will be disciplined in accordance with established college policies.~~

~~(4)) Members of the college community (students, ((~~faculty, and staff~~)) employees, and contracted partners) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accordance with these rules, chapter 495B-121 WAC, and college policy.~~

~~((5)) (3) Any person ((~~s~~)) or group ((~~s~~)) who violates ((~~the~~)) or is in violation of a college policy or local, state, or federal law, ((a college policy or rule)) may have their license or privilege to be on school property revoked and be ordered to withdraw from and refrain from entering upon any college property. Remaining on or reentering college property after one's license or privilege to be on college property has been revoked shall constitute trespass and such individual shall be subject to arrest for criminal trespass.~~

~~(4) There shall be no overnight camping on college property. Camping is defined to include sleeping, sleeping in a vehicle, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation. However, the college president or designee is authorized to make exceptions in the case of college-sponsored events and/or instructional activities.~~

AMENDATORY SECTION (Amending WSR 17-23-113, filed 11/16/17, effective 12/17/17)

WAC 495B-140-070 Prohibited conduct at college facilities. (1)

The use or possession of unlawful drugs or narcotics, not medically prescribed, or of intoxicants on college property or at college functions, is prohibited. Students and employees obviously under the influence of intoxicants, unlawful drugs, or narcotics while ((~~in college facilities~~)) on college property are subject to disciplinary action.

(2) The use of tobacco is prohibited in accordance with health regulations. Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including ((~~r, twenty-five~~)) 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college, except in designated areas in accordance with chapter 70.160 RCW. "Related products" include, but are not limited to, cigarettes, cigars, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems and snuff.

(3) The use or possession of firearms, explosives (including fireworks), dangerous chemicals or other dangerous weapons or instrumentalities on college property is prohibited. This prohibition does not apply to exceptions outlined in WAC 495B-121-265 (22) (a) through (d).

(4) Malicious damage to or malicious misuse of college property, or the property of any person where such property is located on college property, is prohibited. Destruction of property is also prohibited by state law in reference to public institutions.

(5) Alcoholic beverages may be served only as allowed under college policy.

AMENDATORY SECTION (Amending WSR 17-23-113, filed 11/16/17, effective 12/17/17)

WAC 495B-140-080 Control of pets in college facilities. Pets are not permitted in campus buildings or on the grounds except guide or service animals as an accommodation for a disability in accordance with state laws, Bellingham municipal codes, and college policy.

AMENDATORY SECTION (Amending WSR 12-21-061, filed 10/17/12, effective 11/17/12)

WAC 495B-140-090 Basis of fee assessment. (1) A current fee schedule is available to interested groups or individuals from the administrative services office.

(2) The basis for establishing and charging use fees reflects the college's assessment of the present market, the cost of operations, and an evaluation of the intended purpose and its relationship to the purposes of ~~((this))~~ the college. The ~~((board of trustees))~~ college has determined that groups or organizations affiliated with the college should be permitted access to facilities at the lowest charge on the fee schedule which may include complimentary use. ~~((A current fee schedule is available to interested persons from the business office.~~

~~(2-))~~ (3) The college ~~((does not wish to compete with private enterprise. Therefore, the college reserves the right to deny applications for facility use when the administration and/or the board of trustees feel a commercial facility should be patronized. At no time will facility use be granted for a commercial activity at a rental rate, or upon terms, less than the full and fair rental value of premises used))~~ reserves the right to make pricing changes without prior written notice.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-140-100 Application for facility use procedures. (1) At least seven ~~((working))~~ business days prior to date of intended use of any college facility, an authorized representative of the requesting organization must submit proper and complete written application which may be obtained through the college's ~~((office of continuing ed-~~

uation)) administrative services office. A single application may be sufficient for a series of meetings by an organization unless those meetings vary significantly in some substantive way (~~(if so, separate applications will be required)~~).

(2) Upon approval of the application, an authorized representative of the (~~using organization~~) applicant shall sign the rental agreement. By affixing a signature as representing the (~~using~~) requesting organization, the signatory specifies (~~he or she has~~) they have authority to enter into agreement on behalf of the organization. If the organization fails to pay the amount due, the signatory becomes responsible for all charges, which may include charges incurred through property damage, additional services required by the college, and/or interest payment for overdue accounts, as specified on the rental form but not less than one percent per month.

(3) For large events, events requiring expenditures on the part of the college, or where significant areas are blocked out for the renter, a minimum of up to (~~fifty~~) 50 percent advance deposit may be required at the time of application.

(4) (~~The college reserves the right to make pricing changes without prior written notice.~~

~~(5))~~ Use of (~~a facility is~~) college facilities shall be limited to the facilities specified (~~on~~) in the agreement.

(~~(6))~~ (5) The priorities for facility use place primary emphasis on regular college events and activities. The president or designee and the board of trustees reserve the right to cancel any permit and refund any payments for use of college facilities and equipment when they deem such action advisable and in the college's best interests.

(~~(7))~~ (6) In the event of (~~a~~) cancellation of a facility use permit by the applicant, that organization is liable for all college costs and expenses in preparing the facility for its use.

(~~(8))~~ (7) Any admission charge is to be specified and approved by the college in advance.

(~~(9) Organizations using Bellingham Technical College's facilities shall conduct all activities in accordance with applicable local, state, and federal laws including all rules adopted by the Bellingham Technical College board of trustees.~~)

AMENDATORY SECTION (Amending WSR 12-21-061, filed 10/17/12, effective 11/17/12)

WAC 495B-140-105 Posting of a bond and hold harmless statement.

When using college facilities (~~and grounds, an individual or organization~~), a group or individual may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with (~~the college's facility use~~) this chapter and college policy.

When the college grants permission to a college (~~group~~) or non-college group or individual to use its facilities, it is with the express understanding and condition that the group or individual (~~or organization~~) assumes full responsibility for any injuries, loss, or damage.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-140-110 Supervision during activity. (1) Signatories of the rental agreement, as well as adult (~~(organization)~~) leaders, are responsible for group conduct and are expected to remain with their group during activities. When the use of special facilities makes it necessary that supervision be provided, the trustees reserve the right to require that a (~~(staff member)~~) designated administrator represent the college at any activity on college facilities. Such service shall be paid at the current rate by the organization requesting use of the facility(~~(r)~~) and does not relieve the organization from safeguarding the college's property.

(2) (~~(The security staff, or some other authority of the college,)~~) A college representative will open and lock all rented facilities. Keys to (~~(buildings or)~~) college facilities will not be issued or loaned on any occasion (~~(to any using organization)~~) with the exception of keys to designated off-campus locations.

NEW SECTION

WAC 495B-140-115 Dances, concerts, carnivals, and fairs. Street dances, outdoor concerts, carnivals, or fairs may be held at approved locations when sponsored by student government or registered student organizations on days and at times approved by the office delegated oversight responsibility for student government organizations and registered student organizations, following consultation with appropriate college departments and administrators.

NEW SECTION

WAC 495B-140-120 Parades and other street and road activity. Permits for parades, street/road runs, marches, or other events on college streets and roads may be obtained upon approval of the college president or designee.

Such events must be scheduled so as not to interfere with major traffic arterials or with college events and activities. For use of city streets on and adjacent to campus, permits must be obtained through the city of Bellingham.

WSR 25-11-048

PERMANENT RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed May 15, 2025, 9:40 a.m., effective June 15, 2025]

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

Purpose: To bring Bellingham Technical College's (college) Student conduct code, chapter 495B-121 WAC, into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students. On January 9, 2025, a federal district court issued a decision vacating the 2024 updates to the Title IX Education Amendments of 1972. On February 4, 2025, the United States Department of Education issued a Title IX enforcement directive confirming the court's ruling and instructing recipients to revert back to using the 2020 Title IX final rule, effective immediately.

Citation of Rules Affected by this Order: New WAC 495B-121-351, 495B-121-356, 495B-121-361, 495B-121-366, 495B-121-371, 495B-121-376, 495B-121-381, 495B-121-386, and 495B-121-391; and amending WAC 495B-121-235, 495B-121-245, 495B-121-260, 495B-121-265, 495B-121-280, 495B-121-285, 495B-121-286, 495B-121-295, 495B-121-300, 495B-121-310, 495B-121-315, 495B-121-320, 495B-121-325, 495B-121-330, and 495B-121-335.

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

Adopted under notice filed as WSR 25-07-079 on March 17, 2025.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 15, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 15, Repealed 0.

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

Date Adopted: May 15, 2025.

Ronda Laughlin
Executive Assistant to the President

RDS-6175.3

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-235 Statement of jurisdiction. (1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) On college premises;

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

(c) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or employee to participate in the college's programs and activities.

(2) Jurisdiction extends to locations in which students are engaged in college programs or activities including, but not limited to, (~~college-sponsored housing,~~) foreign or domestic travel, activities funded by the students, student government, student clubs or organizations, training internships, cooperative and distance education, on-line education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

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

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

(5) The student conduct officer or their designee has sole discretion, on a case-by-case basis, to bring a student conduct proceeding under this code for academic dishonesty. Nothing in this code precludes instructors and/or academic divisions or departments from imposing an academic sanction, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic integrity policy, the course syllabus, and any applicable program handbook.

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

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-245 Definitions. The following definitions shall apply for the purpose of this student conduct code.

(1) "Board" means the board of trustees of Bellingham Technical College.

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

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

(4) "Complainant" means the following individuals who (~~are alleged to~~) have been subjected to conduct that would constitute (~~sex discrimination~~.) sexual harassment:

(a) A student or employee; or

(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged (~~(discrimination)~~) sexual harassment.

(5) "Conduct review officer" is a college administrator designated by the president and is responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

(6) "Disciplinary action" is the process by which the student conduct officer or their designee imposes discipline against a student for a violation of the student conduct code. A written or verbal warning is not a disciplinary action.

(7) "Disciplinary appeal" is the process by which an aggrieved party can appeal the discipline imposed or recommended by the student conduct officer or their designee. Disciplinary appeals from a suspension in excess of 10 instructional days or a dismissal from the college are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed by a conduct review officer through brief adjudicative proceedings.

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

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

(b) By sending the document by email and first-class mail to the specified college official's office and college email address.

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

(9) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related conditions.

(10) "President" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(11) "Program" or "programs and activities" means all operations of the college.

(12) "Relevant" means related to the allegations of (~~(sex)~~) discrimination and/or harassment under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged (~~(sex)~~) discrimination and/or harassment occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged (~~(sex)~~) discrimination and/or harassment occurred.

(13) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by (~~(sex-discrimination)~~) sexual harassment. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that (~~(sex-discrimination)~~) sexual harassment has occurred.

(14) "Respondent" is a student who is alleged to have violated the student conduct code.

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

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

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

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

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

(17) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(18) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, (~~sex-based~~) sexual harassment, occurred while the individual was performing employment-related work.

(19) "Student group" is a student organization including, but not limited to, student clubs and organizations, members of a class or student cohort, and student performance groups.

(20) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to (~~sex-based~~) sexual harassment.

(21) "Title IX coordinator" is the administrator responsible for processing complaints of (~~sex~~) discrimination and harassment, including (~~sex-based~~) sexual harassment, and conducting or overseeing investigations and informal resolution processes in accordance with college policy.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-260 Statement of student rights. As members of the Bellingham Technical College academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college.

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including (~~sex-based~~) sexual harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

(d) Students have the right to request disability-related accommodations through accessibility resources.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-265 Prohibited student conduct. The college may impose disciplinary sanctions against a student, student group, or a college-sponsored student organization who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct(~~(7)~~) which include, but are not limited to, the following:

(1) Abuse of others. Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is

reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) Abuse in later life.

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

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

(c) Does not include self-neglect.

(3) Academic dishonesty. Any act of academic dishonesty including:

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

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

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

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

(e) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course or dismissal from an academic program. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic integrity policy, the course syllabus, and any applicable program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer or their designee for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

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

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

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

(c) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.

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

(6) Cannabis, drug, and tobacco violations.

(a) Cannabis. The use, possession, growing, delivery, sale, or being visibly under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia is prohibi-

ted on college premises or college-sponsored events. While state law permits the recreational use of cannabis, federal law prohibits such use on college premises or in connection with college activities.

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

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

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

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

(9) Discriminatory harassment.

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

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

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

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

(b) Protected status includes a person's race, ethnicity, creed, color, sex, gender identity or expression, citizenship or immigration status, national origin, age, religion, disability, veteran or military status, sexual orientation, genetic information, the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, pregnancy, marital status, or any other characteristic protected by federal, state, or local law.

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

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

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

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

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

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

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

(13) Hazing. Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college-sponsored student organization, or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing. Examples of hazing include, but are not limited to:

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

(b) Humiliation by ritual act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) Retaliation. Harming, threatening, intimidating, coercing, or other adverse action taken against any individual for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies.

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

(19) Sex discrimination. The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.

(a) Sex-based harassment. "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) Quid pro quo harassment. A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

~~((iii))~~ (b) Sexual violence. "Sexual violence" is a type of discrimination and harassment and includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

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

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

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

~~((D))~~ (iv) Statutory rape (~~((rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent))~~ is consensual sexual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.

~~((E))~~ (v) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

~~((F))~~ (vi) Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim;

and where the existence of such a relationship shall be determined based on a consideration of the following factors:

~~((I))~~ (A) The length of the relationship;

~~((II))~~ (B) The type of relationship; and

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

~~((G))~~ (vii) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for ~~((the person's))~~ their safety or the safety of others; or

(B) To suffer substantial emotional distress.

~~((b) Consent. For purposes of this code "consent"))~~ (c) Consent means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

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

(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

~~((e) Title IX retaliation means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.))~~

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

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

(22) Weapons. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive devices, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, and during college programming and activities, subject to the following exceptions:

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

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

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

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

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-280 Initiation of disciplinary action. (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) Sex discrimination, including sex-based harassment. The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) Hazing by student groups. A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer or designee for disciplinary action.

(4) If a student conduct officer or designee determines that a complaint appears to state a violation of the student conduct code, the student conduct officer or designee will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the parties.

~~((a) Informal dispute resolution shall not be used to resolve sex discrimination complaints without written permission from both the complainant and the respondent.~~

~~(b))~~ If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer or designee has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer or designee may initiate disciplinary action against the respondent.

~~(6) ((Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.~~

~~(7))~~) All disciplinary actions will be initiated by the student conduct officer or their designee. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

~~((8))~~) (7) The student conduct officer or their designee shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

~~((9))~~) (8) At the meeting, the student conduct officer or designee will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice the student conduct officer or designee may take disciplinary action based upon the available information.

(9) The student conduct officer or designee, prior to taking discipline action in a case involving allegations of sexual harassment, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual harassment are found to have merit.

(10) Within 10 business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer or designee shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer or designee, if additional information is necessary to reach a determination. The student conduct officer or their designee will notify the parties of any extension period and the reason therefore.

(11) The student conduct officer or designee may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC ~~((495B-121-265))~~ 495B-121-270 and 495B-121-275; or

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(12) In cases involving allegations of ~~((sex discrimination))~~ sexual harassment, the student conduct officer ~~((or their designee, shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer or their designee shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation.~~

The time for serving a written recommendation may be extended by the student conduct officer or their designee for good cause.

~~(a) The complainant and respondent may either accept the student conduct officer's or their designee's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.~~

~~(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.~~

~~(c) The request may be verbal or written, but must be clearly communicated to the student conduct officer or their designee.~~

~~(d) The student conduct officer or designee shall promptly notify the other party of the request.~~

~~(e) In cases involving sex discrimination, the student conduct officer or designee may recommend dismissal of the complaint if:~~

~~(i) The college is unable to identify respondent after taking reasonable steps to do so;~~

~~(ii) Respondent is not participating in the college's educational programs or activities;~~

~~(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;~~

~~(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or~~

~~(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.~~

~~(f) In cases involving allegations of sex-based harassment, the college must obtain the complaint's voluntary withdrawal in writing before the matter can be dismissed.~~

~~(g) If no request for a full hearing is provided to the student conduct officer or their designee, the student conduct officer's or their designee's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.~~

~~(h) Upon receipt of the student conduct officer's or their designee's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.~~

~~(i) If respondent is found responsible for engaging in sex discrimination, the Title IX coordinator or their designee shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.)) will, on the same date the disciplinary decision is served on the respondent, serve a written notice informing the complainant whether the allegations of sexual harassment were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the parties of their appeal rights. If disciplinary sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the disciplinary sanctions and/or conditions.~~

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-285 Appeal from disciplinary action. (1) (~~Except as specified for cases involving allegations of sex-based harassment, as set forth in WAC 495B-121-280,~~) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent, complainant if any, and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless the respondent has been summarily suspended.

(7) A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

- (a) Suspensions of 10 instructional days or less;
- (b) Disciplinary probation; and
- (c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(8) The student conduct committee shall hear appeals from:

- (a) Disciplinary suspensions in excess of 10 instructional days;
- (b) Dismissals; and
- (c) (~~Sex discrimination, including sex-based harassment cases;~~

~~and~~

~~(d))~~ Discipline cases referred to the committee by the student conduct officer or their designee, a conduct review officer, or the president.

(9) In cases involving allegations of sexual harassment, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual harassment complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual harassment violation, including a disciplinary warning.

(10) If the respondent timely appeals a decision imposing discipline for a sexual harassment violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(11) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to a respondent's appeal of disciplinary decisions shall be afforded the same procedural rights as are afforded the respondent.

(12) The college may, in its sole discretion, contract with an administrative law judge or other qualified person(s) to act as the conduct review officer, authorized to exercise any or all duties of the conduct review officer.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-286 Hazing prohibited—Sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 495B-121-265 (~~((13))~~).

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

(3) Washington state law provides that:

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

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

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

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

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-295 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent and the student conduct officer, and in cases involving sexual harassment, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the college's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within 10 business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within 10 business days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual harassment, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual harassment were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension in excess of 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-300 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within 10 business days of service of the initial decision.

(2) The president shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decisions and must be served on the parties within 20 calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within 20 calendar days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual harassment, the president, on the same date as the final decision is served on the re-

spondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual harassment were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-310 Student conduct committee. (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;
- (c) One administrative employee (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The administrative employee appointed on a yearly basis shall serve as the chair of the committee and may act on preliminary hearing matters prior to convening the committee.

(3) Hearings may be heard by a quorum of three members of the committee so long as the chair, one faculty member, and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness; in which they have direct or personal interest, prejudice, or bias; or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

~~((5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair shall receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term, "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.~~

~~(6) The college may, in its sole discretion, contract with an administrative law judge or other qualified person(s), to act as presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.))~~

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-315 Student conduct committee—Prehearing. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven business days

in advance of the hearing date. The chair may shorten this notice period if both parties agree, and may also continue the hearing to a later time for good cause shown. The notice must include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

(3) The chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request for a document exchange filed at least five business days before the hearing by any party or at the direction of the chair, the parties shall exchange, no later than the third business day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

- (a) The conduct officer's notification of imposition of discipline (or referral to the committee); and
- (b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer or their designee, upon request, shall provide reasonable assistance to the ~~((respondent and complainant in procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer or designee no less than three business days in advance of the hearing. The student conduct officer or their designee shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective witness to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision))~~ parties in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by an advisor of their choice, which may be an attorney retained at the student's expense.

(10) For any matters involving a disciplinary sanction of suspension of more than one quarter, dismissal, or ~~((sex-based))~~ sexual har-

assessment, the ~~((college shall provide an advisor to the respondent and any complainant, if they have not otherwise identified an advisor to assist them during the hearing. The committee will ordinarily be advised by an assistant attorney general or their designee))~~ parties are entitled to an advisor of their choosing, who may be an attorney. If the respondent and/or complainant is represented by an attorney, the student conduct officer or their designee may also be represented by an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

(12) In cases involving allegations of ~~((sex discrimination))~~ sexual harassment, the complainant has a right to participate equally in any part of the disciplinary process, including appeals.

(a) Notice. The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) Advisors. The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.

(d) Evidence. In advance of the hearing, the student conduct officer, or designee, shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer, their designee, or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) In cases involving allegations of ~~((sex-based))~~ sexual harassment, the following additional procedures apply:

(a) Notice. In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged ~~((sex-based))~~ sexual harassment;

(ii) That the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial student conduct committee;

(iii) That they may have an advisor of their choice, who may be an attorney, assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant has not otherwise identified an advisor to assist during the hearing.

(d) Evidence. In advance of the hearing, the student conduct officer or their designee shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer, their designee, or chair issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) Separate locations. The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-320 Student conduct committee—Presentation of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing (~~room~~) location.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer or designee (unless represented by an assistant attorney general) shall present the college's case.

(6) All testimony shall be given under oath or affirmation. (~~Except as otherwise provided in this section,~~) Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of (~~sex-based~~) sexual harassment, the complainant and respondent may not directly question one another. In such circumstances, the chair will determine whether the questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witness by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) The chair must determine whether any proposed question is relevant and not otherwise impermissible prior to the question being posed; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client communications and attorney work product privilege;

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such questions or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged (~~sex-based~~) sexual harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged (~~sex-based~~) sexual harassment or preclude determination that (~~sex-based~~) sexual harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether ((sex-based)) sexual harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) Except in cases involving allegations of ((sex-based)) sexual harassment, the chair has the discretion in all cases to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-325 Student conduct committee—Initial decision.

(1) At the conclusion of the hearing, the committee chair shall permit the parties to make closing arguments in whatever form, written or verbal, the committee wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within 20 calendar days following the latter of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue a decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall so be identified.

(3) The committee's initial order shall also include a determination on appropriate sanctions, if any. If the matter was referred to the committee by the student conduct officer or their designee, the committee shall identify and impose disciplinary sanction(s) or conditions (if any), as authorized in the student code. If the matter is an appeal by a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer or designee, and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their attorney, if any. The notice will inform the parties of their appeal rights. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of ((sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator)) sexual harassment, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual harassment were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent, including suspension or dismissal of the respondent. The complainant may appeal the student conduct committee's initial decision to the president sub-

ject to the same procedures and deadlines applicable to the respondent. The notice will also inform the parties of their appeal rights.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-330 Student conduct committee—Review of initial decision. (1) Any party (~~(, including a complainant in sex-based harassment cases,)~~) who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain an argument as to why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The president shall provide a written decision to all parties and their attorneys, if any, within 20 calendar days after receipt of the notice of appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of (~~(sex-based)~~) sexual harassment, the (~~(president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator)~~) president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual harassment allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(7) The president shall not engage in any "ex parte" communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 25-02-031, filed 12/19/24, effective 1/19/25)

WAC 495B-121-335 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer or their designee may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning the student that their privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer, their designee, or conduct review officer, or to attend a disciplinary hearing.

(5) (a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a

brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of (~~sex-based~~) sexual harassment, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 495B-121-351 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Bellingham Technical College's standard disciplinary procedures, WAC 495B-121-230 through 495B-121-345, these supplemental procedures shall take precedence. Bellingham Technical College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

NEW SECTION

WAC 495B-121-356 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities.

(3) Sexual assault. Sexual assault includes the following conduct:

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

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

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

(d) Statutory rape. Nonforcible sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking, or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.55.010.

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

NEW SECTION

WAC 495B-121-361 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged harassment:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity;

and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" includes locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This also includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 495B-121-265.

(4) If the student conduct officer or designee determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or in part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 495B-121-366 Initiation of discipline. (1) Upon receiving a Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) The college will appoint an advisor of the college's choosing at no cost to the party, if the party fails to do so; and

(f) Explain that if the party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 495B-121-371 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 495B-121-315. In no event will the hearing date be set less than 10 days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 495B-121-376 Rights of parties. (1) The college's student conduct procedures, WAC 495B-121-230 through 495B-121-345 and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing, and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 495B-121-381 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any questions based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged harassment; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) Complainant and respondent may not ask questions directly of one another. Questions may be asked through a party's advisor or by the chair, after the chair determines the question is relevant and not privileged or otherwise impermissible. The chair has discretion to follow this procedure for other witnesses, as well.

(5) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client communications and attorney work product privilege;
- (c) Clergy privileges;
- (d) Medical or mental health providers and counselor privileges;
- (e) Sexual assault and domestic violence advocate privileges; and
- (f) Other legal privileges set forth in RCW 5.60.060 or federal law.

NEW SECTION

WAC 495B-121-386 Initial order. In addition to complying with WAC 495B-121-325, the student conduct committee will be responsible for conferring and drafting an initial order that:

- (1) Identifies the allegations of sexual harassment;
- (2) Describes the procedural steps taken from receipt of the formal complaint through the determination, including any notifications to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
- (3) Makes findings of fact supporting the determination;
- (4) Reaches conclusions applying the student conduct code to the facts;
- (5) Contains a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- (6) Describes any disciplinary sanctions or conditions imposed against the respondent, if the committee determines the respondent violated the student conduct code;
- (7) Determines whether remedies designed to restore or preserve the complainant's equal access to the college educational programs or activities will be provided by the college; and
- (8) Describes the process for appealing the initial order to the college president.

The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 495B-121-391 Appeals. (1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or in part, of a formal complaint

during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 calendar days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions in the initial order or notice of dismissal that the appealing party is challenging and must contain arguments as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president or designee will serve a copy of the appeal on all nonappealing parties, who shall have 10 business days from the date of service to submit a written response to the president's office addressing the issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the response to the other parties.

(3) Parties receiving a copy of the responses shall have five business days in which to submit a written reply addressing issues raised in the response to the president's office.

(4) The president or their designee, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions terms and conditions.

(5) The president's office shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process may be judicially reviewed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542.

WSR 25-11-049

PERMANENT RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed May 15, 2025, 9:40 a.m., effective June 15, 2025]

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

Purpose: To clarify language in chapter 495B-168 WAC for employees and visitors.

Citation of Rules Affected by this Order: Amending WAC 495B-168-020, 495B-168-030, 495B-168-040, and 495B-168-050.

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

Adopted under notice filed as WSR 25-07-073 on March 17, 2025.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: May 15, 2025.

Ronda Laughlin
Executive Assistant to the President

RDS-6141.2

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-168-020 Loans. Materials from the college library(~~(-media center)~~) are checked out only to the following groups.

- (1) All currently registered students of the college;
- (2) All current faculty and administrative staff members;
- (3) All persons currently employed in classified staff positions;
- (4) All holders of currently valid courtesy cards. This latter group includes members of the board of trustees, community educators whose work might necessitate usage of library(~~(-media)~~) materials, and other individuals who show a particular need for specialized items in the library(~~(-media)~~) collections which are not available elsewhere;
- (5) Students from other institutions with which the college library(~~(-media center)~~) has a reciprocal lending agreement through a "shared use plan." This group may use materials on a loan basis at the discretion of the (~~(circulation supervisor)~~) library director who will determine lending priorities based upon the current usage of individual items by Bellingham Technical College students.

AMENDATORY SECTION (Amending WSR 25-02-034, filed 12/19/24, effective 1/19/25)

WAC 495B-168-030 Fines. In cases where damage or loss of library material occurs, the patron will be assessed the replacement cost and processing fees. (~~In other instances where library media materials are retained by the borrower beyond the designated due date, fines will be levied as a sanction to effect the prompt return of items which may be in demand by others.~~) When materials are not returned, or fines not paid, holds are placed on the borrowing privileges of those involved. When expensive or valuable items are involved and reasonable attempts to advise and notify the debtor have been made, outstanding fines and fees may be assigned to a collection agency (RCW 19.16.500).

AMENDATORY SECTION (Amending WSR 25-02-034, filed 12/19/24, effective 1/19/25)

WAC 495B-168-040 Library information. Detailed information governing the operation of the library(~~-media center~~) and the rules for loaning books, other print materials, and nonprint materials is located on Bellingham Technical College's website.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-168-050 Inspection. The library shall have the right to inspect packages, (~~brief cases~~) backpacks, containers, articles, and materials leaving the building to prevent the unauthorized removal of library resources. The inspection may be done by persons or devices designed to detect unauthorized removals.

WSR 25-11-050

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed May 15, 2025, 10:02 a.m., effective June 15, 2025]

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

Purpose: Residential treatment facilities (RTF) regulations, private psychiatric hospital regulations, and behavioral health agency (BHA) regulations as related to licensing fees of Indian health care providers as establishments.

The department of health (department) is adopting new rules in chapters 246-337 and 246-322 WAC to establish fees necessary for the department to receive and process an attestation that a tribal RTF or tribal private psychiatric hospital meets state minimum standards for licensure. Additionally, the department is adopting updates to WAC 246-322-020 and 246-337-010 to clarify that the licensure process described in each section does not apply to tribes seeking licensure via attestation. Finally, the department is adopting updates to WAC 246-341-0367 regarding BHA tribal attestation fees to align with the proposed RTF and private psychiatric hospital tribal attestation fees.

These rules only apply to tribes attesting that a tribal BHA, tribal RTF, or tribal private psychiatric hospital meets state minimum standards for licensure.

Citation of Rules Affected by this Order: New WAC 246-322-985 and 246-337-985; and amending WAC 246-322-020, 246-337-010, and 246-341-0367.

Statutory Authority for Adoption: RCW 43.70.250, 43.70.280, 71.24.037, and SHB 2075 (chapter 204, Laws of 2024), codified as RCW 71.12.460.

Adopted under notice filed as WSR 25-07-052 on March 12, 2025.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 3, Repealed 0.

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

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

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

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

Date Adopted: May 15, 2025.

Kristin Peterson, JD
Chief of Policy
for Jessica Todorovich, MS
Acting Secretary of Health

RDS-6166.1

AMENDATORY SECTION (Amending WSR 95-22-012, filed 10/20/95, effective 11/20/95)

WAC 246-322-020 Licensure—Initial, renewal, modifications. (1)

A person shall have a current license issued by the department before operating or advertising a private psychiatric hospital.

(2) The private psychiatric hospital licensure process described in this section does not apply to a tribe that is licensed or seeking licensure via attestation as described in WAC 246-322-985.

(3) An applicant for initial licensure shall submit to the department, (~~forty-five~~) 45 days or more before commencing business:

(a) A completed application on forms provided by the department;

(b) Certificate of need approval according to the provisions of chapter 246-310 WAC for the number of beds indicated on the application;

(c) Verification of department approval of facility plans submitted for construction review according to the provisions of WAC 246-322-250;

(d) A criminal history background check in accordance with WAC 246-322-030(2);

(e) Verification of approval as a private psychiatric hospital from the state director of fire protection according to RCW 71.12.485;

(f) The fee specified in WAC 246-322-990; and

(g) Other information as required by the department.

(~~3~~) (4) The licensee shall apply for license renewal annually at least (~~thirty~~) 30 days before the expiration date of the current license by submitting to the department:

(a) A completed application on forms provided by the department;

(b) The fee specified in WAC 246-322-990; and

(c) Other information as required by the department.

(~~4~~) (5) At least (~~sixty~~) 60 days prior to transferring ownership of a currently licensed hospital:

(a) The licensee shall submit to the department:

(i) The full name and address of the current licensee and prospective owner;

(ii) The name and address of the currently licensed hospital and the name under which the transferred hospital will operate;

(iii) Name of the new administrator; and

(iv) Date of the proposed change of ownership; and

(b) The prospective owner shall apply for licensure according to subsection (~~2~~) (3) of this section.

NEW SECTION

WAC 246-322-985 Licensure—Fee requirements for tribal attestations. (1) An Indian health care provider as defined in RCW 71.24.025 may attest that its private psychiatric hospital meets state minimum standards for a licensed private psychiatric hospitals, as described in RCW 71.12.460.

(2) A tribe that is pursuing attestation with the department must submit an administrative processing fee to the department for any new, renewed, or amended attestation as specified in WAC 246-341-0367.

(3) Tribal attestations are renewed every three years from the date of signature by all parties.

RDS-6167.1

AMENDATORY SECTION (Amending WSR 18-06-092, filed 3/6/18, effective 4/16/18)

WAC 246-337-010 Licensing. (1) An applicant may not open or operate an RTF until all requirements for licensure set forth in this section are met and the department has issued an initial, renewed, or amended RTF license listing the service type(s) approved to be provided in the RTF.

~~((1))~~ (2) The RTF licensure process described in this section does not apply to a tribe that is licensed or seeking licensure via attestation as described in WAC 246-337-985.

(3) Initial licensure. An applicant for an initial RTF license must submit to the department:

(a) A completed application on form(s) provided by the department, signed by the owner or legal designee;

(b) Disclosure statements and criminal history background checks obtained within the previous three months of the application date for the administrator in accordance with WAC 246-337-055;

(c) The license fee specified in WAC 246-337-990;

(d) Policies and procedures in compliance with chapter 71.12 RCW and this chapter for review and approval by the department;

(e) A completed construction review application and fee, and functional program plan according to WAC 246-337-040;

(f) Written approval of the chief of the Washington state patrol, through the director of fire protection, as required by RCW 71.12.485 and chapter 212-12 WAC; and

(g) Other information as required by the department.

~~((2))~~ (4) An RTF license is effective for one year from the date it is issued.

~~((3))~~ (5) License renewal. At least ~~((thirty))~~ 30 calendar days before the expiration date of the current license, the licensee must submit to the department:

(a) A completed application on form(s) provided by the department;

(b) Disclosure statements and criminal history background checks obtained within the previous three months of the application date for the administrator in accordance with WAC 246-337-055;

(c) The renewal fee specified in WAC 246-337-990;

(d) Written approval from the chief of the Washington state patrol, through the director of fire protection, as required by RCW 71.12.485 and chapter 212-12 WAC; and

(e) Other information as required by the department.

~~((4))~~ (6) License amendment. Prior to changing any of the service type(s) provided in the facility, number of resident beds, location or use of rooms, the physical structure of the facility, a change in the administrator, or a change in address, the licensee must submit to the department:

(a) Notification in writing of the intended change;

(b) A completed application on form(s) provided by the department;

(c) The administrative fee and other applicable fee(s) specified in WAC 246-337-990;

(d) A request to the department to determine the need for review by the department's construction review services and Washington state fire marshal;

(e) If changing service type, policies and procedures in compliance with chapter 71.12 RCW and this chapter for review and approval by the department; and

(f) If changing administrators, disclosure statements and criminal history background checks obtained within the previous three months of the application date for the administrator in accordance with WAC 246-337-055.

~~((5))~~ (7) Change of ownership. Prior to selling, leasing, renting or otherwise transferring control of an RTF that results in a change of the state Uniform Business Identifier Number, the licensee must submit to the department:

(a) The full name and address of the current licensee and prospective licensee;

(b) The name and address of the licensed RTF and the name under which the RTF will operate;

(c) Date of the proposed change;

(d) Plans for preserving resident records, consistent with WAC 246-337-095; and

(e) Other information as required by the department.

~~((6))~~ (8) A prospective new RTF owner shall apply for licensure by complying with subsection ~~((1))~~ (3) of this section.

~~((7))~~ (9) An RTF license is not transferable.

~~((8))~~ (10) The licensee shall:

(a) Maintain and post a current RTF license in a conspicuous place on the premises;

(b) Provide services limited to each department approved service type; and

(c) Maintain the occupancy level not exceeding the licensed resident bed capacity of the RTF.

~~((9))~~ (11) Prior to issuing, renewing, or amending a license, the department shall:

(a) Review and approve the licensing application;

(b) Review and approve RTF policies and procedures according to this chapter, as applicable;

(c) Verify compliance with RTF construction standards according to this chapter, as applicable;

(d) Obtain written verification of compliance with RCW 71.12.485 and chapter 212-12 WAC administered by the Washington state patrol fire marshal fire protection service, as applicable; and

(e) Determine whether the applicant or licensee meets the requirements in chapter 71.12 RCW and this chapter.

~~((10))~~ (12) The department may issue a single RTF license to include two or more buildings on the same campus if the applicant or licensee:

(a) Meets the licensure requirements of chapter 71.12 RCW and this chapter; and

(b) Operates the multiple buildings as a single integrated system with governance by a single authority or body over all staff and buildings.

~~((11))~~ (13) For the purposes of this section, "campus" means an area where all of the RTF's buildings are located on contiguous properties undivided by:

(a) Public streets, not including alleyways used primarily for delivery services or parking; or

(b) Other land that is not owned and maintained by the owners of the property on which the facility is located.

NEW SECTION

WAC 246-337-985 Licensing—Fee requirements for tribal attestations. (1) An Indian health care provider as defined in RCW 71.24.025 may attest that its residential treatment facility meets state minimum standards for a licensed residential treatment facility, as described in RCW 71.12.460.

(2) A tribe that is pursuing attestation with the department must submit an administrative processing fee to the department for any new, renewed, or amended attestation as specified in WAC 246-341-0367.

(3) Tribal attestations are renewed every three years from the date of signature by all parties.

RDS-6168.1

AMENDATORY SECTION (Amending WSR 21-12-042, filed 5/25/21, effective 7/1/21)

WAC 246-341-0367 Agency licensure and certification—Fee requirements for tribal attestations. (1) (~~(A tribe may attest that its behavioral health agency meets)~~) An Indian health care provider as defined in RCW 71.24.025 may attest to meeting state minimum standards for a licensed or certified behavioral health agency, as described by the definition of "licensed or certified behavioral health agency" in RCW 71.24.025.

(2) A tribe that is pursuing attestation with the department must submit (~~(a two hundred sixty-one dollar)~~) an administrative processing fee to the department for (~~(any new or renewed)~~) each new, renewed, or amended attestation of \$130 plus \$131 for each behavioral health agency, residential treatment facility, and behavioral health hospital license issued under the attestation.

WSR 25-11-070

PERMANENT RULES

TRANSPORTATION COMMISSION

[Filed May 20, 2025, 8:38 a.m., effective July 1, 2025]

Effective Date of Rule: July 1, 2025.

Purpose: When toll rates were initially set on the State Route (SR) 99 tunnel in October 2018, the Washington state transportation commission (WSTC) established a plan for three percent toll rate increases to take effect every three years, subject to review and approval by WSTC. The purpose of these planned toll rate increases is to support financial sufficiency for the facility and operational costs. This rule will implement the planned three percent toll rate increase for the SR 99 tunnel that will take effect on July 1, 2025, as established in WAC 468-270-073 and as described in WAC 468-270-040.

Citation of Rules Affected by this Order: Amending WAC 468-270-073.

Statutory Authority for Adoption: RCW 47.56.030, 47.56.850, and 47.56.862.

Other Authority: RCW 47.56.830 and 47.56.862.

Adopted under notice filed as WSR 25-07-099 on March 18, 2025.

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

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

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

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

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

Date Adopted: May 20, 2025.

Reema Griffith
Executive Director

RDS-6230.1

AMENDATORY SECTION (Amending WSR 22-07-078, filed 3/22/22, effective 4/22/22)

WAC 468-270-073 What are the toll rates on the SR 99 Tunnel?

(1) Tables 7 through 11 show the applicable toll rates by vehicle axles, day and time of travel, and method of payment.

(2) Effective July 1, 2022, and every three years thereafter, subject to review and potential adjustment by the commission, toll rates shall be increased as described in WAC 468-270-040 (3)(b).

~~((TABLE 7a, Effective September 26, 2021
SR 99 TUNNEL
TWO-AXLE VEHICLE TOLL RATES~~

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 6 a.m.	\$1.15	\$3.15	\$1.40
6 a.m. to 7 a.m.	\$1.45	\$3.45	\$1.70
7 a.m. to 9 a.m.	\$1.75	\$3.75	\$2.00
9 a.m. to 3 p.m.	\$1.45	\$3.45	\$1.70
3 p.m. to 6 p.m.	\$2.60	\$4.60	\$2.85
6 p.m. to 11 p.m.	\$1.45	\$3.45	\$1.70
11 p.m. to midnight	\$1.15	\$3.15	\$1.40
Saturdays and Sundays³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to Midnight	\$1.15	\$3.15	\$1.40

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.)

TABLE 7 (b), Effective July 1, ((2022)) 2025
SR 99 TUNNEL
TWO-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 6 a.m.	(((\$1.20)) <u>\$1.25</u>)	(((\$3.20)) <u>\$3.25</u>)	(((\$1.45)) <u>\$1.50</u>)
6 a.m. to 7 a.m.	(((\$1.50)) <u>\$1.55</u>)	(((\$3.50)) <u>\$3.55</u>)	(((\$1.75)) <u>\$1.80</u>)
7 a.m. to 9 a.m.	(((\$1.80)) <u>\$1.85</u>)	(((\$3.80)) <u>\$3.85</u>)	(((\$2.05)) <u>\$2.10</u>)
9 a.m. to 3 p.m.	(((\$1.50)) <u>\$1.55</u>)	(((\$3.50)) <u>\$3.55</u>)	(((\$1.75)) <u>\$1.80</u>)
3 p.m. to 6 p.m.	(((\$2.70)) <u>\$2.80</u>)	(((\$4.70)) <u>\$4.80</u>)	(((\$2.95)) <u>\$3.05</u>)
6 p.m. to 11 p.m.	(((\$1.50)) <u>\$1.55</u>)	(((\$3.50)) <u>\$3.55</u>)	(((\$1.75)) <u>\$1.80</u>)
11 p.m. to midnight	(((\$1.20)) <u>\$1.25</u>)	(((\$3.20)) <u>\$3.25</u>)	(((\$1.45)) <u>\$1.50</u>)
Saturdays and Sundays³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to Midnight	(((\$1.20)) <u>\$1.25</u>)	(((\$3.20)) <u>\$3.25</u>)	(((\$1.45)) <u>\$1.50</u>)

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

~~(TABLE 8a, Effective September 26, 2021)~~
SR 99 TUNNEL
THREE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 6 a.m.	\$1.75	\$4.75	\$2.00
6 a.m. to 7 a.m.	\$2.20	\$5.20	\$2.45

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
7 a.m. to 9 a.m.	\$2.65	\$5.65	\$2.90
9 a.m. to 3 p.m.	\$2.20	\$5.20	\$2.45
3 p.m. to 6 p.m.	\$3.90	\$6.90	\$4.15
6 p.m. to 11 p.m.	\$2.20	\$5.20	\$2.45
11 p.m. to midnight	\$1.75	\$4.75	\$2.00
Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to Midnight	\$1.75	\$4.75	\$2.00

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.)

TABLE 8 (b), Effective July 1, ((2022)) 2025
SR 99 TUNNEL
THREE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 6 a.m.	(\$1.80) <u>\$1.90</u>	(\$4.80) <u>\$4.90</u>	(\$2.05) <u>\$2.15</u>
6 a.m. to 7 a.m.	(\$2.25) <u>\$2.35</u>	(\$5.25) <u>\$5.35</u>	(\$2.50) <u>\$2.60</u>
7 a.m. to 9 a.m.	(\$2.70) <u>\$2.80</u>	(\$5.70) <u>\$5.80</u>	(\$2.95) <u>\$3.05</u>
9 a.m. to 3 p.m.	(\$2.25) <u>\$2.35</u>	(\$5.25) <u>\$5.35</u>	(\$2.50) <u>\$2.60</u>
3 p.m. to 6 p.m.	(\$4.05) <u>\$4.20</u>	(\$7.05) <u>\$7.20</u>	(\$4.30) <u>\$4.45</u>
6 p.m. to 11 p.m.	(\$2.25) <u>\$2.35</u>	(\$5.25) <u>\$5.35</u>	(\$2.50) <u>\$2.60</u>
11 p.m. to midnight	(\$1.80) <u>\$1.90</u>	(\$4.80) <u>\$4.90</u>	(\$2.05) <u>\$2.15</u>
Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to Midnight	(\$1.80) <u>\$1.90</u>	(\$4.80) <u>\$4.90</u>	(\$2.05) <u>\$2.15</u>

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

~~(TABLE 9a, Effective September 26, 2021~~
~~SR 99 TUNNEL~~
~~FOUR-AXLE VEHICLE TOLL RATES~~

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 6 a.m.	\$2.30	\$6.30	\$2.55
6 a.m. to 7 a.m.	\$2.90	\$6.90	\$3.15
7 a.m. to 9 a.m.	\$3.50	\$7.50	\$3.75
9 a.m. to 3 p.m.	\$2.90	\$6.90	\$3.15

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
3 p.m. to 6 p.m.	\$5.20	\$9.20	\$5.45
6 p.m. to 11 p.m.	\$2.90	\$6.90	\$3.15
11 p.m. to midnight	\$2.30	\$6.30	\$2.55
Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to Midnight	\$2.30	\$6.30	\$2.55

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.)

TABLE 9 (b), Effective July 1, ((2022)) 2025
SR 99 TUNNEL
FOUR-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 6 a.m.	(((\$2.40)) <u>\$2.50</u>)	(((\$6.40)) <u>\$6.50</u>)	(((\$2.65)) <u>\$2.75</u>)
6 a.m. to 7 a.m.	(((\$3.00)) <u>\$3.10</u>)	(((\$7.00)) <u>\$7.10</u>)	(((\$3.25)) <u>\$3.35</u>)
7 a.m. to 9 a.m.	(((\$3.60)) <u>\$3.70</u>)	(((\$7.60)) <u>\$7.70</u>)	(((\$3.85)) <u>\$3.95</u>)
9 a.m. to 3 p.m.	(((\$3.00)) <u>\$3.10</u>)	(((\$7.00)) <u>\$7.10</u>)	(((\$3.25)) <u>\$3.35</u>)
3 p.m. to 6 p.m.	(((\$5.40)) <u>\$5.60</u>)	(((\$9.40)) <u>\$9.60</u>)	(((\$5.65)) <u>\$5.85</u>)
6 p.m. to 11 p.m.	(((\$3.00)) <u>\$3.10</u>)	(((\$7.00)) <u>\$7.10</u>)	(((\$3.25)) <u>\$3.35</u>)
11 p.m. to midnight	(((\$2.40)) <u>\$2.50</u>)	(((\$6.40)) <u>\$6.50</u>)	(((\$2.65)) <u>\$2.75</u>)
Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to Midnight	(((\$2.40)) <u>\$2.50</u>)	(((\$6.40)) <u>\$6.50</u>)	(((\$2.65)) <u>\$2.75</u>)

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

~~((TABLE 10a, Effective September 26, 2021~~
~~SR 99 TUNNEL~~
~~FIVE-AXLE VEHICLE TOLL RATES~~

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 6 a.m.	\$2.90	\$7.90	\$3.15
6 a.m. to 7 a.m.	\$3.65	\$8.65	\$3.90
7 a.m. to 9 a.m.	\$4.40	\$9.40	\$4.65
9 a.m. to 3 p.m.	\$3.65	\$8.65	\$3.90
3 p.m. to 6 p.m.	\$6.50	\$11.50	\$6.75
6 p.m. to 11 p.m.	\$3.65	\$8.65	\$3.90

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
11 p.m. to midnight	\$2.90	\$7.90	\$3.15
Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to Midnight	\$2.90	\$7.90	\$3.15

- Notes:
- ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
 - ²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
 - ³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.)

TABLE 10 (b), Effective July 1, ((2022)) 2025
SR 99 TUNNEL
FIVE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 6 a.m.	(((\$3.00)) <u>\$3.15</u>	(((\$8.00)) <u>\$8.15</u>	(((\$3.25)) <u>\$3.40</u>
6 a.m. to 7 a.m.	(((\$3.75)) <u>\$3.90</u>	(((\$8.75)) <u>\$8.90</u>	(((\$4.00)) <u>\$4.15</u>
7 a.m. to 9 a.m.	(((\$4.50)) <u>\$4.65</u>	(((\$9.50)) <u>\$9.65</u>	(((\$4.75)) <u>\$4.90</u>
9 a.m. to 3 p.m.	(((\$3.75)) <u>\$3.90</u>	(((\$8.75)) <u>\$8.90</u>	(((\$4.00)) <u>\$4.15</u>
3 p.m. to 6 p.m.	(((\$6.75)) <u>\$7.00</u>	(((\$11.75)) <u>\$12.00</u>	(((\$7.00)) <u>\$7.25</u>
6 p.m. to 11 p.m.	(((\$3.75)) <u>\$3.90</u>	(((\$8.75)) <u>\$8.90</u>	(((\$4.00)) <u>\$4.15</u>
11 p.m. to midnight	(((\$3.00)) <u>\$3.15</u>	(((\$8.00)) <u>\$8.15</u>	(((\$3.25)) <u>\$3.40</u>
Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to Midnight	(((\$3.00)) <u>\$3.15</u>	(((\$8.00)) <u>\$8.15</u>	(((\$3.25)) <u>\$3.40</u>

- Notes:
- ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
 - ²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
 - ³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

((TABLE 11a, Effective September 26, 2021
SR 99 TUNNEL
SIX-AXLE OR MORE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 6 a.m.	\$3.45	\$9.45	\$3.70
6 a.m. to 7 a.m.	\$4.35	\$10.35	\$4.60
7 a.m. to 9 a.m.	\$5.25	\$11.25	\$5.50
9 a.m. to 3 p.m.	\$4.35	\$10.35	\$4.60
3 p.m. to 6 p.m.	\$7.80	\$13.80	\$8.05
6 p.m. to 11 p.m.	\$4.35	\$10.35	\$4.60
11 p.m. to midnight	\$3.45	\$9.45	\$3.70

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to Midnight	\$3.45	\$9.45	\$3.70

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.)

**TABLE 11((b)), Effective July 1, ((2022)) 2025
 SR 99 TUNNEL
 SIX-AXLE OR MORE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 6 a.m.	(((\$3.60)) <u>\$3.75</u>	(((\$9.60)) <u>\$9.75</u>	(((\$3.85)) <u>\$4.00</u>
6 a.m. to 7 a.m.	(((\$4.50)) <u>\$4.65</u>	(((\$10.50)) <u>\$10.65</u>	(((\$4.75)) <u>\$4.90</u>
7 a.m. to 9 a.m.	(((\$5.40)) <u>\$5.55</u>	(((\$11.40)) <u>\$11.55</u>	(((\$5.65)) <u>\$5.80</u>
9 a.m. to 3 p.m.	(((\$4.50)) <u>\$4.65</u>	(((\$10.50)) <u>\$10.65</u>	(((\$4.75)) <u>\$4.90</u>
3 p.m. to 6 p.m.	(((\$8.10)) <u>\$8.40</u>	(((\$14.10)) <u>\$14.40</u>	(((\$8.35)) <u>\$8.65</u>
6 p.m. to 11 p.m.	(((\$4.50)) <u>\$4.65</u>	(((\$10.50)) <u>\$10.65</u>	(((\$4.75)) <u>\$4.90</u>
11 p.m. to midnight	(((\$3.60)) <u>\$3.75</u>	(((\$9.60)) <u>\$9.75</u>	(((\$3.85)) <u>\$4.00</u>

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to Midnight	(((\$3.60)) <u>\$3.75</u>	(((\$9.60)) <u>\$9.75</u>	(((\$3.85)) <u>\$4.00</u>

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

WSR 25-11-071
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 20, 2025, 9:59 a.m., effective July 1, 2025]

Effective Date of Rule: July 1, 2025.

Purpose: The department of labor and industries (department) is amending rules to implement and to be consistent with HB 1197 (chapter 171, Laws of 2023) Defining attending provider and clarifying other provider functions for workers' compensation claims, and adding psychologists as attending providers for mental health only claims. HB 1197 adds psychologists (in the case of claims solely for mental health conditions) and physician assistants to the list of providers that can be attending providers. The department is also amending rules to align with ESHB 2041 (chapter 62, Laws of 2024) Physician assistant collaborative practice.

The following are amended: Chapter 296-14 WAC, Industrial insurance; chapter 296-19A WAC, Vocational rehabilitation; chapter 296-20 WAC, Medical aid rules; chapter 296-21 WAC, Reimbursement policies: Psychiatric services, biofeedback, physical medicine; and chapter 296-23 WAC, Radiology, radiation therapy, nuclear medicine, pathology, hospital, chiropractic, physical therapy, drugless therapeutics and nursing—Drugless therapeutics, etc.

For example, the amended rules add psychologists in the case of claims solely for mental health conditions, and physician assistants, as attending providers; clarifies language related to attending provider functions when providing a diagnosis of mental health conditions and commenting on return to work issues for accepted mental health conditions. The amended rules consistently uses the term "attending provider" in Title 296 WAC. Housekeeping changes are made for those rules already being amended to refer to "attending providers." Gender-neutral language is used in those same WAC sections.

A summary of the adopted rules to these chapters is as follows:

Amended Sections:

WAC 296-14-410 Reduction, suspension, or denial of compensation as a result of noncooperation.

- Replaces "attending physician" with "attending provider."
- Makes a housekeeping change, "self insurer" to "self-insurer."

WAC 296-14-4129 How will imputed wages be determined?

- Replaces "attending physician" with "attending provider."
- Uses gender-neutral language, "his certification" to "their certification."

WAC 296-14-6226 What other information must be submitted to the department in a completed application for a residence modification?

- Replaces "attending health services provider" with "attending provider."
- Makes a housekeeping change, "self-insured employer" to "self-insurer."

WAC 296-14-6230 What will the supervisor consider when approving or denying a residence modification request?

- Replaces "attending health services provider" with "attending provider."

WAC 296-14-6236 How is a worker advised that the supervisor has approved or denied the request for residence modification benefits?

- Replaces "attending health services provider" with "attending provider."

WAC 296-19A-140 What information must a vocational rehabilitation provider include in a labor market survey?

- Replaces "attending physician" with "attending provider."
- Makes a housekeeping change, "provider" to "vocational rehabilitation provider."
- Makes a housekeeping change, "VRC" to "vocational rehabilitation counselor."

WAC 296-20-01002 Definitions, "acceptance/accepted condition."

- Adds language to require use of the edition of the DSM designated by the department when diagnosing mental health conditions.
- Amends language for consistency with other rules in Title 296 WAC, "claimant's medical condition" to "worker's medical condition."

WAC 296-20-01002 Definitions, "attending provider."

- Adds "psychologist in the case of claims solely for mental health conditions, and physician assistant."

WAC 296-20-01002 Definitions, "attending provider report."

- Adds language to require use of the edition of the DSM designated by the department when diagnosing mental health conditions.
- Clarifies return to work language for an accepted mental health condition. "If the worker is unable to return to work due to an accepted mental health condition, a provider's estimate of functional status and barriers to work should be included with the report. If further information is needed or required, a mental health evaluation from an approved mental health provider can be requested.["]
- Replaces "attending doctor" with "attending provider."

WAC 296-20-01002 Definitions, "consultation examination report."

- Adds language to require use of the edition of the DSM designated by the department when diagnosing mental health conditions.
- Replaces "attending doctor" with "attending provider."
- Amends language for consistency with other rules in Title 296 WAC, "patient's" to "worker's."
- Makes a housekeeping [change], "which may effect" to "that may affect."

WAC 296-20-01002 Definitions, "doctor."

- Deletes "attending doctor" from the title to be consistent with the use of the term "attending provider" in HB 1197.

WAC 296-20-01002 Definitions, "fatal."

- Replaces "attending doctor" with "attending provider."
- Replaces "doctor" with "provider."

WAC 296-20-01002 Definitions, "fee schedules (also called maximum fee scheduled)."

- Adds language for clarity, "Level I (Current Procedural Terminology CPT®) and Level II (HCPCS)."
- WAC 296-20-01002 Definitions, "initial visit."**
- Uses the current title for the Report of Accident: Report of Accident (Workplace Injury, Accident, or Occupational Disease).
- WAC 296-20-01002 Definitions, "modified work status."**
- Clarifies return to work language for an accepted mental health condition. For an accepted mental health condition, workers should be urged to return to modified work as soon as reasonable considering the ability to engage in modified work, which may include relevant accommodations.
 - Replaces "attending doctor" with "attending provider."
 - Replaces "doctor" with "attending provider."
 - Makes a housekeeping [change], "self confidence" to "self-confidence."
- WAC 296-20-01002 Definitions, "physician."**
- Deletes "attending physician" from the title to be consistent with the use of the term "attending provider" in HB 1197.
- WAC 296-20-01002 Definitions, "practitioner."**
- Amends language to reflect the broad use of the term "practitioner" in Title 296 WAC. "For these rules, means any person defined as an attending provider or other licensed health care provider authorized to deliver services under Title 51 RCW."
 - Removes "or licensed health care provider" from the title as it is a term that is not used anywhere else in Title 296 WAC.
 - Replaces "doctor" with "attending provider."
- WAC 296-20-01002 Definitions, "proper and necessary."**
- Replaces "attending doctor" with "attending provider."
 - Replaces "doctor" with "provider."
 - Amends language for consistency with other rules in Title 296 WAC, "claimant" to "worker" and "claimant's attending doctor" to "worker's attending provider."
 - Makes a housekeeping change, "which" to "that."
- WAC 296-20-01002 Definitions, "regular work status."**
- Clarifies that the attending provider should consider mood, behavioral, and/or cognitive factors for an accepted mental health condition when determining whether the worker is released to return to regular work.
 - Replaces "attending doctor" with "attending provider."
 - Uses gender-neutral language, "his/her regular work" to "their regular work."
- WAC 296-20-01002 Definitions, "temporary partial disability."**
- Replaces "attending doctor" with "attending provider."
 - Amends language for consistency with other rules in Title 296 WAC, "time loss" to "time-loss."
- WAC 296-20-01002 Definitions, "termination of treatment."**
- Amends language for consistency with other rules in Title 296 WAC, "patient" to "worker."

WAC 296-20-01002 Definitions, "total permanent disability."

- Replaces "attending doctor" with "attending provider."

WAC 296-20-01002 Definitions, "total temporary disability."

- Amends language for consistency with other rules in Title 296 WAC, "full-time loss" to "full time-loss."

WAC 296-20-01002 Definitions, "treating provider."

- Adds psychologists.

WAC 296-20-01002 Definitions, "utilization review."

- Amends language for consistency with other rules in Title 296 WAC, "claimant's medical care" to "worker's medical care."

WAC 296-20-01010 Scope of health care provider network.

- Adds "psychologists" to the list of providers that must be in the medical provider network.
- Amends language for consistency with other rules in Title 296 WAC, "self-insured employers" to "self-insurers."
- Uses gender-neutral language, "his/her" to "their."

WAC 296-20-01501 Physician assistant rules.

- Clarifies that physician assistants can be attending providers.
- Aligns with ESHB 2041 (chapter 62, Laws of 2024) by clarifying that physician assistants treat under a collaboration agreement with a physician(s).
- Uses the current title for the Report of Accident: Report of Accident (Workplace Injury, Accident, or Occupational Disease).
- Makes a housekeeping change, "which" to "that."

WAC 296-20-020 Acceptance of rules and fees.

- Replaces "doctor" with "provider."
- Replaces "that physician" with "that provider."
- Uses the current title for the Report of Accident: Report of Accident (Workplace Injury, Accident, or Occupational Disease).
- Deletes the reference to the Washington State Medical Association's Utilization Review committee as it no longer exists.
- Uses gender-neutral language, "his" to "their."

WAC 296-20-030 Treatment not requiring authorization for accepted conditions.

- Replaces "attending doctor" with "attending provider."
- Amends language for consistency with other rules in Title 296 WAC, "claimant" to "worker."
- Uses gender-neutral language, "his" to "their."

WAC 296-20-03001 Treatment requiring authorization.

- Replaces "attending doctor" with "attending provider."
- Amends language for consistency with other rules in Title 296 WAC, "patient" to "worker."
- Makes housekeeping changes, "long term" to "long-term" and "which" to "that."

WAC 296-20-035 Treatment in cases that remain open beyond 60 days.

- Replaces "attending doctor" with "attending provider."
- Makes a housekeeping change, "time loss" to "time-loss."

WAC 296-20-055 Limitation of treatment and temporary treatment of unrelated conditions when retarding recovery.

- Replaces "attending doctor" with "attending provider."
- Amends language for consistency with other rules in Title 296 WAC, "claimant" to "worker."
- Uses gender-neutral language, "his" to "their" and "his industrial condition" to "that industrial condition."

WAC 296-20-06101 What reports are health care providers required to submit to the department or self-insurer?

- Amends the introduction to the table to define provider acronyms used in the table (e.g., "psychologist (PhD/PsD[PsyD]).[")
- Adds psychologists to the list of providers that can complete the following forms: (1) Report of Accident (Workplace Injury, Accident, or Occupational Disease); (2) Self-insurance: Provider's Initial Report; and (3) application to reopen claim due to worsening of condition.
- Uses the current title for the Report of Accident: Report of Accident (Workplace Injury, Accident, or Occupational Disease).
- Adds and amends language on diagnosing mental health conditions and return to work criteria to be consistent with the amended "Attending Provider Report" and the amended "Consultation Examination Report" in WAC 296-20-01002 Definitions.
- Replaces "attending or treating provider" with "attending provider."
- Replaces "doctor" with "provider."
- Makes housekeeping changes, "Insurer" to "department or self-insurer," "Head Injury Program" to "Brain Injury Program," and "Speech Therapist" to "Speech Language Pathologist."

WAC 296-20-071 Concurrent treatment.

- Replaces "attending doctor" with "attending provider."
- Makes a housekeeping change, "time loss" to "time-loss."

WAC 296-20-09701 Request for reconsideration.

- Replaces "attending doctor" with "attending provider."
- Replaces "doctor" with "attending provider."
- Amends language for consistency with other rules in Title 296 WAC, "claimant's" to "worker's."
- Uses gender-neutral language, "his request for reconsideration" to "a request for reconsideration."

WAC 296-20-1102 Special equipment rental and purchase prosthetic and orthotics equipment.

- Replaces "attending doctor" with "attending provider."
- Replaces "prescribing doctor" with "prescribing provider."
- Makes a housekeeping change, "long term" to "long-term."
- Uses gender-neutral language, "reimburse the doctor his cost for the item" to "reimburse the provider for their cost for the item."

WAC 296-20-121 X-rays.

- Replaces "attending doctor" with "attending provider."
- Replaces "doctor's" with "provider's."
- Uses gender-neutral language, "his" to "their."

WAC 296-20-200 General information for impairment rating examinations by attending providers, consultants or independent medical examination (IME) providers.

- Replaces "attending doctor" with "attending provider" in the title.

WAC 296-20-2010 General rules for impairment rating examinations by attending providers and consultants.

- Replaces "attending doctor" with "attending provider" in the title and the body of this WAC.
- Replaces "doctors" with "providers."
- Replaces "doctors" with "attending providers and consultants."
- The language in subsection (1) still limits impairment ratings to providers currently licensed in both medicine and surgery (including osteopathic and podiatric) or dentistry, and department-approved chiropractors. This applies to attending providers and consultants.
- Amends subsection (1) for clarity.
- Amends language for consistency with other rules in Title 296 WAC, "patient" to "worker."

WAC 296-20-2015 What rating systems are used for determining an impairment rating conducted by the attending provider or a consultant?

- Replaces "attending doctor" with "attending provider" in the title.

WAC 296-20-2025 May a worker bring someone with them to an impairment rating examination conducted by the attending provider or a consultant?

- Replaces "attending doctor" with "attending provider" in the title and the body of this WAC.

WAC 296-20-2030 May the worker videotape or audiotape the impairment rating examination conducted by the attending provider or a consultant?

- Replaces "attending doctor" with "attending provider" in the title.

WAC 296-21-290 Physical medicine.

- Replaces "attending doctor" with "attending provider."
- Amends language for consistency with other rules in Title 296 WAC, "patient" to "worker."

WAC 296-23-140 Custody of X-rays.

- Replaces "attending doctor" with "attending provider."
- Replaces "doctor" with "provider."
- Makes a housekeeping change, "doctor's office" to "provider's office."

WAC 296-23-145 Duplication of X-rays and extra views.

- Replaces "attending doctor" with "attending provider."

WAC 296-23-165 Miscellaneous services and applications.

- Replaces "attending doctor" with "attending provider."
- Replaces "worker's doctor" with "worker's provider."
- Replaces "prescribing doctor's" with "prescribing provider's."

WAC 296-23-205 General instructions—Naturopathic physicians.

- Replaces "attending doctor" with "attending provider."

WAC 296-23-240 Licensed nursing rules.

- Replaces "attending physician" with "attending provider."

WAC 296-23-241 Advanced registered nurse practitioners.

- Amends language for clarity and refers to applicable rules in Title 296 WAC.
- Uses the current title for the Report of Accident: Report of Accident (Workplace Injury, Accident, or Occupational Disease).

WAC 296-23-246 Attendant services.

- Replaces "attending physician" with "attending provider."
- Uses gender-neutral language, "his or her" to "their."

WAC 296-23-250 Massage therapy rules.

- Replaces "attending doctor" with "attending provider."
- Removes language on physician assistants ordering massage. Physician assistants will be attending providers per HB 1197 so this language is not needed.

WAC 296-23-302 Definitions, approved IME provider, direct patient care, medical director, patient related services.

- Replaces "treating/attending doctors" with "attending providers."
- Replaces "licensed doctor" with "licensed provider."
- Amends language for consistency with other rules in Title 296 WAC, "patient" to "worker."
- Uses gender-neutral language, "his or her" to "their."

WAC 296-23-347 What are the independent medical examination (IME) provider's responsibilities in an examination?

- Replaces "attending doctor" with "attending provider."
- Amends language for consistency with other rules in Title 296 WAC, "self-insured employer" to "self-insurer."
- Uses gender-neutral language, "himself or herself" to "themselves" and "he/she" to "they."

WAC 296-23-377 If an independent medical examination (IME) provider is asked to do an impairment rating examination only, what information must be included in the report?

- Replaces "attending doctor" with "attending provider."

Citation of Rules Affected by this Order: Amending WAC 296-14-410, 296-14-4129, 296-14-6226, 296-14-6230, 296-14-6236, 296-19A-140, 296-20-01002, 296-20-01010, 296-20-01501, 296-20-020, 296-20-030, 296-20-03001, 296-20-035, 296-20-055, 296-20-06101, 296-20-071, 296-20-09701, 296-20-1102, 296-20-121, 296-20-200, 296-20-2010, 296-20-2015, 296-20-2025, 296-20-2030, 296-21-290, 296-23-140, 296-23-145, 296-23-165, 296-23-205, 296-23-240, 296-23-241, 296-23-246, 296-23-250, 296-23-302, 296-23-347, and 296-23-377.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, and 51.36.010.

Adopted under notice filed as WSR 25-03-115 on January 21, 2025.

Changes Other than Editing from Proposed to Adopted Version: The definition of "regular work status" in WAC 296-20-01002 Definitions, has a minor change.

Proposed: The ((injured)) worker is ((physically)) capable of returning to ((his/her)) their regular work from physical, cognitive, emotional, and behavioral standpoints. It is the duty of the attending ((~~doctor~~)) provider to notify the worker and the department or self-insurer, as the case may be, of the specific date of release to return to regular work. Compensation will be terminated on the release date. Further treatment can be allowed as requested by the attending ((~~doctor~~)) provider if the condition is not stationary and such treatment is needed and otherwise in order.

Adopted: The ((injured)) worker is physically capable of returning to ((his/her)) their regular work. For an accepted mental health condition, the provider should consider mood, behavioral, and/or cognitive factors. It is the duty of the attending ((~~doctor~~)) provider to notify the worker and the department or self-insurer, as the case may be, of the specific date of release to return to regular work. Compensation will be terminated on the release date. Further treatment can be allowed as requested by the attending ((~~doctor~~)) provider if the condition is not stationary and such treatment is needed and otherwise in order.

A final cost-benefit analysis is available by contacting Jami Lifka, Administrative Regulations Analyst, Department of Labor and Industries, Insurance Services, Office of the Medical Director, P.O. Box 44321, Olympia, WA 98504-4321, phone 360-902-4941, fax 360-902-6315, TTY 771 [711], 360-902-4941, email Jami.Lifka@lni.wa.gov, website <https://www.lni.wa.gov/rulemaking-activity>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 36, Repealed 0.

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

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

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

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

Date Adopted: May 20, 2025.

Joel Sacks
Director

OTS-6004.2

AMENDATORY SECTION (Amending WSR 99-18-062, filed 8/30/99, effective 9/30/99)

WAC 296-14-410 Reduction, suspension, or denial of compensation as a result of noncooperation. (1) **Can the department or self-insurer**

reduce, suspend or deny industrial insurance benefits from a worker?

The department or the self-insurer, after receiving the department's order, has the authority to reduce, suspend or deny benefits when a worker (or worker's representative) is noncooperative with the management of the claim.

(2) **What does noncooperative mean?** Noncooperation is behavior by the worker (or worker's representative) which obstructs and/or delays the department or self-insurer from reaching a timely resolution of the claim.

(a) Noncooperation can include any one of the following:

(i) Not attending or cooperating with medical examinations or vocational evaluations requested by the department or self-insurer.

(ii) Failure to keep scheduled appointments or evaluations with (~~attending physician~~) the attending provider or vocational counselor.

(iii) Engaging in unsanitary or harmful actions that jeopardize or slow recovery.

(iv) Not accepting medical and/or surgical treatment that is considered reasonably essential for recovery from the industrial injury or occupational disease.

(3) **Are there ever exceptions to attending a scheduled examination or vocational evaluation?** The worker will not be considered uncooperative if refusal to attend a scheduled examination is for any one of the following reasons:

(a) The department or self-insurer did not mail notice to the worker and designated representative at least 14 but no more than 60 days prior to the examination. The notice must contain the date, time and location of the examination.

(b) If the worker is 30 or less minutes late for the appointment.

(c) If the worker has not been examined or evaluated and leaves after waiting for more than one hour after the scheduled time.

(4) **What actions are taken before reducing, suspending or denying industrial insurance benefits?**

(a) The department or self-insurer must first send a letter to the worker (or the worker's representative) advising that benefits may be suspended and asking for an explanation for the noncooperation, obstruction and/or delay of the management of the claim.

(b) The worker has 30 days to respond in writing to the letter. This written response should include the reason(s) the worker has for not cooperating with the department or self-insurer.

(5) **What are the actions the department can take if a worker (or a worker's representative) is determined to be noncooperative?** If the worker does not respond in 30 days to the letter asking for justification for not cooperating or it is determined there is no good cause the department or self-insurer, after receiving the department's order, may take the following action:

(a) Reduce current or future time-loss compensation by the amount of the charge incurred by the department or self-insurer for any examination, evaluation, or treatment that the worker failed to attend.

(b) Reduce, suspend or deny all or part of the time-loss benefits.

(c) Suspend or deny medical benefits.

AMENDATORY SECTION (Amending WSR 04-20-024, filed 9/28/04, effective 11/1/04)

WAC 296-14-4129 How will imputed wages be determined? (1) When the worker has performed work or work-type activities within the state of Washington, the department imputes wages based on information collected and reported by the department of employment security. This information may include wages for the same or similar jobs within the geographic area proximate to the worker and for the same or most proximate time period as the work or work-type activities performed.

(2) When the worker performed work or work-type activities outside the state of Washington for which wages are to be imputed, the department will use information collected and reported by the United States Department of Labor Statistics to determine the correct imputed wage.

(3) In no case shall the imputed wages equal less than the hourly minimum wage for the proximate time period and geographic area used.

(4) If the worker engaged in reduced work or work-type activities when compared to the employment at the time of injury, except in pension cases, the department shall calculate the loss-of-earning power benefits consistent with RCW 51.32.090(3) to which the worker would have been entitled based on the imputed wage.

Example of imputed wage: A worker received time-loss compensation benefits and contended he was unable to work in his regular job as a construction laborer. Investigation showed that he was working painting houses on a regular full-time basis. The work he performed was ongoing over an extended period of time. Payments for this work were reportedly on a cash basis and no records were kept.

Wages would be imputed based on the average wage of a painter in his local area as reported by the department of employment security.

Example of reduced work or work-type activity: A worker was receiving time-loss compensation benefits for a shoulder injury she suffered while working as a registered nurse. She contended she was unable to perform nursing duties. The department received evidence that she had in fact been working on a regular basis as a cashier in her husband's delicatessen. There were no wages reported for this work. The evidence also showed she had worked there for several months.

The medical and vocational providers were shown the investigative evidence and they determined the worker was able to work and had returned to work as a cashier.

The department would impute wages based on the average wage paid by the business owner to other employees in the same position. If there were no other employees, wages would be imputed based on the average wage of a cashier in the local area as reported by the department of employment security.

Example of release for work and no imputed wage: A worker, who was a carpenter on the date of injury, was receiving time-loss compensation benefits based on his alleged inability to return to work. He contended he had to use a wheelchair to get around.

Video evidence was obtained showing him performing extensive remodeling work on a rental home he owned. He did not use the wheelchair and there was no indication he had any difficulties performing the work. His activities included installing siding and windows, painting, and performing other activities inconsistent with his alleged level of disability. He received no wages as the work was done on his personal property.

The video was shown to his attending (~~(physician)~~) provider. (~~(The physician)~~) That provider withdrew (~~(his)~~) their certification of the worker's entitlement to time-loss compensation benefits and released him to return to work at his job of injury effective the first date of the video surveillance.

There is no need to impute wages because the release for work was to the job of injury.

AMENDATORY SECTION (Amending WSR 06-06-065, filed 2/28/06, effective 4/1/06)

WAC 296-14-6226 What other information must be submitted to the department in a completed application for a residence modification?

(1) The attending (~~(health services)~~) provider may need to submit medical documentation verifying the worker's condition and the necessity for any residence modification.

(2) The residence modification consultant must submit an evaluation, based on an in-home inspection, of the worker's needs for safety, mobility and activities of daily living. This evaluation must be in the form of a written report with pictures or drawings.

(3) Any additional information requested by the department or (~~(self-insured employer)~~) self-insurer that might be needed to evaluate a specific request.

AMENDATORY SECTION (Amending WSR 06-06-065, filed 2/28/06, effective 4/1/06)

WAC 296-14-6230 What will the supervisor consider when approving or denying a residence modification request? The supervisor will consider requests for residence modifications on a case-by-case basis. The supervisor may approve all or part of the requested modifications, based on what is reasonable and necessary for the individual worker.

In order to determine what is reasonable and necessary, the supervisor will review the completed application and will consider at least the following:

(1) Whether the worker is eligible to receive a residence modification benefit; and

(2) The needs and preferences of the individual worker, based on information provided by the injured worker; and

(3) Whether the proposed residence is appropriate for modification; and

(4) Whether the proposed modifications are appropriate for the style, nature and condition of the residence; and

(5) The attending (~~(health care)~~) provider's opinions of the medical condition, physical needs of the worker and whether the worker can reside in the residence after the modifications are complete; and

(6) The residence modification consultant's evaluation of whether the proposed modification is necessary to meet the worker's current need for safety, mobility and activities of daily living; and

(7) Whether the contractor's proposed plan will satisfy the necessary modification; and

(8) Whether the proposed plans submitted by the contractors are consistent with state guidelines for specially adapted residential housing, if any; and

(9) The contractor's proposed modification plan is consistent with the guidelines established by the United States Department of Veterans Affairs in their publication entitled "*Handbook for Design: Specially Adapted Housing*," or the recommendations published in "*The Accessible Housing Design File*" by Barrier Free Environments, Inc.; and

(10) Whether the proposed modifications are being provided at the least cost while maintaining quality.

AMENDATORY SECTION (Amending WSR 06-06-065, filed 2/28/06, effective 4/1/06)

WAC 296-14-6236 How is a worker advised that the supervisor has approved or denied the request for residence modification benefits?
The department will notify the worker, contractors, homeowner (if not the worker), residence modification consultant, attending ((health services)) provider and employer of the supervisor's decision in writing.

OTS-6005.3

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-140 What information must a vocational rehabilitation provider include in a labor market survey? (1) The following information must be included in a labor market survey that is submitted to the department as documentation in support of a vocational recommendation. This information must be presented in the form of a summary report and accompanied by the results of the individual employer contacts:

(a) The specific job title surveyed and its DOT code. If the DOT code is not an accurate reflection/description of the job, then list the specific job surveyed, the occupational code and the source from which the occupational code was obtained;

(b) The name of the surveyor;

(c) A summary of all contacts and the dates of contact;

(d) A summary of whether or not the industrially injured or ill worker has the physical and mental/cognitive capacities to perform the job, based upon information from the attending ((physician)) provider or from a preponderance of medical information;

(e) A summary of whether the labor market matches the industrially injured or ill worker's work pattern;

(f) A summary of whether the labor market is considered positive or negative, as follows:

(i) If the labor market survey is conducted during an ability to work assessment, a labor market is considered positive if it shows

that there are sufficient job opportunities in the worker's relevant labor market to enable the injured worker to become employable.

(ii) If the labor market is conducted during a plan development, a labor market is considered positive if it shows that jobs suitable for the injured worker for the proposed job goal exist in sufficient numbers to reasonably conclude that the worker will be employable at plan completion.

(g) Additional information may be presented in the summary, but only as a supplement to the labor market survey. Additional information may include, but is not limited to, published statistical data regarding occupations and projected job openings.

(2) The following information must be obtained from the individual employer contacts and submitted to the department with the summary report. If the information is not available, the ((VRC)) vocational rehabilitation counselor should document attempts made to obtain the information and why it was not available.

(a) The specific job title surveyed;

(b) All specific employer contacts, including their firm names, phone numbers, contact name and job title;

(c) Physical and mental/cognitive demands of the job in relation to the industrially injured or ill worker's physical and mental/cognitive capacities;

(d) Minimum hiring requirements and the skills and training commonly and currently necessary to be gainfully employed in the job;

(e) Work patterns;

(f) Number of positions per job title;

(g) Wage;

(h) Date of last hire;

(i) Number of current openings; and

(j) An indication of whether each contact was considered positive or negative. The vocational rehabilitation provider must include specific documentation to support why a contact was positive or negative for the recommended occupation or proposed vocational goal.

RDS-6006.7

AMENDATORY SECTION (Amending WSR 17-16-133, filed 8/1/17, effective 9/1/17)

WAC 296-20-01002 Definitions. Acceptance, accepted condition:

Determination by a qualified representative of the department or self-insurer that reimbursement for the diagnosis and curative or rehabilitative treatment of a ((claimant's)) worker's medical condition is the responsibility of the department or self-insurer. The condition being accepted must be specified by one or more diagnosis codes from the current federally adopted edition of the International Classification of Diseases, Clinically Modified (ICD-CM). For mental health conditions, the condition being accepted must also be specified from the edition of the American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (DSM) designated by the department.

Appointing authority: For the evidence-based prescription drug program, the appointing authority shall mean the following people act-

ing jointly: The director of the health care authority and the director of the department of labor and industries.

Attendant care: Those proper and necessary personal care services provided to maintain the worker in his or her residence. Refer to WAC 296-23-246 for more information.

Attending provider: For these rules, means a person (~~(licensed to independently practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry; and advanced registered nurse practitioner. An attending provider actively treats an injured or ill worker)~~) who is a member of the health care provider network established under RCW 51.36.010, is treating injured workers within their scope of practice, and is licensed under Title 18 RCW as one of the following: Physician, osteopathic physician, chiropractor, naturopath, podiatric physician, dentist, optometrist, advanced registered nurse practitioner, psychologist in the case of claims solely for mental health conditions, and physician assistant.

Attending provider report: This type of report (~~(may)~~) is also ((be)) referred to as a "60 day" or "special" report. The following information must be included in this type of report. (~~(Also,)~~) Additional information may be requested by the department as needed.

(1) The condition(s) diagnosed including the current federally adopted ICD-CM codes and the ((objective and)) subjective and objective findings. For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (DSM) designated by the department and the subjective and objective findings for that condition.

(2) Their relationship, if any, to the industrial injury or exposure.

(3) Outline of proposed treatment program, its length, components, and expected prognosis including an estimate of when treatment should be concluded and condition(s) stable. An estimated return to work date should be included. The probability, if any, of permanent partial disability resulting from industrial conditions should be noted.

(4) If the worker has not returned to work, the attending (~~(doctor))~~ provider should indicate whether a vocational assessment will be necessary to evaluate the worker's ability to return to work and why.

(5) If the worker ((has not returned)) is unable to return to work, a ((doctor's)) provider's estimate of physical capacities should be included with the report. If further information regarding physical capacities is needed or required, a performance-based physical capacities evaluation can be requested. Performance-based physical capacities evaluations should be conducted by a licensed occupational therapist or a licensed physical therapist. Performance-based physical capacities evaluations may also be conducted by other qualified professionals who provided performance-based physical capacities evaluations to the department prior to May 20, 1987, and who have received written approval to continue supplying this service based on formal department review of their qualifications.

(6) If the worker is unable to return to work due to an accepted mental health condition, a provider's estimate of functional status and barriers to work should be included with the report. If further information is needed or required, a mental health evaluation from an approved mental health provider can be requested.

Authorization: Notification by a qualified representative of the department or self-insurer that specific proper and necessary treatment, services, or equipment provided for the diagnosis and curative or rehabilitative treatment of an accepted condition will be reimbursed by the department or self-insurer.

Average wholesale price (AWP): A pharmacy reimbursement formula by which the pharmacist is reimbursed for the cost of the product plus a mark-up. The AWP is an industry benchmark which is developed independently by companies that specifically monitor drug pricing.

Baseline price (BLP): Is derived by calculating the mean average for all NDC's (National Drug Code) in a specific product group, determining the standard deviation, and calculating a new mean average using all prices within one standard deviation of the original mean average. "Baseline price" is a drug pricing mechanism developed and updated by First Data Bank.

Bundled codes: When a bundled code is covered, payment for them is subsumed by the payment for) the codes or services to which they are incident. (An example is a telephone call from a hospital nurse regarding care of a patient. This service is not separately payable because it is included in the payment for other services such as hospital visits.) Bundled codes and services are identified in the fee schedules.

By report: BR (by report) in the value column of the fee schedules indicates that the value of this service is to be determined by report (BR) because the service is too unusual, variable or new to be assigned a unit value. The report shall provide an adequate definition or description of the services or procedures that explain why the services or procedures (e.g., operative, medical, radiological, laboratory, pathology, or other similar service report) are too unusual, variable, or complex to be assigned a relative value unit, using any of the following as indicated:

- (1) Diagnosis;
- (2) Size, location and number of lesion(s) or procedure(s) where appropriate;
- (3) Surgical procedure(s) and supplementary procedure(s);
- (4) Whenever possible, list the nearest similar procedure by number according to the fee schedules;
- (5) Estimated follow-up;
- (6) Operative time;
- (7) Describe in detail any service rendered and billed using an "unlisted" procedure code.

The department or self-insurer may adjust BR procedures when such action is indicated.

Chart notes: This type of documentation may also be referred to as "office" or "progress" notes. Providers must maintain charts and records in order to support and justify the services provided. "Chart" means a compendium of medical records on an individual patient. "Record" means dated reports supporting bills submitted to the department or self-insurer for medical services provided in an office, nursing facility, hospital, outpatient, emergency room, or other place of service. Records of service shall be entered in a chronological order by the practitioner who rendered the service. For reimbursement purposes, such records shall be legible, and shall include, but are not limited to:

- (1) Date(s) of service;
- (2) Patient's name and date of birth;
- (3) Claim number;

- (4) Name and title of the person performing the service;
- (5) Chief complaint or reason for each visit;
- (6) Pertinent medical history;
- (7) Pertinent findings on examination;
- (8) Medications and/or equipment/supplies prescribed or provided;
- (9) Description of treatment (when applicable);
- (10) Recommendations for additional treatments, procedures, or consultations;
- (11) X-rays, tests, and results; and
- (12) Plan of treatment/care/outcome.

Consultation examination report: The following information must be included in this type of report. Additional information may be requested by the department as needed.

- (1) A detailed history to establish:
 - (a) The type and severity of the industrial injury or occupational disease.
 - (b) The ~~((patient's))~~ worker's previous physical and mental health.
 - (c) Any social and emotional factors ~~((which))~~ that may ~~((effect))~~ affect recovery.
- (2) A comparison ~~((history))~~ between the history provided by the attending ~~((doctor))~~ provider and the injured worker~~((r))~~ must be provided with exam.
- (3) A detailed physical examination concerning all systems affected by the industrial accident.
- (4) A general physical examination sufficient to demonstrate any preexisting impairments of function or concurrent condition.
- (5) A complete diagnosis of all ~~((pathological))~~ conditions including the current federally adopted ICD-CM codes ~~((found to be listed))~~ and the subjective and objective findings. For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM) designated by the department and the subjective and objective findings for that condition, and listed as:
 - (a) Due solely to injury.
 - (b) Preexisting condition aggravated by the injury and the extent of aggravation.
 - (c) Other medical conditions neither related to nor aggravated by the injury but which may retard recovery.
 - (d) Coexisting disease (arthritis, congenital deformities, heart disease, etc.).
- (6) Conclusions must include:
 - (a) Type of treatment recommended for each pathological condition and the probable duration of treatment.
 - (b) Expected degree of recovery from the industrial condition.
 - (c) Probability, if any, of permanent disability resulting from the industrial condition.
 - (d) Probability of returning to work.
- (7) Reports of necessary, reasonable X-ray and laboratory studies to establish or confirm the diagnosis when indicated.

Doctor ~~((or attending doctor))~~: For these rules, means ~~((a person licensed to independently practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry. An attending doctor is a treating doctor.~~

Only those persons so licensed may sign report of accident forms, the provider's initial report, and certify time loss compensation; however, physician assistants (PAs) also may sign these forms pursuant to WAC 296-20-01501 (PAs may be "treating providers" pursuant to the definition contained in WAC 296-20-01002); and ARNPs may also sign these forms pursuant to WAC 296-23-241 (ARNPs may be "attending providers" consistent with the definition contained in WAC 296-20-01002-)) one or more of the following acting within the scope of their professional license: Physician, osteopathic physician, chiropractor, naturopath, podiatric physician, dentist, optometrist, or psychologist.

Emergent hospital admission: Placement of the worker in an acute care hospital for treatment of a work related medical condition of an unforeseen or rapidly progressing nature which if not treated in an inpatient setting, is likely to jeopardize the workers health or treatment outcome.

Endorsing practitioner: A practitioner who has notified the health care authority that he or she agrees to allow therapeutic interchange.

Fatal: When the attending (~~doctor~~) provider has reason to believe a worker has died as a result of an industrial injury or exposure, (~~the doctor~~) that provider should notify the nearest department service location or the self-insurer immediately. Often an autopsy is required by the department or self-insurer. If so, it will be authorized by the service location manager or the self-insurer. Benefits payable include burial stipend and monthly payments to the surviving spouse and/or dependents.

Fee schedules (~~or~~) (also called maximum fee schedule(s)): The fee schedules consist of, but are not limited to, the following:

(1) Health Care Common Procedure Coding System Level I (Current Procedural Terminology CPT®) and Level II (HCPCS) codes, descriptions and modifiers that describe medical and other services, supplies and materials.

(2) Codes, descriptions and modifiers developed by the department.

(3) Relative value units (RVUs), calculated or assigned dollar values, percent-of-allowed-charges (POACs), or diagnostic related groups (DRGs), that set the maximum allowable fee for services rendered.

(4) Billing instructions or policies relating to the submission of bills by providers and the payment of bills by the department or self-insurer.

(5) Average wholesale price (AWP), baseline price (BLP), and policies related to the purchase of medications.

Health services provider or provider: For these rules means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of services related to the treatment of an industrially injured worker. It includes, but is not limited to, hospitals, medical doctors, dentists, chiropractors, vocational rehabilitation counselors, osteopathic physicians, pharmacists, podiatrists, physical therapists, occupational therapists, massage therapists, psychologists, naturopathic physicians, and durable medical equipment dealers.

Home nursing: Those nursing services that are proper and necessary to maintain the worker in his or her residence. These services must be provided through an agency licensed, certified or registered to

provide home care, home health or hospice services. Refer to WAC 296-20-091 for more information.

Independent or separate procedure: Certain of the fee schedule's listed procedures are commonly carried out as an integral part of a total service, and as such do not warrant a separate charge. When such a procedure is carried out as a separate entity, not immediately related to other services, the indicated value for "independent procedure" is applicable.

Initial prescription drugs: Any drug prescribed for an alleged industrial injury or occupational disease during the initial visit.

Initial visit: The first visit to a health care provider during which the Report of ~~((Industrial))~~ Accident (Workplace Injury, Accident, or Occupational Disease) form or the Provider's Initial Report form, where applicable, is completed and the worker files a claim for workers compensation.

Medical aid rules: The Washington Administrative Codes (WACs) that contain the administrative rules for medical and other services rendered to workers.

Modified work status: The worker is not able to return to their previous work, but is physically capable of carrying out work of a lighter nature or, for an accepted mental health condition(s), the ability to engage in modified work, which may include relevant accommodations. Workers should be urged to return to modified work as soon as reasonable as such work is frequently beneficial for body conditioning and regaining self-confidence.

Under RCW 51.32.090, when the employer has modified work available for the worker, the employer must furnish the ~~((doctor))~~ attending provider and the worker with a statement describing the available work in terms that will enable the ~~((doctor))~~ attending provider to relate the physical activities of the job to the worker's physical limitations and capabilities. The ~~((doctor))~~ attending provider shall then determine whether the worker is physically able to perform the work described. The employer may not increase the physical requirements of the job without requesting the opinion of the ~~((doctor))~~ attending provider as to the worker's ability to perform such additional work. If after a trial period of reemployment the worker is unable to continue with such work, the worker's time-loss compensation will be resumed upon certification by the attending ~~((doctor))~~ provider.

If the employer has no modified work available, the department should be notified immediately, so vocational assessment can be conducted to determine whether the worker will require assistance in returning to work.

Nonemergent (elective) hospital admission: Placement of the worker in an acute care hospital for medical treatment of an accepted condition which may be safely scheduled in advance without jeopardizing the worker's health or treatment outcome.

Physician ~~((or attending physician (AP)))~~: For these rules, means any person licensed to perform one ~~((or more))~~ of the following professions: Medicine and surgery; or osteopathic medicine and surgery. ~~((An AP is a treating physician.))~~

Practitioner ~~((or licensed health care provider))~~: For these rules, means any person defined as ~~((a "doctor" under these rules, or licensed to practice one or more of the following professions: Audiology; physical therapy; occupational therapy; pharmacy; prosthetics; orthotics; psychology; nursing; advanced registered nurse practitioners (ARNPs); certified medical physician assistants or osteopathic physician assistants; and massage therapy))~~ an "attending provider" or

other licensed health care provider authorized to deliver services under Title 51 RCW.

Preferred drug: A drug selected by the appointing authority for inclusion in the Washington preferred drug list and designated for coverage by applicable state agencies or a drug selected for coverage by applicable state agencies.

Preferred drug list: Washington preferred drug list or "WPDL" is the list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for the purchase of drugs in state purchased health care programs.

Proper and necessary:

(1) The department or self-insurer pays for proper and necessary health care services that are related to the diagnosis and treatment of an accepted condition.

(2) Under the Industrial Insurance Act, "proper and necessary" refers to those health care services (~~(which)~~) that are:

(a) Reflective of accepted standards of good practice, within the scope of practice of the provider's license or certification;

(b) Curative or rehabilitative. Care must be of a type to cure the effects of a work-related injury or illness, or it must be rehabilitative. Curative treatment produces permanent changes, which eliminate or lessen the clinical effects of an accepted condition. Rehabilitative treatment allows an injured or ill worker to regain functional activity in the presence of an interfering accepted condition. Curative and rehabilitative care produce long-term changes;

(c) Not delivered primarily for the convenience of the (~~claimant~~) worker, the (~~claimant's~~) worker's attending (~~doctor~~) provider, or any other provider; and

(d) Provided at the least cost and in the least intensive setting of care consistent with the other provisions of this definition.

(3) The department or self-insurer stops payment for health care services once a worker reaches a state of maximum medical improvement. Maximum medical improvement occurs when no fundamental or marked change in an accepted condition can be expected, with or without treatment. Maximum medical improvement may be present though there may be fluctuations in levels of pain and function. A worker's condition may have reached maximum medical improvement though it might be expected to improve or deteriorate with the passage of time. Once a worker's condition has reached maximum medical improvement, treatment that results only in temporary or transient changes is not proper and necessary. "Maximum medical improvement" is equivalent to "fixed and stable."

(4) In no case shall services (~~(which)~~) that are inappropriate to the accepted condition or which present hazards in excess of the expected medical benefits be considered proper and necessary. Services that are controversial, obsolete, investigational or experimental are presumed not to be proper and necessary, and shall be authorized only as provided in WAC 296-20-03002(6) and 296-20-02850.

Refill: The continuation of therapy with the same drug, including the renewal of a previous prescription or adjustments in dosage.

Regular work status: The (~~injured~~) worker is physically capable of returning to (~~(his/her)~~) their regular work. For an accepted mental health condition, the provider should consider mood, behavioral, and/or cognitive factors. It is the duty of the attending (~~doctor~~) provider to notify the worker and the department or self-insurer, as the case may be, of the specific date of release to return to regular work. Compensation will be terminated on the release date. Further

treatment can be allowed as requested by the attending ~~((doetor))~~ pro-
vider if the condition is not stationary and such treatment is needed
and otherwise in order.

Temporary partial disability: Partial time-loss compensation may be paid when the worker can return to work on a limited basis or re-
turn to a lesser paying job is necessitated by the accepted injury or
condition. The worker must have a reduction in wages of more than five
percent before consideration of partial time-loss can be made. No par-
tial time-loss compensation can be paid after the worker's condition
is stationary. All time-loss compensation must be certified by the at-
tending ~~((doetor))~~ provider based on objective findings.

Termination of treatment: When treatment is no longer required
and/or the industrial condition is stabilized, a report indicating the
date of stabilization should be submitted to the department or self-
insurer. This is necessary to initiate closure of the industrial
claim. The ~~((patient))~~ worker may require continued treatment for con-
ditions not related to the industrial condition; however, financial
responsibility for such care must be the ~~((patient's))~~ worker's.

Therapeutic interchange: To dispense a preferred drug in place of
a prescribed nonpreferred drug within the same therapeutic class lis-
ted on the Washington preferred drug list.

Total permanent disability: Loss of both legs or arms, or one leg
and one arm, total loss of eyesight, paralysis or other condition per-
manently incapacitating the worker from performing any work at any
gainful employment. When the attending ~~((doetor))~~ provider feels a
worker may be totally and permanently disabled, the attending ~~((doe-
tor))~~ provider should communicate this information immediately to the
department or self-insurer. A vocational evaluation and an independent
rating of disability may be arranged by the department prior to a de-
termination as to total permanent disability. Coverage for treatment
does not usually continue after the date an injured worker is placed
on pension.

Total temporary disability: ~~((Full-time-loss))~~ Full time-loss
compensation will be paid when the worker is unable to return to any
type of reasonably continuous gainful employment as a direct result of
an accepted industrial injury or exposure.

Treating provider: For these rules, means a ~~((person licensed to
practice one or more of the following professions: Medicine and sur-
gery; osteopathic medicine and surgery; chiropractic; naturopathic
physician; podiatry; dentistry; optometry; advanced registered nurse
practitioner (ARNP); and certified medical physician assistants or os-
teopathic physician assistants. A treating provider))~~ physician, os-
teopathic physician, chiropractor, naturopath, podiatric physician,
dentist, optometrist, advanced registered nurse practitioner, psychol-
ogist, or physician assistant that actively treats an injured or ill
worker.

Unusual or unlisted procedure: Value of unlisted services or pro-
cedures should be substantiated "by report" (BR).

Utilization review: The assessment of a ~~((elaimant's))~~ worker's
medical care to assure that it is proper and necessary and of good
quality. This assessment typically considers the appropriateness of
the place of care, level of care, and the duration, frequency or quan-
tity of services provided in relation to the accepted condition being
treated.

AMENDATORY SECTION (Amending WSR 12-23-020, filed 11/13/12, effective 12/14/12)

WAC 296-20-01010 Scope of health care provider network. (1) The rules establish the development, enrollment, and oversight of a network of health care providers approved to treat injured workers. The health care provider network rules apply to care for workers covered by Washington state fund and self-insured employers.

(2) As of January 1, 2013, the following types of health care providers (hereafter providers) must be enrolled in the network with an approved provider agreement to provide and be reimbursed for care to injured workers in Washington state beyond the initial office or emergency room visit:

- (a) Medical physicians and surgeons;
- (b) Osteopathic physicians and surgeons;
- (c) Chiropractic physicians;
- (d) Naturopathic physicians;
- (e) Podiatric physicians and surgeons;
- (f) Dentists;
- (g) Optometrists;
- (h) Advanced registered nurse practitioners; (~~and~~)
- (i) Psychologists; and
- (j) Physician assistants.

(3) The requirement in subsection (2) of this section does not apply to providers who practice exclusively in acute care hospitals or within inpatient settings in the following specialties:

- (a) Pathologists;
- (b) Consulting radiologists working within a hospital radiology department;
- (c) Anesthesiologists or certified registered nurse anesthetists (CRNAs) except anesthesiologists and CRNAs with pain management practices in either hospital-based or ambulatory care settings;
- (d) Emergency room providers; or
- (e) Hospitalists.

(4) The department may phase implementation of the network to ensure access within all geographic areas. The director of the department shall determine, at (~~his/her~~) their discretion, whether to establish or expand the network, after consideration of at least the following:

- The percent of injured workers statewide who have access to at least five primary care providers within (~~fifteen~~) 15 miles, compared to a baseline established within the previous (~~twelve~~) 12 months;
- The percent of injured workers by county who have access to at least five primary care providers within (~~fifteen~~) 15 miles, compared to a baseline established within the previous (~~twelve~~) 12 months; and
- The availability within the network of a broad variety of specialists necessary to treat injured workers.

The department may expand the health care provider network scope to include additional providers not listed in subsection (2) of this section, listed in subsection (3) of this section, and to out-of-state providers. For providers outside the scope of the health care provider network rule, the department and (~~self-insured employers~~) self-insurers may reimburse for treatment beyond the initial office or emergency room visit.

AMENDATORY SECTION (Amending WSR 08-04-095, filed 2/5/08, effective 2/22/08)

WAC 296-20-01501 Physician assistant rules. (1) Physician assistants (~~((PA))~~) may be "~~((treating))~~ attending providers" pursuant to WAC 296-20-01002, under the workers' compensation system(~~((, and))~~). They may be approved for payment for those medical services for which the physician assistant is trained and licensed, under ~~((the control and supervision of a licensed physician. Such control and supervision shall not be construed to require the personal presence of the supervising physician))~~ a collaboration agreement with a licensed physician(s) as defined in RCW 18.71A.010.

(2) Physician assistants may perform those medical services ~~((which))~~ that are within the scope of their ~~((physician's assistant))~~ license and within the limitations of subsection (3) of this section.

(3) To be eligible to treat and be paid for workers' compensation related services, the physician assistant must obtain a provider number by:

(a) Providing the department with ~~((a copy of his/her license))~~ their license number and effective date of that license;

(b) Providing the name, address, specialty, and active provider number issued by the department of the supervising or collaborating physician(s) on the provider application ~~((a PA))~~. A physician assistant may have to obtain more than one provider number if billing under multiple supervising or collaborating physicians(~~((+))~~); and

(c) Notifying the department of any change of the parameters listed in (a) or (b) of this subsection.

(4) Physician assistants may ~~((sign and attest to any certificates, cards, forms or other required documentation required by the department that the physician assistant's supervising physician may sign provided that))~~ perform the functions of an attending provider when it is within the physician assistant's scope of practice and is consistent with the terms of the physician assistant's ~~((practice arrangement plan))~~ collaboration agreement as required by chapter ~~((s 18.57A and))~~ 18.71A RCW. This includes, but is not limited to:

- Completing and signing the Report of Accident (Workplace Injury, Accident or Occupational Disease) form or the Provider's Initial Report form, where applicable;

- Certifying time-loss compensation;

- Completing and submitting all required or requested reports;

- Referring workers for consultations;

- Facilitating early return to work offered by and performed for the employer(s) of record; and

- Doing all that is possible to expedite the vocational process, including making an estimate of the worker's physical or mental capacities that affect the worker's employability.

(5) Physician assistants cannot:

- Rate permanent disability or impairment; and

- Perform independent medical examinations or consultations.

AMENDATORY SECTION (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

WAC 296-20-020 Acceptance of rules and fees. The filing of ~~((an accident report))~~ the Report of Accident (Workplace Injury, Accident

or Occupational Disease) form or the Provider's Initial Report form, where applicable; or the rendering of treatment to a worker who comes under the department's or self-insurer's jurisdiction, as the case may be, constitutes acceptance of the department's medical aid rules and compliance with its rules and fees.

In accordance with RCW 51.28.020 of the industrial insurance law, when a (~~doctor~~) provider renders treatment to a worker entitled to benefits under the law, "it shall be the duty of (~~the physician~~) that provider to inform the worker of (~~his~~) their rights under this title and to lend all necessary assistance in making the application for compensation and such proof of other matters as required by the rules of the department without charge to the worker," a worker shall not be billed for treatment rendered for (~~his~~) their accepted industrial injury or occupational disease.

The department or self-insurer must be notified immediately, when an unrelated condition is being treated concurrently with an industrial injury. See WAC 296-20-055 for specific information required.

When there is questionable eligibility, (i.e., service is not usually allowed for industrial injuries or investigation is pending, etc.) the provider may require the worker to pay for the treatment rendered.

In cases of questionable eligibility where the provider has billed the worker or other insurance, and the claim is subsequently allowed, the provider shall refund the worker or insurer in full and bill the department or self-insurer for services rendered using billing instructions, codes, and policies as listed in the medical aid rules and fee schedules.

~~((Cases in which there is a question of medical ethics or quality of medical care, will be referred to the Washington state medical association's medical advisory and utilization review committee to the department of labor and industries for recommendations.))~~

AMENDATORY SECTION (Amending WSR 12-12-059, filed 6/5/12, effective 7/6/12)

WAC 296-20-030 Treatment not requiring authorization for accepted conditions. (1) A maximum of (~~twenty~~) 20 office calls for the treatment of the industrial condition, during the first (~~sixty~~) 60 days, following injury. Subsequent office calls must be authorized. Reports of treatment rendered must be filed at (~~sixty~~) 60-day intervals to include number of office visits to date. See chapter 296-20 WAC and department policies for report requirements and further information.

(2) Initial diagnostic X-rays necessary for evaluation and treatment of the industrial injury or condition. See WAC 296-20-121 for further information.

(3) The first (~~twelve~~) 12 physical therapy treatments as provided by chapters 296-21, 296-23, and 296-23A WAC, upon consultation by the attending (~~doctor~~) provider or under (~~his~~) their direct supervision. Additional physical therapy treatment must be authorized and the request substantiated by evidence of improvement. In no case will the department or self-insurer pay for inpatient hospitalization of a (~~claimant~~) worker to receive physical therapy treatment only. USE OF DIAPULSE, THERMATIC (standard model only), SPECTROWAVE AND SUPERPULSE MACHINES AND

IONTOPHORESIS IS NOT AUTHORIZED FOR WORKERS ENTITLED TO BENEFITS UNDER THE INDUSTRIAL INSURANCE ACT.

(4) Routine laboratory studies reasonably necessary for diagnosis and/or treatment of the industrial condition. Other special laboratory studies require authorization.

(5) Routine standard treatment measures rendered on an emergency basis or in connection with minor injuries not otherwise requiring authorization.

(6) Consultation with specialist when indicated. See WAC 296-20-051 for consultation guidelines.

(7) Myelogram if prior to emergency surgery.

AMENDATORY SECTION (Amending WSR 15-17-104, filed 8/18/15, effective 10/1/15)

WAC 296-20-03001 Treatment requiring authorization. Certain treatment procedures require authorization by the department or self-insurer. Requests for authorization must include a statement of: The condition(s) diagnosed; the current federally adopted ICD-CM codes; their relationship, if any, to the industrial injury/exposure; an outline of the proposed treatment program, its length and components, procedure codes, and expected prognosis; and an estimate of when treatment would be concluded and condition stable.

(1) Office calls in excess of the first (~~twenty~~) 20 visits or (~~sixty~~) 60 days whichever occurs first.

(2) The department may designate those inpatient hospital admissions that require prior authorization.

(3) X-ray and radium therapy.

(4) Diagnostic studies other than routine X-ray and blood or urinalysis laboratory studies.

(5) Myelogram in nonemergent cases.

(6) Physical therapy treatment beyond initial (~~twelve~~) 12 treatments as outlined in chapters 296-21, 296-23, and 296-23A WAC.

(7) Diagnostic or therapeutic injections that include, but are not limited to:

(a) Therapeutic subarachnoid, epidural, or caudal injections for chronic pain;

(b) Diagnostic facet injections;

(c) Sacroiliac joint injections for chronic pain;

(d) Intra-muscular and trigger point injections of steroids and other nonscheduled medications are limited to three injections per (~~patient~~) worker. The attending (~~doctor~~) provider must submit justification for an additional three injections if indicated with a maximum of six injections to be authorized for any one (~~patient~~) worker.

Refer to fee schedule payment policies and coverage decisions for authorization criteria.

(8) Home nursing, attendant services or convalescent center care must be authorized per provisions outlined in WAC 296-20-091 or 296-23-246.

(9) Provision of prosthetics, orthotics, surgical appliances, special equipment for home or transportation vehicle; custom made shoes for ankle/foot injuries resulting in permanent deformity or malfunction of a foot; masking devices; hearing aids; etc., must be authorized in advance as per WAC 296-20-1101 and 296-20-1102.

(10) Biofeedback program; structured intensive multidisciplinary pain programs (SIMPs); pain clinic; weight loss program; psychotherapy; rehabilitation programs; and other programs designed to treat special problems must be authorized in advance. Refer to the department's medical aid rules and fee schedules for details.

(11) Prescription or injection of vitamins for specific therapeutic treatment of the industrial condition(s) when the attending (~~doctor~~) provider can demonstrate that published clinical studies indicate vitamin therapy is the treatment of choice for the condition. Authorization for this treatment will require presentation of facts to and review by department medical consultant.

(12) The long-term prescription of medication under the specific conditions and circumstances in (a) and (b) of this subsection are considered corrective therapy rather than palliative treatment and approval in advance must be obtained.

(a) Nonsteroidal anti-inflammatory agents for the treatment of degenerative joint conditions aggravated by occupational injury.

(b) Anticonvulsive agents for the treatment of seizure disorders caused by trauma.

(13) The department may designate those diagnostic and surgical procedures (~~which~~) that can be performed in other than a hospital inpatient setting. Where a worker has a medical condition (~~which~~) that necessitates a hospital admission, prior approval of the department or self-insurer must be obtained.

AMENDATORY SECTION (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

WAC 296-20-035 Treatment in cases that remain open beyond (~~sixty~~) 60 days. Conditions requiring treatment beyond (~~sixty~~) 60 days are indicative of a major industrial condition or complication by other conditions. Except in cases of severe and extensive injuries, i.e., quadriplegia, paraplegia, multiple fractures, etc., when the worker requires treatment beyond (~~sixty~~) 60 days following injury, a complete examination is necessary to determine and/or establish need for continued treatment and/or payment of time-loss compensation. This may be accomplished either by the attending (~~doctor~~) provider or a consultation exam. In either case, a detailed exam report must be provided to the department or self-insurer. Refer to chapter 296-20 WAC (including the definition section) and department policy for the type of information that must be included in these reports.

AMENDATORY SECTION (Amending WSR 81-01-100, filed 12/23/80, effective 3/1/81)

WAC 296-20-055 Limitation of treatment and temporary treatment of unrelated conditions when retarding recovery. Conditions preexisting the injury or occupational disease are not the responsibility of the department. When an unrelated condition is being treated concurrently with the industrial condition, the attending (~~doctor~~) provider must notify the department or self-insurer immediately and submit the following:

(1) Diagnosis and/or nature of unrelated condition.

(2) Treatment being rendered.

(3) The effect, if any, on industrial condition.

Temporary treatment of an unrelated condition may be allowed, upon prior approval by the department or self-insurer, provided these conditions directly retard recovery of the accepted condition. The department or self-insurer will not approve or pay for treatment for a known preexisting unrelated condition for which the ((claimant)) worker was receiving treatment prior to ((his)) their industrial injury or occupational disease, which is not retarding recovery of ((his)) that industrial condition.

A thorough explanation of how the unrelated condition is affecting the industrial condition must be included with the request for authorization.

The department or self-insurer will not pay for treatment of an unrelated condition when it no longer exerts any influence upon the accepted industrial condition. When treatment of an unrelated condition is being rendered, reports must be submitted monthly outlining the effect of treatment on both the unrelated and the accepted industrial conditions.

The department or self-insurer will not pay for treatment for unrelated conditions unless specifically authorized. This includes prescription of drugs and medicines.

AMENDATORY SECTION (Amending WSR 15-17-104, filed 8/18/15, effective 10/1/15)

WAC 296-20-06101 What reports are health care providers required to submit to the ((insurer)) department or self-insurer? The department or self-insurer requires different kinds of information at various stages of a claim in order to approve treatment, time-loss compensation, and treatment bills. The information provided in these reports is needed to adequately manage industrial insurance claims.

This list defines the provider types and associated acronyms used in the table below: Physician (MD), osteopathic physician (DO), psychologist (PhD/PsyD), chiropractor (DC), naturopath (ND), podiatric physician (DPM), dentist (DDS), advanced registered nurse practitioner (ARNP), physician assistant (PA), and optometrist (OD).

<i>Report</i>	<i>Due/Needed by Insurer</i>	<i>What Information Should Be Included In the Report?</i>	<i>Special Notes</i>
Report of ((Industrial Injury)) <u>Accident (Workplace Injury, Accident or Occupational Disease)</u> (form) Self-Insurance: Provider's Initial Report (form)	Immediately - Within five days of first visit.	See form If additional space is needed, please attach the information to the application. The claim number should be at the top of the page.	Only MD, DO, <u>PhD/PsyD</u> , DC, ND, DPM, DDS, ARNP, PA, and OD may sign and be paid for completion of this form.

<i>Report</i>	<i>Due/Needed by Insurer</i>	<i>What Information Should Be Included In the Report?</i>	<i>Special Notes</i>
<p><u>Attending provider report, also known as the Sixty Day report</u> (narrative)</p> <p>Purpose: Support and document the need for continued care when conservative (nonsurgical) treatment is to continue beyond sixty days</p>	<p>Every sixty days when only conservative (nonsurgical) care has been provided.</p>	<p>(1) The conditions diagnosed((s)) including the current federally adopted ICD-CM codes and the subjective ((complaints)) and objective findings.</p> <p><u>For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the American Psychiatric Association <i>Diagnostic and Statistical Manual of Mental Disorders</i> (DSM) designated by the department and the subjective and objective findings for that condition.</u></p>	<p>Providers may submit legible comprehensive chart notes in lieu of sixty day reports PROVIDED the chart notes include all the information required as noted in the "What Information Should Be Included?" column.</p> <p>However, office notes are not acceptable in lieu of requested narrative reports and providers may not bill for the report if chart notes are submitted in place of the report.</p> <p>Providers must include their name, address, and date on all chart notes submitted.</p>
		<p>(2) The relationship of diagnoses, if any, to the industrial injury or exposure.</p>	<p>((However, office notes are not acceptable in lieu of requested narrative reports and providers may not bill for the report if chart notes are submitted in place of the report.))</p>
		<p>(3) Outline of proposed treatment program, its length, components and expected prognosis including an estimate of when treatment should be concluded and condition(s) stable. An estimated return to work date and the probability, if any, of permanent partial disability resulting from the industrial condition.</p>	
		<p>(4) Current medications, including dosage and amount prescribed. With repeated prescriptions, include the plan and need for continuing medication.</p>	<p>((Providers must include their name, address and date on all chart notes submitted.))</p>
		<p>(5) If the worker has not returned to work, indicate whether a vocational assessment will be necessary to evaluate the worker's ability to return to work and why.</p>	

<i>Report</i>	<i>Due/Needed by Insurer</i>	<i>What Information Should Be Included In the Report?</i>	<i>Special Notes</i>
		<p>(6) If the worker (has not returned) <u>is unable to return to work</u>, a ((doctor's)) <u>provider's estimate of physical capacities</u> should be included.</p> <p><u>If the worker is unable to return to work due to an accepted mental health condition, a provider's estimate of functional status and barriers to work should be included. If further information is needed or required, a mental health evaluation from an approved mental health provider can be requested.</u></p>	
		<p>(7) Response to any specific questions asked by the insurer or vocational counselor.</p>	
Opioid Authorization Requirement	<p>Opioids in subacute phase - Six weeks from the date of injury or surgery.</p> <p>Opioids in chronic phase - Twelve weeks from the date of injury or surgery.</p> <p>Opioids for ongoing chronic therapy - Every ninety days.</p>	<p>Please see WAC 296-20-03056 through 296-20-03059 for documentation requirements for those workers receiving opioids.</p>	
Special Reports/Follow-up Reports (narrative)	<p>As soon as possible following request by the ((department/insurer)) <u>department or self-insurer.</u></p>	<p>Response to any specific questions asked by the insurer or vocational counselor.</p>	<p>"Special reports" are payable only when requested by the ((insurer)) <u>department or self-insurer.</u></p>
Consultation Examination Reports (narrative)	<p>At one hundred twenty days if only conservative (nonsurgical) care has been provided.</p>	<p>(1) Detailed history.</p>	<p>If the injured/ill worker had been seen by the consulting doctor within the past three years for the same condition, the consultation will be considered a follow-up office visit, not a consultation.</p>
Purpose: Obtain an objective evaluation of the need for ongoing conservative medical management of the worker.		<p>(2) ((Comparative history)) <u>A comparison</u> between the history provided by the attending ((or treating)) <u>provider and the injured worker.</u></p>	
		<p>(3) Detailed physical examination.</p>	

<i>Report</i>	<i>Due/Needed by Insurer</i>	<i>What Information Should Be Included In the Report?</i>	<i>Special Notes</i>
The attending ((or treating)) provider may choose the consultant.		(4) <u>The condition(s) diagnosed</u> , including the current federally adopted ICD-CM codes ((;)) and the subjective ((complaints)) and objective findings. <u>For mental health conditions, the report must also include the condition(s) diagnosed using the edition of the DSM designated by the department and the subjective and objective findings for that condition.</u>	A copy of the consultation report must be submitted to both the attending ((or treating)) provider and the ((department/insurer)) department or self-insurer.
		(5) Outline of proposed treatment program : Its length, components, expected prognosis including when treatment should be concluded and condition(s) stable.	
		(6) Expected degree of recovery from the industrial condition.	
		(7) Probability of returning to regular work or modified work and an estimated return to work date .	
		(8) Probability , if any, of permanent partial disability resulting from the industrial condition.	
		(9) A ((doctor's)) <u>provider's estimate of physical capacities</u> should be included if the worker has not returned to work. <u>If the worker is unable to return to work due to an accepted mental health condition, a provider's estimate of functional status and barriers to work should be included.</u>	
		(10) Reports of necessary, reasonable X-ray and laboratory studies to establish or confirm diagnosis when indicated.	
Attending Provider Review of IME Report (form) Purpose: Obtain the attending provider's opinion about the accuracy of the diagnoses and information provided based on the IME.	As soon as possible following request by the department ((/insurer)) or <u>self-insurer</u> .	Agreement or disagreement with IME findings. If you disagree, provide objective/subjective findings to support your opinion.	Payable only to the attending provider upon request of the department ((/insurer)) or <u>self-insurer</u> . PAs can concur with treatment recommendations but not PPD ratings.

<i>Report</i>	<i>Due/Needed by Insurer</i>	<i>What Information Should Be Included In the Report?</i>	<i>Special Notes</i>
<p>Loss of Earning Power (form)</p> <p>Purpose: Certify the loss of earning power is due to the industrial injury/occupational disease.</p>	As soon as possible after receipt of the form.	See form	Payable only to the attending (or treating) provider.
<p>Application to Reopen Claim Due to Worsening of Condition (form)</p> <p>Purpose: Document worsening of the accepted condition and need to reopen claim for additional treatment.</p>	<p>Immediately following identification of worsening after a claim has been closed for sixty days.</p> <p>Crime Victims: Following identification of worsening after a claim has been closed for ninety days.</p>	See form	Only MD, DO, <u>PhD/PsyD</u> , DC, ND, DPM, DDS, ARNP, PA, and OD may sign and be paid for completion of this form.

What documentation is required for initial and follow up visits?

Legible copies of office or progress notes are required for the initial and all follow-up visits.

What documentation are ancillary providers required to submit to the insurer?

Ancillary providers are required to submit the following documentation to the department or self-insurer:

Provider	Chart Notes	Reports
Audiology	X	X
Biofeedback	X	X
Dietician		X
Drug & Alcohol Treatment	X	X
Free Standing Surgery	X	X
Free Standing Emergency Room	X	X
(Head) Brain Injury Program	X	X
Home Health Care		X
Infusion Treatment, Professional Services		X
Hospitals	X	X
Laboratories		X
Licensed Massage Therapy	X	X
Medical Transportation		X
Nurse Case Managers		X
Nursing Home	X	X
Occupational Therapist	X	X
Optometrist	X	X
Pain Clinics	X	X
Panel Examinations		X
Physical Therapist	X	X
Prosthetist/Orthotist	X	X

Provider	Chart Notes	Reports
Radiology		X
Skilled Nursing Facility	X	X
Speech ((Therapist)) Language Pathologist	X	X

AMENDATORY SECTION (Amending WSR 09-14-104, filed 6/30/09, effective 7/31/09)

WAC 296-20-071 Concurrent treatment. In some cases, treatment by more than one practitioner may be allowed. The department or self-insurer will consider concurrent treatment when the accepted conditions resulting from the injury involve more than one system and/or require specialty or multidisciplinary care.

When requesting consideration for concurrent treatment, the attending ((~~doctor~~)) provider must provide the department or self-insurer with the following:

The name, address, discipline, and specialty of all other practitioners assisting in the treatment of the injured worker and an outline of their responsibility in the case and an estimate of the length of the period of concurrent care.

When concurrent treatment is allowed, the department or self-insurer will recognize one primary attending provider, who will be responsible for directing the over-all treatment program, including monitoring or prescribing medications when appropriate, providing copies of all reports and other data received from the involved practitioners and, in time-loss cases, providing adequate certification evidence of the worker's inability to work. The department or self-insurer may allow a concurrent care provider to prescribe medications. In such cases, the concurrent care provider is required to send the attending provider and the department or self-insurer all required reports, including a report of the medications prescribed.

The department or self-insurer will approve concurrent care on a case-by-case basis. Consideration will be given to all factors in the case including availability of providers in the worker's geographic location.

AMENDATORY SECTION (Amending WSR 81-01-100, filed 12/23/80, effective 3/1/81)

WAC 296-20-09701 Request for reconsideration. On occasion, a claim may be closed prematurely or in error or other adjudication action may be taken, which may seem inappropriate to the ((~~doctor~~)) attending provider or injured worker. When this occurs the attending ((~~doctor~~)) provider should submit immediately in writing ((~~his~~)) a request for reconsideration of the adjudication action, supported by an outline of:

- (1) The ((~~claimant's~~)) worker's current condition.
- (2) The treatment program being received.
- (3) The prognosis of when stabilization will occur.

All requests for reconsideration must be received by the department or self-insurer within ((~~sixty~~)) 60 days from date of the order

and notice of closure. Request for reconsideration of other department or self-insurer orders or actions must be made in writing by either the ~~((doetor))~~ attending provider or the injured worker within ~~((sixty))~~ 60 days of the date of the action or order.

AMENDATORY SECTION (Amending WSR 05-23-143, filed 11/22/05, effective 1/3/06)

WAC 296-20-1102 Special equipment rental and purchase prosthetic and orthotics equipment. The department or self-insurer will authorize and pay rental fee for equipment or devices if the need for the equipment will be for a short period of treatment during the acute phase of condition. Rental extending beyond ~~((sixty))~~ 60 days requires prior authorization. If the equipment will be needed on long-term basis, the department or self-insurer will consider purchase of the equipment or device. The department's or self-insurer's decision to rent or purchase an item of medical equipment will be based on a comparison of the projected rental costs of the item with its purchase price. An authorized representative of the department or self-insurer will decide whether to rent or purchase certain items, provided they are appropriate and medically necessary for treatment of the worker's accepted industrial condition. Decisions to rent or purchase items will be based on the following information:

- (1) Purchase price of the item.
- (2) Monthly rental fee.

(3) The prescribing ~~((doetor's))~~ provider's estimate of how long the item will be needed.

The prescribing ~~((doetor))~~ provider must obtain prior authorization from the department or self-insurer, for rental or purchase of special equipment or devices. Also, all equipment (rentals and purchases), prosthetics, and orthotics must be billed using the appropriate codes, and billing forms, as determined by the medical aid rules and fee schedules.

The department or self-insurer will authorize and pay for prosthetics and orthotics as needed by the worker and substantiated by the attending ~~((doetor))~~ provider. If such items are furnished by the attending ~~((doetor))~~ provider, the department or self-insurer will reimburse the ~~((doetor-his))~~ provider for their cost for the item. See chapter 296-20 WAC (including WAC 296-20-124) and the fee schedules for information regarding replacement of such items on closed claims.

The department or self-insurer will repair or replace originally provided damaged, broken, or worn-out prosthetics, orthotics, or special equipment devices upon documentation and substantiation from the attending ~~((doetor))~~ provider.

Provision of such equipment requires prior authorization.

THE GRAVITY GUIDING SYSTEM, GRAVITY LUMBAR REDUCTION DEVICE, BACKSWING AND OTHER INVERSION TRACTION EQUIPMENT MAY ONLY BE USED IN A SUPERVISED SETTING. RENTAL OR PURCHASE FOR HOME USE WILL NOT BE ALLOWED NOR PAID BY THE DEPARTMENT OR SELF-INSURER.

EQUIPMENT NOT REQUIRING PRIOR AUTHORIZATION INCLUDES CRUTCHES, CERVICAL COLLARS, LUMBAR AND RIB BELTS, AND OTHER COMMONLY USED ORTHOTICS OF MINIMAL COST.

PERSONAL APPLIANCES SUCH AS VIBRATORS, HEATING PADS, HOME FURNISHINGS, HOT TUBS, WATERBEDS, EXERCISE BIKES, EXERCISE EQUIPMENT, JACUZZIES, PILLOWS, CASSETTE TAPES, EDUCATIONAL MATERIALS OR BOOKS, AND OTHER SIMILAR ITEMS WILL NOT BE AUTHORIZED OR PAID.

In no case will the department or self-insurer pay for rental fees once the purchase price of the rented item has been reached with

the exception of oxygen equipment. The department or self-insurer may pay for rental fees of oxygen equipment beyond its purchase price.

AMENDATORY SECTION (Amending WSR 86-06-032, filed 2/28/86, effective 4/1/86)

WAC 296-20-121 X-rays. Recognizing the greatest need for access to X-rays lies with the attending (~~(doetor)~~) provider, the department or self-insurer requires only submission of X-ray findings and does not require submission of the actual films except upon specific request when needed for purposes of permanent disability rating, other administrative or legal decisions, or in litigation cases. The department or self-insurer requires the attending (~~(doetor)~~) provider retain X-rays for a period of not less than (~~(ten)~~) 10 years. In transfer cases, the X-rays in the possession of the current attending (~~(doetor)~~) provider must be made available to the new attending (~~(doetor)~~) pro-vider.

When requesting consultation, the attending (~~(doetor)~~) provider should make any X-rays in (~~(his)~~) their possession available to the consultant.

When a special exam has been arranged for the worker by the department or self-insurer, the worker's existing X-rays should be provided to the special examiner. The worker may carry such X-rays to the exam.

When the (~~(doetor's)~~) provider's office is closed because of death, retirement or leaving the state, arrangements must be made with the department or self-insurer regarding custody of X-rays to insure availability on request. When submitting billing for X-ray service, a copy of the X-ray findings is required. No payment will be made for excessive or unnecessary X-rays. No payment will be made on closed or rejected claims, except under conditions outlined in WAC 296-20-124.

Prior authorization is required for X-rays subsequent to the initial study. Repeat or serial radiology examinations may be performed only upon adequate clinical justification to confirm changes in the condition(s) accepted. The subjective complaints and the objective findings substantiating the repeat study must be submitted by the practitioner in the request for authorization to the department or self-insurer.

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

WAC 296-20-200 General information for impairment rating examinations by attending (~~(doeters)~~) providers, consultants or independent medical examination (IME) providers. (1) The department of labor and industries has promulgated the following rules and categories to provide a comprehensive system of classifying unspecified permanent partial disabilities in the proportion they reasonably bear to total bodily impairment. The department's objectives are to reduce litigation and establish more certainty and uniformity in the rating of unspecified permanent partial disabilities pursuant to RCW 51.32.080(2).

(2) The following system of rules and categories directs the provider's attention to the actual conditions found and establishes a

uniform system for conducting rating examinations and reporting findings and conclusions in accord with broadly accepted medical principles.

The evaluation of bodily impairment must be made by experts authorized to perform rating examinations. After conducting the examination, the provider will choose the appropriate category for each bodily area or system involved in the particular claim and include this information in the report. The provider will, therefore, in addition to describing the worker's condition in the report, submit the conclusions as to the relative severity of the impairment by giving it in terms of a defined condition rather than a personal opinion as to a percentage figure. In the final section of this system of categories and rules are some rules for determining disabilities and the classification of disabilities in bodily impairment is listed for each category. These last provisions are for the department's administrative use in acting upon the expert opinions which have been submitted to it.

(3) In preparing this system, the department has complied with its duty to enact rules classifying unspecified disabilities in light of statutory references to nationally recognized standards or guides for determining various bodily impairments. Accordingly, the department has obtained and acted upon sound established medical opinion in thus classifying unspecified disabilities in the reasonable proportion they bear to total bodily impairment. In framing descriptive language of the categories and in assigning a percentage of disability, careful consideration has been given to nationally recognized medical standards and guides. Both are matters calling for the use of expert medical knowledge. For this reason, the meaning given the words used in this set of categories and accompanying rules, unless the text or context clearly indicates the contrary, is the meaning attached to the words in normal medical usage.

(4) The categories describe levels of physical and mental impairment. Impairment is anatomic or functional abnormality or loss of function after maximum medical improvement has been achieved. This is the meaning of "impairment" as the word is used in the guides mentioned above. This standard applies to all persons equally, regardless of factors other than loss of physical or mental function. Impairment is evaluated without reference to the nature of injury or the treatment therefore, but is based on the functional loss due to the injury or occupational disease. The categories have been framed to include conditions in other bodily areas which derive from the primary impairment. The categories also include the presence of pain, tenderness and other complaints. Workers with comparable loss of function thus receive comparable awards.

(5) These rules and categories (WAC 296-20-200 through 296-20-690) shall only be applicable to compensable injuries occurring on or after the effective date of these rules and categories.

(6) These rules and categories (WAC 296-20-200 through 296-20-690) shall be applicable only to cases of permanent partial disability. They have no applicability to determinations of permanent total disability.

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

WAC 296-20-2010 General rules for impairment rating examinations by attending ~~((doctors))~~ providers and consultants. These general rules must be followed by ~~((doctors))~~ providers who perform examinations or evaluations of permanent bodily impairment.

(1) Impairment rating examinations shall be performed only by ~~((doctors))~~ attending providers and consultants currently licensed in both medicine and surgery (including osteopathic and podiatric) or dentistry, and department-approved chiropractors subject to RCW 51.32.112. ~~((The department or self-insurer may request the worker's attending doctor conduct the impairment rating when appropriate. If the attending doctor is unable or unwilling to perform the impairment rating examination, a consultant, at the attending doctor's request, may conduct a consultation examination and provide an impairment rating based on the findings. The department or self-insurer can also request an impairment rating examination from an independent medical examination (IME) provider. A chiropractic impairment rating examination may be performed only when the worker has been clinically managed by a chiropractor.))~~

(a) When the worker's attending provider is eligible to perform impairment ratings according to this section, the department or self-insurer may request that the attending provider conduct the impairment rating when appropriate.

(b) If the attending provider is unable or unwilling to perform the impairment rating examination, a consultant, at the attending provider's request according to this section, may conduct a consultation examination and provide an impairment rating based on the findings.

(c) The department or self-insurer can also request an impairment rating examination from an independent medical examination (IME) provider.

(d) A chiropractic impairment rating examination may be performed only when the worker has been clinically managed by a chiropractor.

(2) Whenever an impairment rating examination is made, the attending ~~((doctor))~~ provider or consultant must complete a rating report that includes, at a minimum, the following:

(a) Statement that the ~~((patient))~~ worker has reached maximum medical improvement (MMI) and that no further curative treatment is recommended;

(b) Pertinent details of the physical examination performed (both positive and negative findings);

(c) Results of any pertinent diagnostic tests performed (both positive and negative findings). Include copies of any pertinent tests or studies ordered as part of the exam;

(d) An impairment rating consistent with the findings and a statement of the system on which the rating was based (for example, the *AMA Guides to the Evaluation of Permanent Impairment* and edition used, or the Washington state category rating system - refer to WAC 296-20-19000 through 296-20-19030 and WAC 296-20-200 through 296-20-690); and

(e) The rationale for the rating, supported by specific references to the clinical findings, especially objective findings and supporting documentation including the specific rating system, tables, figures and page numbers on which the rating was based.

(3) It is the responsibility of attending (~~doctors~~) providers and consultants to be familiar with the contents of the *Medical Examiner Handbook* section on how to rate impairment.

(4) Attending (~~doctors~~) providers and consultants performing impairment ratings must be available and willing to testify on behalf of the department or self-insurer, worker or employer and accept the department fee schedule for testimony.

(5) A complete impairment rating report must be sent to the department or self-insurer within (~~fourteen~~) 14 calendar days of the examination date, or within (~~fourteen~~) 14 calendar days of receipt of the results of any special tests or studies requested as a part of the examination. Job analyses (JAs) sent to the IME provider at the time of the impairment rating exam must be completed and submitted with the impairment rating report.

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

WAC 296-20-2015 What rating systems are used for determining an impairment rating conducted by the attending (~~doctor~~) provider or a consultant? The following table provides guidance regarding the rating systems generally used. These rating systems or others adopted through department policies should be used to conduct an impairment rating.

Overview of Systems for Rating Impairment

Rating System	Used for These Conditions	Form of the Rating
RCW 51.32.080	Specified disabilities: Loss by amputation, total loss of vision or hearing	Supply the level of amputation
<i>AMA Guides to the Evaluation of Permanent Impairment</i>	Loss of function of extremities, partial loss of vision or hearing	Determine the percentage of loss of function, as compared to amputation value listed in RCW 51.32.080
Category Rating System	Spine, neurologic system, mental health, respiratory, taste and smell, speech, skin, or disorders affecting other internal organs	Select the category that most accurately indicates overall impairment
Total Bodily Impairment (TBI)	Impairments not addressed by any of the rating systems above, and claims prior to 1971	Supply the percentage of TBI

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

WAC 296-20-2025 May a worker bring someone with them to an impairment rating examination conducted by the attending (~~doctor~~) provider or a consultant? (1) Workers can bring an adult friend or family member to the impairment rating examination to provide comfort and reassurance. The accompanying person may attend the physical examination but may not attend a psychiatric examination.

(2) The accompanying person cannot be compensated for attending the examination by anyone in any manner.

(3) 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 impairment rating examination is to provide information to assist in the determination of the level of any permanent impairment, not to conduct an adversarial procedure. Therefore, 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 impairment rating examination.

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

WAC 296-20-2030 May the worker videotape or audiotape the impairment rating examination conducted by the attending (~~doctor~~) provider or a consultant? The use of recording equipment of any kind by the worker or accompanying person is not allowed.

OTS-6007.2

AMENDATORY SECTION (Amending WSR 14-23-064, filed 11/18/14, effective 1/1/15)

WAC 296-21-290 Physical medicine. (1) **Whom does the department authorize and pay for physical medicine or physical therapy services?** The department or self-insurer may authorize and pay for physical medicine services from the following providers:

- A medical or osteopathic physician who is "board certified or board qualified" in the field of physical medicine and rehabilitation; or
- A licensed physical therapist; or

• The injured worker's attending (~~doctor~~) provider, within the limitations listed below.

The physical medicine services must be personally performed by the:

- Physical medicine and rehabilitation physician; or
- Attending (~~doctor~~) provider; or
- Licensed physical therapist; or
- Physical therapist assistant employed by and serving under the direction of a licensed physical therapist, physical medicine and rehabilitation physician, or attending (~~doctor~~) provider as required in RCW 18.74.180 (3) (a); or
- Licensed athletic trainer employed by and serving under the direction of a licensed physical therapist, physical medicine and rehabilitation physician, or attending (~~doctor~~) provider as required in RCW 18.250.010 (4) (a) (v).

Note: Licensed physical therapy provider rules are contained in chapter 296-23 WAC.

(2) **When may the department or self-insurer pay the attending (~~doctor~~) provider for physical medicine services?** The department or self-insurer may pay the attending (~~doctor~~) provider to provide physical medicine modalities and/or procedures in the following situations:

(a) The attending (~~doctor's~~) provider's scope of practice includes physical medicine modalities and procedures.

(b) Only the physical medicine modalities and procedures allowed under the department's fee schedules and payment policies will be authorized or paid.

(c) No more than six physical medicine visits may be authorized and paid to the attending (~~doctor~~) provider. If the worker requires treatment beyond six visits, the worker must be referred to a licensed physical therapist or a board certified or qualified physical medicine and rehabilitation physician for such treatment. Payments will be made in accordance with the department's fee schedules and payment policies.

(d) In remote areas, where no physical medicine and rehabilitation specialist, licensed physical therapist or physical therapist assistant is available, physical medicine visits required by the (~~patient's~~) worker's accepted condition(s) may be authorized and paid to the attending (~~doctor~~) provider. Payments will be made in accordance with the department's fee schedules and payment policies.

(e) The attending (~~doctor~~) provider may bill for office visits in addition to the physical medicine services only when a separately identifiable office visit service is provided in addition to the physical medicine service.

(3) **What codes and fees are payable for physical medicine services?**

• The codes, reimbursement levels, and other policies for physical medicine services are listed in the department's *Medical Aid Rules and Fee Schedules*. Physicians licensed in physical medicine and licensed physical therapists use CPT and/or HCPCS codes, rules and payment policies as listed in the department's *Medical Aid Rules and Fee Schedules* or provider bulletins.

• Attending (~~doctors~~) providers must use the local codes, rules and payment policies published in the department's *Medical Aid Rules and Fee Schedules* or provider bulletins.

OTS-6008.3

AMENDATORY SECTION (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

WAC 296-23-140 Custody of X-rays. (1) Radiographs should not be sent to the department or self-insurer unless they are requested for comparison and interpretation in determining a permanent disability, administrative or legal decisions, and for cases in litigation. X-rays must be retained for a period of ~~((ten))~~ 10 years by the radiologist or the attending ~~((doctor))~~ provider.

(2) X-rays must be made available upon request to consultants, to medical examiners, to the department, to self-insurers, and/or the board of industrial insurance appeals.

(3) In cases where the worker transfers from one ~~((doctor))~~ pro-vider to another, the former attending ~~((doctor))~~ provider will immediately forward all films in his possession to the new attending ~~((doctor))~~ provider.

(4) When a ~~((doctor's))~~ provider's office is closed because of death, retirement, or upon leaving the state, department approved custodial arrangements must be made to insure availability on request. If a radiological office is closed for any of the previously listed reasons or because the partnership or corporation is being dissolved, disposition of X-rays for industrial injuries will be handled in the same manner. In the event custodial arrangements are to be made, the department must approve the arrangements prior to transfer of X-rays to the custodian so as to assure their availability to the department or self-insurer upon request.

(5) Refer to chapter 296-20 WAC (including WAC 296-20-125) and to chapter 296-21 WAC for additional information.

AMENDATORY SECTION (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

WAC 296-23-145 Duplication of X-rays and extra views. Every attempt should be made to minimize the number of X-rays taken for workers. The attending ~~((doctor))~~ provider or any other person or institution having possession of X-rays which pertain to the injury and are deemed to be needed for diagnostic or treatment purposes should make these X-rays available upon request.

The department or self-insurer will not authorize or pay for additional X-rays when recent X-rays are available except when presented with adequate information regarding the need to re-X-ray.

AMENDATORY SECTION (Amending WSR 01-18-041, filed 8/29/01, effective 10/1/01)

WAC 296-23-165 Miscellaneous services and appliances. (1) The department or self-insurer will reimburse for certain proper and necessary miscellaneous services and items needed as a result of an industrial accident. Nursing care, attendant services, transportation, hearing aids, eyeglasses, orthotics and prosthetics, braces, medical

supplies, oxygen systems, walking aids, and durable medical equipment are included in this classification.

(a) When a fee maximum has been established, the rate of reimbursement for miscellaneous services and items will be the supplier's usual and customary charge or the department's current fee maximum, whichever is less. In no case may a supplier or provider charge a worker the difference between the fee maximum and their usual and customary charge.

(b) When the department or self-insurer has established a purchasing contract with a qualified supplier through an open competitive request for proposal process, the department or self-insurer will require that workers obtain specific groups of items from the contractor. When items are obtained from a contractor, the contractor will be paid at the rates established in the contract. When a purchasing contract for a selected group of items exists, suppliers who are not named in the contract will be denied reimbursement if they provide a contracted item to a worker. The noncontracting supplier, not the worker, will be financially responsible for providing an item to a worker when it should have been supplied by a contractor. This rule may be waived by an authorized representative of the department or self-insurer in special cases where a worker's attending (~~doctor~~) provider recommends that an item be obtained from another source for medical reasons or reasons of availability. In such cases, the department may authorize reimbursement to a supplier who is not named in a contract. Items or services may be provided on an emergency basis without prior authorization, but will be reviewed for appropriateness to the accepted industrial condition and medical necessity on a retrospective basis.

(2) The department or self-insurer will inform providers and suppliers of the selected groups of items for which purchasing contracts have been established, including the beginning and ending dates of the contracts.

(3) Prior authorization by an authorized representative of the department or self-insurer will be required for reimbursement of selected items and services which are provided to workers. Payment will be denied for selected items or services supplied without prior authorization. The supplier, not the worker, will be financially responsible for providing selected items or services to workers without prior authorization. In cases where a worker's (~~doctor~~) provider recommends rental or purchase of a contracted item from a supplier who lacks a contract agreement, prior authorization will be required.

The decision to grant or deny prior authorization for reimbursement of selected services or items will be based on the following criteria:

(a) The worker is eligible for coverage.

(b) The service or item prescribed is appropriate and medically necessary for treatment of the worker's accepted industrial condition.

(4) The decision to rent or purchase an item will be made based on a comparison of the projected rental costs of the item with its purchase price. An authorized representative of the department or self-insurer will decide whether to rent or purchase certain items provided they are appropriate and medically necessary for treatment of the worker's accepted condition. Decisions to rent or purchase items will be based on the following information:

(a) Purchase price of the item.

(b) Monthly rental fee.

(c) The prescribing (~~doctor's~~) provider's estimate of how long the item will be needed.

(5) The department will review the medical necessity, appropriateness, and quality of items and services provided to workers.

(6) The department's STATEMENT FOR MISCELLANEOUS SERVICES form or electronic transfer format specifications must be used for billing the department for miscellaneous services, equipment, supplies, appliances, and transportation. Bills must be itemized according to instructions in WAC 296-20-125 and the department or self-insurer's billing instructions. Bills for medical appliances and equipment must include the type of item, manufacturer name, model name and number, and serial number.

(7) All miscellaneous materials, supplies and services must be billed using the appropriate HCPCS Level II codes and billing modifiers. HCPCS codes are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 24-11-122, filed 5/21/24, effective 7/1/24)

WAC 296-23-205 General instructions—Naturopathic physicians.

General instructions for naturopathic physicians:

(1) Refer to WAC 296-20-010 through 296-20-125 for general rules and billing procedures including, but not limited to:

(a) WAC 296-20-06101 for reporting requirements.

(b) WAC 296-20-01002 for the definition of "proper and necessary" health care services.

(c) WAC 296-20-03002 for treatment not authorized by the department.

(2) Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

(3) Refer to WAC 296-23-135 through 296-23-145 and 296-20-121 for requirements for X-rays.

(4) Refer to chapter 246-836 WAC for scope of practice including prescribing authority and injection requirements.

(5) Refer to WAC 296-21-290 for physical medicine limitations for attending (~~doctors~~) providers.

AMENDATORY SECTION (Amending WSR 04-22-085, filed 11/2/04, effective 12/15/04)

WAC 296-23-240 Licensed nursing rules. (1) Registered nurses and licensed practical nurses may perform private duty nursing care in industrial injury cases when the attending (~~physician~~) provider deems this care necessary. Registered nurses may be reimbursed for services as outlined by department policy. (See chapter 296-20 WAC for home nursing rules.)

(2) Advanced registered nurse practitioners (ARNPs) may perform advanced and specialized levels of nursing care on a fee for service basis in industrial injury cases within the limitations of this section. ARNPs may be reimbursed for services as outlined by department policy.

(3) In order to treat workers under the Industrial Insurance Act, the advanced registered nurse practitioner must be:

(a) Recognized by the Washington state board of nursing or other government agency as an advanced registered nurse practitioner (ARNP). For out-of-state nurses an equivalent title and training may be approved at the department's discretion.

(b) Capable of providing the department with evidence and documentation of a reliable and rapid system of obtaining physician consultations.

(4) Billing procedures outlined in the medical aid rules and fee schedules apply to all nurses.

AMENDATORY SECTION (Amending WSR 09-14-104, filed 6/30/09, effective 7/31/09)

WAC 296-23-241 Advanced registered nurse practitioners. (1) Advanced registered nurse practitioners (ARNPs) may independently perform the functions of an attending provider under the Industrial Insurance Act and applicable rules in Title 296 WAC, with the exception of rating permanent impairment. These functions (~~are referenced in the medical aid rules as those of an attending or treating provider, and~~) include, but are not limited to:

- Completing and signing the Report of Accident (Workplace Injury, Accident, or Occupational Disease) form or the Provider's Initial Report form, where applicable;
- Certifying time-loss compensation;
- Completing and submitting all required or requested reports;
- Referring workers for consultations;
- Performing consultations;
- Facilitating early return to work offered by and performed for the employer(s) of record;
- Doing all that is possible to expedite the vocational process, including making an estimate of the worker's physical or mental capacities that affect the worker's employability.

(2) Psychiatric advanced registered nurse practitioners can provide psychiatric services as defined in WAC 296-21-270.

(3) ARNPs can state whether a worker has permanent impairment, such as on the department's activity prescription form (APF). ARNPs cannot rate permanent impairment or perform independent medical examinations (IMEs).

AMENDATORY SECTION (Amending WSR 03-21-069, filed 10/14/03, effective 12/1/03)

WAC 296-23-246 Attendant services. (1) **What are attendant services?** Attendant services are proper and necessary personal care services provided to maintain the injured worker in (~~his or her~~) their residence.

(2) **Who may receive attendant services?** Workers who are temporarily or permanently totally disabled and rendered physically helpless by the nature of their industrial injury or occupational disease may receive attendant services.

(3) **Is prior authorization required for attendant services?** Yes. To be covered by the department, attendant services must be requested by the attending ((physician)) provider and authorized by the department before care begins.

(4) **What attendant services does the department cover?** The department covers proper and necessary attendant services that are provided consistent with the injured worker's needs, abilities and safety. Only attendant services that are necessary due to the physical restrictions caused by the accepted industrial injury or occupational disease are covered.

The following are examples of attendant services that may be covered:

- Bathing and personal hygiene;
- Dressing;
- Administration of medications;
- Specialized skin care, including changing or caring for dressings or ostomies;
- Tube feeding;
- Feeding assistance (not meal preparation);
- Mobility assistance, including walking, toileting and other transfers;
- Turning and positioning;
- Bowel and incontinent care; and
- Assistance with basic range of motion exercises.

Services the department considers everyday environmental needs, unrelated to the medical care of the worker are not covered. The following chore services are examples of services that are not covered: Housecleaning, laundry, shopping, meal planning and preparation, transportation of the injured worker, errands for the injured worker, recreational activities, yard work, and child care.

(5) **Who may provide attendant services?** Attendant services provided on or after June 1, 2002, must be provided through an agency licensed, certified or registered to provide home care or home health services.

EXCEPTION: A worker who received department approved attendant services from a spouse prior to October 1, 2001, may continue to receive attendant services from that spouse as long as all of the following criteria are met.
The attendant service spouse provider:

- (a) Had an active provider account with the department on September 30, 2001; and
- (b) Maintains an active provider account with the department; and
- (c) Remains legally married to the injured worker; and
- (d) Allows the department or its designee to perform periodic independent nursing evaluations in the worker's residence.

(6) **What are the treatment limits for attendant services?** The department will determine the maximum hours of authorized attendant care services based on an independent nursing assessment of the worker's care needs.

Spouses eligible to provide attendant services are limited to a maximum of ((seventy)) 70 hours of attendant services per week or to the maximum hours authorized for the worker, whichever is less. Workers who are receiving attendant services from spouses and whose care needs exceed ((seventy)) 70 hours per week must receive attendant services in excess of ((seventy)) 70 hours from an agency eligible to provide attendant services.

EXCEPTION: The department may exempt a spouse from the ((seventy)) 70-hour limit if, after review by the department and based on independent nursing assessment:

- (a) The injured worker is receiving proper and necessary care; and
- (b) The worker's care needs exceed ((seventy)) 70 hours per week; and
- (c) No eligible agency provider is available.

(7) **Will the department review attendant services?** Yes. The department or its designee will perform periodic independent nursing

evaluations of attendant services. Evaluations may include, but are not limited to, on-site review of the injured worker and review of medical records.

AMENDATORY SECTION (Amending WSR 08-09-120, filed 4/22/08, effective 7/1/08)

WAC 296-23-250 Massage therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers. See WAC 296-20-125 for billing instructions.

Refer to WAC 296-20-132 and 296-20-135 for information regarding use of the conversion factors.

Massage therapy treatment will be permitted when given by a licensed massage practitioner only upon written orders from the worker's attending ~~((doctor. In addition, physician assistants may order massage therapy under these rules for the attending doctor))~~ provider.

A progress report must be submitted to the attending ~~((doctor))~~ provider and the department or the self-insurer following six treatment visits or one month, whichever comes first. Massage therapy treatment beyond the initial six treatments will be authorized only upon substantiation of improvement in the worker's condition in terms of functional modalities, i.e., range of motion; sitting and standing tolerance; reduction in medication; etc. In addition, an outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Massage therapy in the home and/or places other than the practitioners usual and customary business facilities will be allowed only upon prior justification and authorization by the department or self-insurer.

No inpatient massage therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

Massage therapy treatments exceeding once per day must be justified by the attending ~~((doctor))~~ provider.

Maximum daily reimbursement levels for massage therapy are ~~((seventy-five))~~ 75 percent of the maximum daily reimbursement levels for physical and occupational therapy services that may be found in WAC 296-23-220 and 296-23-230.

Billing codes, reimbursement levels, and supporting policies for massage therapy services are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 22-07-110, filed 3/23/22, effective 4/23/22)

WAC 296-23-302 Definitions. Approved independent medical examination (IME) provider - A licensed ~~((doctor))~~ provider or firm whose credentials are approved to conduct an independent medical examination, rating evaluation, or provide IME associated services including, but not limited to, file preparation, scheduling of examinations, and processing billing. An approved IME provider is assigned a unique provider number.

Case progress examination - An examination requested for an accepted condition because:

(a) A proper and necessary treatment plan, per the definition of "proper and necessary" found in WAC 296-20-01002, is not in place; or

(b) The treatment plan has stalled or been completed without resulting in objective or functional improvement for physical conditions, or clinically meaningful signs of improvement for mental health conditions.

Department - For the purpose of this section, department means the department of labor and industries industrial insurance workers' compensation state fund and self-insured programs.

Direct patient care - For the purpose of meeting the qualifications of an independent medical examination (IME) provider, direct patient care means face-to-face contact with the ~~((patient))~~ worker for the purpose of evaluation and management of care that includes, but is not limited to:

- History taking and review of systems;
- Physical examination;
- Medical decision making;
- Coordination of care with other providers and agencies.

This does not include time spent in independent medical examinations.

Impairment rating examination - An examination to determine whether or not the injured/ill worker has any permanent impairment(s) as a result of the industrial injury or illness after the worker has reached maximum medical improvement. An impairment rating may be conducted by a qualified attending provider, a medical consultant, or an approved examiner. An impairment rating may be a component of an IME.

Independent medical examination (IME) - An objective medical-legal examination requested (by the department or self-insurer) to establish medical findings, opinions, and conclusions about a worker's physical condition. These examinations may only be conducted by department-approved examiners.

Independent medical examination (IME) provider - A firm, partnership, corporation, or individual licensed doctor (examiner) who has been approved and given an independent medical examination (IME) provider number by the department to perform IMEs.

Medical director - A licensed ~~((doctor))~~ provider and approved IME examiner in the firm, partnership, corporation or other legal entity responsible to provide oversight on quality of independent medical examinations, impairment ratings and reports.

Medical Examiners' Handbook - A handbook developed by the department containing department policy and information to assist providers who perform independent medical examinations and impairment rating examinations.

Patient related services - Patient related services are defined as one or more of the following professional activities:

- Direct patient care;
- Locum tenens;
- Clinical consultations for ~~((treating/attending doctors))~~ attending providers;
- Clinical instruction of medical, osteopathic, dental, podiatry, or chiropractic students and/or residents;
- On-call emergency services;
- Volunteer clinician providing direct patient care services in ~~((his or her))~~ their specialty.

Provider number - A unique number(s) assigned to a provider by the department of labor and industries. The number identifies the provider and is linked to a tax identification number that has been designated by the provider for payment purposes. A provider may have more than one provider number assigned by the department.

Suspension - A department action during which the provider is approved by the department but not available to accept referrals.

Temporarily unavailable - Provider is approved by the department but is temporarily unavailable to accept referrals. Temporarily unavailable applies at the provider's request for personal reasons or by the department as part of an administrative action. Provider remains unavailable until the issue is resolved.

Termination - The permanent removal of a provider from the list of approved IME examiners. All IME provider numbers assigned to the examiner are inactivated.

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

- WAC 296-23-347 What are the independent medical examination (IME) provider's responsibilities in an examination?** (1) The IME provider's responsibilities prior to the examination are to:
- (a) Be familiar with the contents of the medical examiner's handbook;
 - (b) Review all claim documents provided by the department or (~~self-insured employer~~) self-insurer;
 - (c) Contact the worker prior to the examination to confirm the appointment date, time and location; and
 - (d) Review the purpose of the examination and the questions to be answered in the examination report.
- (2) The IME provider's responsibilities during the examination are to:
- (a) Introduce (~~himself or herself~~) themselves to the worker;
 - (b) Verify the identity of the worker;
 - (c) Let the worker know that the claim documents from the department or self-insurer have been reviewed;
 - (d) Explain the examination process and answer the worker's questions about the examination process;
 - (e) Advise the worker that (~~he/she~~) they should not perform any activities beyond their physical capabilities;
 - (f) Allow the worker to remain fully dressed while taking the history;
 - (g) Ensure adequate draping and privacy if the worker needs to remove clothing for the examination;
 - (h) Refrain from expressing personal opinions about the worker, the employer, the attending (~~doctor~~) provider, or the care the worker has received;
 - (i) Conduct an examination that is unbiased, sound and sufficient to achieve the purpose and reason the examination was requested;
 - (j) Conduct the examination with dignity and respect for the worker;
 - (k) Ask if there is any further information the worker would like to provide; and
 - (l) Close the examination by telling the worker that the examination is over.

(3) The IME provider's responsibilities following the examination are to:

(a) Send a complete IME report to the department or self-insurer within (~~fourteen~~) 14 calendar days of the examination date, or within (~~fourteen~~) 14 calendar days of receipt of the results of any special tests or studies requested as a part of the examination. Reports received after (~~fourteen~~) 14 calendar days may be paid at a lower rate per the fee schedule. The report must meet the requirements of WAC 296-23-382; and

(b) The claim file information received from the department or self-insurer should be disposed of in a manner used for similar health records containing private information after completion of the IME or any follow-up test results are received. IME reports should be retained per WAC 296-20-02005.

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

WAC 296-23-377 If an independent medical examination (IME) provider is asked to do an impairment rating examination only, what information must be included in the report? When doing an impairment rating examination, the IME provider must first review the determination by the attending (~~doctor~~) provider that the worker has reached maximum medical improvement (MMI).

(1) If, after reviewing the records, taking a history from the worker and performing the examination, the IME provider concurs with the attending (~~doctor's~~) provider's determination of MMI, the impairment rating report must, at a minimum, contain the following:

(a) A statement of concurrence with the attending (~~doctor's~~) provider's determination of MMI;

(b) Pertinent details of the physical or psychiatric examination performed (both positive and negative findings);

(c) Results of any pertinent diagnostic tests performed (both positive and negative findings). Include copies of pertinent tests with the report;

(d) An impairment rating consistent with the findings and a statement of the system on which the rating was based (for example, the *AMA Guides to the Evaluation of Permanent Impairment* and edition used, or the Washington state category rating system - refer to WAC 296-20-19000 through 296-20-19030 and WAC 296-20-200 through 296-20-690); and

(e) The rationale for the rating, supported by specific references to the clinical findings, especially objective findings and supporting documentation including the specific rating system, tables, figures and page numbers on which the rating was based.

(2) If, after review of the records, a history from the worker and the examination, the IME provider does not concur with the attending (~~doctor's~~) provider's determination of MMI, an IME report must be completed. (See WAC 296-23-382.)

WSR 25-11-072
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 20, 2025, 10:08 a.m., effective July 1, 2025]

Effective Date of Rule: July 1, 2025.

Purpose: The department of labor and industries initiated this rule making to align WAC 296-155-140 in chapter 296-155 WAC, Safety standards for construction work, with the requirements of EHB 2266 (chapter 258, Laws of 2024), codified under RCW 49.17.530, which became effective June 6, 2024.

RCW 49.17.530 requires employers in the construction industry to provide workers performing construction activities and who menstruate or express milk the following:

Access to an adequate portable toilet or restrooms, accessible on the worksite, or access to a permanent structure with a restroom/bathroom. Requirements include:

- Minimum size bathroom-equivalent to a standard sized portable chemical toilet;
- Internal latch (lock) to prevent inadvertent entry; and
- Adequate time to accommodate for multiple layers of clothing while using the bathroom.

Adequate and convenient supply of menstrual hygiene products at no cost to employees:

- Products must be located in all gender-neutral bathrooms and bathrooms designated for workers who menstruate; or
- Provided in kits for each worker who needs such products.

Reasonable accommodations to express milk after the child's birth each time such employee has need to express to include:

- Flexible scheduling, including breaks;
- Private dedicated space, other than a bathroom, lockable (if possible) and free from intrusion;
- Convenient hygienic refrigeration on the worksite for the storage of milk;
- Convenient water source in a private location near the location where milk is expressed for the worker to clean and wash hands and milk expression equipment; and
- RCW 49.17.530 requires L&I's rules identify minimum reasonable accommodations for expressing milk that include alternatives for worksites of varying numbers of employees.

Citation of Rules Affected by this Order: Amending WAC 296-155-140.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.530.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 25-05-076 on February 18, 2025.

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

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

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

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

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

Date Adopted: May 20, 2025.

Joel Sacks
Director

RDS-6132.2

AMENDATORY SECTION (Amending WSR 16-09-085, filed 4/19/16, effective 5/20/16)

WAC 296-155-140 Sanitation. (1) Potable water.

(a) You must provide an adequate supply of potable water in all places of employment.

(b) Portable containers used to dispense drinking water must be capable of being tightly closed and equipped with a tap. Water must not be dipped from containers.

(c) You must clearly mark any container used to distribute drinking water as to the nature of its contents and not used for any other purpose.

(d) The common drinking cup is prohibited.

(e) Where single service cups (to be used but once) are supplied, you must provide both a sanitary container for the unused cups and a receptacle for disposing of the used cups.

(f) You must thoroughly clean all water containers used to furnish drinking water at least once each week or more often as conditions require.

(g) The requirements of this subsection do not apply to mobile crews or to normally unattended work locations as long as employees working at these locations have transportation immediately available, within the normal course of their duties, to nearby facilities otherwise meeting the requirements of this section.

(h) The following definitions apply:

(i) **Mobile crew.** A work crew that routinely moves to a different work location periodically. Normally a mobile crew is not at the same location all day.

(ii) **Normally unattended work location.** An unattended site that is visited occasionally by one or more employees.

(iii) **Nearby facility.** A sanitary facility that is within three minutes travel by the transportation provided.

(iv) **Potable water.** Water that is suitable for drinking by the public and meets the requirements of chapter 246-290 or 246-291 WAC.

(2) **Wash water.**

(a) You must provide clean, tepid wash water, between 70 and 100 degrees Fahrenheit, at all construction sites.

(b) You must provide individual hand towels. You must provide both a sanitary container for the unused towels and a receptacle for disposal of used towels.

(c) You must provide hand soap, industrial hand cleaner or similar cleansing agents. Cleansing agents must be adequate to remove any paints, coatings, herbicides, insecticides or other contaminants.

(d) The requirements of this subsection do not apply to mobile crews or to normally unattended work locations as long as employees working at these locations have transportation immediately available, within the normal course of their duties, to nearby facilities otherwise meeting the requirements of this section.

(e) You must not use gasoline or solvents for personal cleaning.

(f) Wash water areas will be maintained in a dry condition. You must eliminate slipping or other hazards from the wash water area before it is acceptable for use.

(3) Nonpotable water.

(a) You must identify outlets for nonpotable water, such as water for industrial or firefighting purposes only, by signs meeting the requirements of Part E of this chapter, to indicate clearly that the water is unsafe and is not to be used for drinking, washing or cooking purposes.

(b) You must ensure that there is no cross-connection, open or potential, between a system furnishing potable water, a system furnishing nonpotable water or a system furnishing wash water.

(4) Toilets.

(a) The provisions of this section apply to both portable chemical toilets and to flush toilets, except where flush toilets are used the requirements of WAC 296-800-230 apply instead of (b) of this subsection.

(b) You must provide accessible toilets for employees according to the following table:

TABLE B-1

<u>Number of Employees</u>	<u>Toilets Required</u>
1 - 10	1
11 - 25	2
26 - 40	3
41 - 60	4
61 - 80	5
Over 80	one additional toilet for each additional 20 employees or any fraction thereof.

(c) When the employer provides both flush and portable chemical toilets, the number of employees allowed to be served by the flush toilets, per WAC 296-800-230 will be calculated. That number will be subtracted from the total number of employees and the employer will be required to provide an adequate number of portable chemical toilets for the number of remaining employees, as required by (b) of this subsection.

(d) You must maintain toilets in clean, sanitary and functional condition. You must provide internal latches to secure the units from inadvertent entry. Where there are 20 or more employees consisting of both sexes, you must provide facilities for each sex. Please see subsection (6) of this section for the requirements for workers who men-

struate and perform construction activities. The requirements of subsection (6) of this section apply to both fixed and mobile crews.

(i) You must properly clean each unit on a routine basis.

(ii) You must maintain chemicals, toilet tissue and sanitary seat covers in a supply sufficient for use during the entire shift.

(iii) You must immediately remove any defective or inadequate unit from service.

(e) **Specifications.** The following specifications apply:

(i) A noncaustic chemical toilet (portable chemical toilet is) a self-contained unit equipped with a waste receiving chemical holding container.

(ii) Portable chemical toilets consisting of only a holding tank, commonly referred to as "elevator units" or "elevator toilets" are not acceptable. "Elevator units" may be used if they are individually located in a lockable room which affords privacy. When this type unit is used in a private individual lockable room the entire room will be considered a toilet facility, as such the room will meet all requirements of toilet facilities and be inspected in accordance with subsection (5)(b)(iii) of this section.

(iii) Rooms, buildings or shelters housing toilets must be of sound construction, easy to clean, provide shelter and provide privacy. The toilet rooms must be ventilated to the outside and adequately lighted. All openings into the toilet room must be covered with 16-mesh screen.

(iv) You must service toilets on a regular schedule. Servicing must include the use of a disinfectant for cleaning urinals and seats, removing waste from containers, recharging containers with an odor controlling chemical and installing an adequate supply of toilet tissue and seat covers.

(v) You must perform service in accordance with local codes by approved servicing organizations. You must dispose of or discharge waste in accordance with requirements of local health department regulations.

(vi) Waste containers must be fabricated from impervious materials, e.g., plastic, steel, fiberglass or their equivalent. Containers must be water tight and capable of containing the chemical waste in a sanitary manner. The container must be fitted to the building in a manner so as to prevent insects from entering from the exterior of the building. Containers must be adequate in size to be used by the number of persons, according to the schedule for minimum requirements, without filling the container to more than half of its volume before regularly scheduled servicing.

(vii) Removal of waste must be handled in a clean and sanitary manner by means of a vacuum hose and received by a leak-proof tank truck. All valves on the tank must be leak-proof.

(viii) You must make provisions so service trucks have a clear approach and convenient access to the toilets to be serviced.

(ix) Disposal of waste from tank trucks must be in accordance with local health department requirements. In the absence of provisions by local health departments, waste must be disposed of through municipal or district sanitary sewage systems. Municipal or area sanitary sewage districts must provide sewage disposal locations and facilities which are adequate and convenient for duly authorized toilet service organizations.

(f) The requirements of this subsection do not apply to mobile crews or to normally unattended work locations as long as employees working at these locations have transportation immediately available,

within the normal course of their duties, to nearby facilities otherwise meeting the requirements of this section.

(5) **Employer responsibilities.**

(a) On multiemployer worksites, the prime contractor must ensure that the requirements of this section are met. Each employer is responsible for seeing that facilities for their own employees are provided.

(b) You must ensure, at the beginning of each shift, that the sanitation facilities required by this section are inspected. If any facility or unit fails to meet the following requirements, you must take immediate corrective action. You must document and maintain such action at the site for at least 72 hours. Inspection must establish:

(i) **Potable water:** Sufficient supply of water, sufficient supply of cups, container integrity, cleanliness of unit and area, capacity of trash receptacle (empty).

(ii) **Wash water:** Sufficient supply of clean water, proper temperature, sufficient supply of towels, sufficient supply of cleansing agents, container integrity, cleanliness of unit and area without the presence of physical hazards, capacity of trash receptacle (empty).

(iii) **Toilets:** Sufficient supply of toilet tissue and sanitary seat covers, capacity and condition of chemical agent, capacity and condition of holding tank, cleanliness of unit and area without the presence of physical hazards, physical and structural condition of unit, condition of lock, condition of toilet seat and tissue holder, absence of all foreign debris.

(c) The location of the facilities required by subsections (1), (2) and (4) of this section must be as close as practical to the highest concentration of employees.

(i) On multistory structures they must be furnished on every third floor.

(ii) At all sites they must be located within 200 feet horizontally of all employees.

(iii) The requirements of subsection (5)(c)(i) and (ii) do not apply to mobile crews or to normally unattended work locations as long as employees working at these locations have transportation immediately available, within the normal course of their duties, to nearby facilities otherwise meeting the requirements of this section.

(6) **Menstruation and expression of milk.** The scope of this subsection applies to employers in the construction industry, whether a fixed or mobile location. Please see subsection (5)(a) of this section for the requirements on multiemployer worksites.

(a) Employers must provide to workers performing construction activities, who menstruate, the following:

(i) A minimum size bathroom accessible on the worksite or a permanent structure when used to meet toilet requirements for mobile crews under subsection (4)(f) of this section, that is:

(A) Equivalent to a standard size chemical toilet;

(B) Has an internal latch to prevent inadvertent entry;

(ii) Adequate time to accommodate for multiple layers of clothing;

(iii) An adequate and convenient supply of menstrual hygiene products at no cost to the workers. Menstrual hygiene products must either be located in all gender-neutral bathrooms and bathrooms designated for workers who menstruate, or provided in kits for each worker who needs such product.

(b) Upon notification from the worker, employers must provide reasonable accommodations for workers performing construction activities to express milk.

(i) This requirement applies to all worksites and employer sizes, whether a fixed or mobile location.

(ii) Reasonable accommodations must include:

(A) Flexible work schedules, including breaks that provide enough time for the expression of milk;

(B) A location that is convenient and sanitary for the worker. The location must be private and secure from entry of others and is not a bathroom or portable toilet;

(C) Convenient, hygienic refrigeration for storage of milk;

(D) Convenient source of potable water for workers to clean and wash hands and milk equipment.

(iii) Employers may have additional responsibilities and requirements under state or federal pregnancy and lactation laws.

(iv) Employees may have additional rights and protections under state or federal pregnancy and lactation accommodation laws.

(v) The department will publish on its website a list of resources to assist employers and workers in identifying the requirements as well as products that will comply with the rule taking into consideration alternative worksites and varying number of workers.

(7) **Food handling.** All employees' food service facilities and operations must meet the applicable laws, ordinances and regulations of the jurisdictions in which they are located.

~~((7))~~ (8) **Temporary sleeping quarters.** When temporary sleeping quarters are provided, they must be heated, ventilated and lighted.

WSR 25-11-075
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 20, 2025, 11:05 a.m., effective July 1, 2025]

Effective Date of Rule: July 1, 2025.

Purpose: This adoption updates a conversion factor provided in WAC 296-20-135 and maximum daily fees provided in WAC 296-23-220 and 296-23-230 for certain professional health care services for injured workers. Rule changes are necessary to maintain current overall fees for health care services, which are published annually in the medical aid rules and fee schedules.

These updates change the resource based relative value scale (RBRVS) conversion factor, the anesthesia conversion factor, and the maximum daily caps to be consistent with the changes for other professional fees resulting from our RBRVS process and changes in the relative value units published by the Centers for Medicare and Medicaid Services.

Citation of Rules Affected by this Order: Amending WAC 296-20-135, 296-23-220, and 296-23-230.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Adopted under notice filed as WSR 25-08-061 on April 1, 2025.

Changes Other than Editing from Proposed to Adopted Version: The proposed language for WAC 296-23-220 Physical therapy rules, indicated an incorrect amount of \$149.95. This is corrected on the adoption language to \$149.45.

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

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

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

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

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

Date Adopted: May 20, 2025.

Joel Sacks
Director

RDS-6201.1

AMENDATORY SECTION (Amending WSR 24-12-047, filed 5/31/24, effective 7/1/24)

WAC 296-20-135 Conversion factors. (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of (~~(\$59.98)~~) \$58.33. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of (~~(\$3.89)~~) \$3.91 per minute, which is equivalent to (~~(\$58.35)~~) \$58.65 per 15 minutes. The base units and payment policies can be found in the fee schedules.

RDS-6202.2

AMENDATORY SECTION (Amending WSR 24-12-047, filed 5/31/24, effective 7/1/24)

WAC 296-23-220 Physical therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist, a physical therapist assistant serving under the direction of a licensed physical therapist as required in RCW 18.74.180 (3)(a), or a licensed athletic trainer serving under the direction of a licensed physical therapist as required in RCW 18.250.010 (4)(a)(v). In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or (~~(\$147.97)~~) \$149.45 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following 12

treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial 12 treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 24-12-047, filed 5/31/24, effective 7/1/24)

WAC 296-23-230 Occupational therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following 12 treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial 12 treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically

necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or (~~(\$147.97)~~) \$149.45 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

WSR 25-11-081
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 21, 2025, 8:08 a.m., effective July 1, 2025]

Effective Date of Rule: July 1, 2025.

Purpose: The department of labor and industries (L&I) is adopting rules to implement SHB 1905, chapter 353, Laws of 2024. The bill expands existing protections against pay and promotion discrimination based on gender found in chapter 49.58 RCW, the Equal Pay and Opportunities Act. SHB 1905 extends the protections to additional protected classes including but not limited to age, race, and sexual orientation. L&I is adopting chapter 296-123 WAC, Equal pay and opportunities, to clarify and implement the provisions of SHB 1905.

L&I is also adopting rules to clarify other requirements created by chapter 49.58 RCW, including:

- The free discussion of wages and salary;
- Protection against retaliation;
- Wage and salary history privacy; and
- Disclosure of wage scale, salary range, and benefits on a job posting.

The adopted rules explain L&I's enforcement of chapter 49.58 RCW. The adopted rules also describe L&I's complaint investigation and resolution processes.

SHB 1905 goes into effect on July 1, 2025.

Citation of Rules Affected by this Order: New WAC 296-123-010, 296-123-020, 296-123-030, 296-123-040, 296-123-050, 296-123-060, 296-123-070, 296-123-080, 296-123-090, 296-123-100, 296-123-110, and 296-123-120.

Statutory Authority for Adoption: RCW 49.58.090.

Adopted under notice filed as WSR 25-03-133 on January 21, 2025.

A final cost-benefit analysis is available by contacting Reed Simock, L&I, Fraud Prevention and Labor Standards, Employment Standards, P.O. Box 44510, Olympia, WA 98504-4510, phone 360-480-3237, fax 360-902-5300, email ESRules@Lni.wa.gov, website <https://www.lni.wa.gov/rulemaking-activity>.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 12, Amended 0, Repealed 0.

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

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

Date Adopted: May 21, 2025.

Joel Sacks
Director

OTS-6051.2

Chapter 296-123 WAC
EQUAL PAY AND OPPORTUNITIES

NEW SECTION

WAC 296-123-010 Definitions. (1) "Actual damages" means compensation including, but not limited to, wages, salary, or other employment benefit, denied or lost to an employee or applicant, and may include other monetary losses suffered, as a result of a violation.

(2) "Benefits" are perks provided by an employer to an employee in addition to the employee's normal wage or salary. Benefits may be mandated by law or optionally provided by employers. Benefits may include, but are not limited to, health care benefits, retirement benefits, any benefits permitting paid days off (including more generous paid sick leave accruals, family leave, and paid time off or vacation benefits), and any other benefit that must be reported for federal tax purposes, such as fringe benefits.

(3) "Compensation" means discretionary and nondiscretionary wages and benefits provided by an employer to an employee as a result of the employment relationship.

(4) "Conference and conciliation" means an effort to find a voluntary resolution to the violation found as a result of an investigation. If the department finds that damages are owed to the employee or applicant as a result of the violation, the department may mediate, or appoint a third party to act as mediator, between the employee or applicant and the employer to find a mutually agreeable resolution. If the department finds that a violation occurred but the employee or applicant is not owed damages, the department may negotiate directly with the employer to resolve the violation.

(5) "Department" means the department of labor and industries.

(6) "Director" means the director of the department of labor and industries, or the director's designated representative.

(7) "Effort" means the amount of physical or mental exertion needed to perform a job. "Effort" encompasses the requirements of a job as a whole, including any factors of the job that cause or mitigate mental fatigue and stress.

(8) "Employee" means an employee who is employed in the business of the employee's employer whether by way of manual labor or otherwise. For the purposes of this chapter, the term "employee" does not include independent contractors or business partners but does include employees who are exempt under chapter 49.46 RCW.

(9) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.

(10) "Protected class" means a person's age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or

the use of a trained dog guide or service animal by a person with a disability, as those terms are defined in RCW 49.60.040.

(11) "Responsibility" means the degree of discretion or accountability involved in performing the essential functions of a job, and includes factors such as the amount of supervision the employee receives, whether the employee supervises others, the degree to which the employee is involved in decision-making such as determining policy, procedure, purchases, investments, or other such activities.

(12) "Retaliation" means any adverse action taken or threatened by an employer against an employee for their exercise of their rights under chapter 49.58 RCW or this chapter, which may include, but is not limited to:

- (a) Terminating, suspending, demoting, or denying a promotion;
- (b) Reducing or changing the number of work hours for which the employee is scheduled;
- (c) Altering the employee's preexisting work schedule;
- (d) Reducing the employee's rate of pay;
- (e) Threatening to take, or taking action, based upon the immigration status of an employee or an employee's family member; and
- (f) Preventing future job opportunities whether for the employer or elsewhere.

(13) "Skill" means factors such as experience, training, education, and ability required to perform a job. Only skills necessary to perform a particular job are relevant in determining whether employees are similarly employed.

(14) "Working conditions" means the environmental factors and similar circumstances, such as physical surroundings and hazards, encountered by employees while performing a job.

NEW SECTION

WAC 296-123-020 Wage discrimination prohibited. (1) Any employer in this state who discriminates in any way in providing compensation based on a person's gender, perceived gender, or membership or perceived membership in a protected class between similarly employed employees of the employer is guilty of a misdemeanor. If any employee receives less compensation because of discrimination on account of the person's gender, perceived gender, or membership or perceived membership in a protected class in violation of this section, that employee is entitled to the remedies in RCW 49.58.060 and 49.58.070 and associated rules. In such action, however, the employer shall be credited with any compensation which has been paid to the employee upon account.

(2) For purposes of this section, employees are similarly employed if the individuals work for the same employer, the performance of the job requires similar skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.

(3) (a) Discrimination within the meaning of this section does not include a differential in compensation based in good faith on a bona fide job-related factor or factors that:

- (i) Are consistent with business necessity;
- (ii) Are not based on or derived from a gender-based differential and are not based on or derived from the employee being a member of a protected class; and

(iii) Account for the entire differential. More than one factor may account for the differential.

(b) Such bona fide factors include, but are not limited to:

(i) Education, training, or experience;

(ii) A seniority system;

(iii) A merit system;

(iv) A system that measures earnings by quantity or quality of production; or

(v) A bona fide regional difference in compensation levels.

(c) A differential in compensation based in good faith on a local government ordinance providing for a minimum wage different from state law does not constitute discrimination under this section.

(d) An individual's previous wage or salary history is not a defense under this section.

(e) The employer carries the burden of proof on these defenses.

(4) A person may file a complaint or bring an action under this chapter asserting discrimination based on the person's membership in more than one protected class.

NEW SECTION

WAC 296-123-030 Finding—When career advancement limited by gender or membership in other protected class. (1) An employer may not, on the basis of a person's gender, perceived gender, or membership or perceived membership in a protected class, limit or deprive an employee of career advancement opportunities that would otherwise be available. For the purposes of this section, "career advancement opportunities" means formal or informal occasions for an employee to gather additional skills, knowledge, or experience with the purpose of furthering their career. Career advancement opportunities may include, but are not limited to, promotions, trainings, classes, mentorships, or special projects.

(2) (a) A differential in career advancement does not constitute discrimination within the meaning of this section if the differential is based on a bona fide job-related factor or factors that:

(i) Are consistent with business necessity;

(ii) Are not based on or derived from a gender-based differential; and

(iii) Account for the entire differential. More than one factor may account for the differential.

(b) Such bona fide factors include, but are not limited to:

(i) Education, training, or experience;

(ii) A seniority system;

(iii) A merit system; or

(iv) A system that measures earnings by quantity or quality of production.

(3) Upon complaint by an employee, the director must investigate pursuant to the procedures outlined in WAC 296-123-090 to determine if there has been compliance with this section.

(4) Subject to subsection (3) of this section, a person may file a complaint or bring an action under this chapter asserting discrimination based on the person's membership in more than one protected class.

(5) (a) If it is determined that an employer committed a pattern of violations of this section as to an employee or committed a violation of this section through application of a formal or informal employer policy or practice, the employee is entitled to the remedies in WAC 296-123-100 and RCW 49.58.070.

(b) For the purposes of this section, a "pattern of violations" will consider whether the employer has committed multiple violations of this chapter against one employee or committed violations of this section against multiple employees.

NEW SECTION

WAC 296-123-040 Certain employer conduct prohibited. (1) An employer may not:

(a) Require nondisclosure by an employee of their wages as a condition of employment; or

(b) Require an employee to sign a waiver or other document that prevents the employee from disclosing the amount of the employee's wages.

(2) An employer may not discharge or in any other manner retaliate against an employee for:

(a) Inquiring about, disclosing, comparing, or otherwise discussing the employee's wages or the wages of any other employee, which includes, but is not limited to, asking for a raise, asking for payment of agreed or obligated wages, and may also include filing a wage-related complaint with the department;

(b) Asking the employer to provide a reason for the employee's wages or lack of opportunity for advancement; or

(c) Aiding or encouraging an employee to exercise their rights under this section.

(3) An employer may prohibit an employee who has access to compensation information of other employees or applicants as part of such employee's essential job functions from disclosing the wages of the other employees or applicants to individuals who do not otherwise have access to such information, unless the disclosure is in response to a complaint or charge, in furtherance of an investigation, or consistent with the employer's legal duty to provide the information and the disclosure is part of the employee's essential job functions. An employee described in this subsection otherwise has the protections of this section, including to disclose the employee's wages without retaliation.

(4) This section does not require an employee to disclose the employee's compensation.

(5) This section does not permit an employee to violate the requirements in chapter 49.17 RCW and rules adopted under that chapter.

NEW SECTION

WAC 296-123-050 Employer seeking wage and salary history. (1) An employer may not:

(a) Seek or inquire about the wage or salary history of an applicant for employment from the applicant or a current or former employer, even if the question is optional; or

(b) Require that an applicant's prior wage or salary history meet certain criteria such as being above a minimum threshold, except as provided in subsection (2) of this section.

(2) An employer may confirm an applicant's wage or salary history:

(a) If the applicant has voluntarily disclosed the applicant's wage or salary history; or

(b) After the employer has negotiated and made an offer of employment with compensation to the applicant and the offer has been accepted by the applicant.

(3) An employer may not reduce the compensation offered to an applicant after confirming the applicant's wage or salary history.

(4) An individual is entitled to the remedies in RCW 49.58.060 and 49.58.070 and associated rules for violations of this section. Recovery of any wages and interest must be calculated from the first date wages were owed to the employee.

NEW SECTION

WAC 296-123-060 Disclosure of wage or salary range by employer.

(1) The employer must disclose in each posting for each job opening the wage scale or salary range, and a general description of all of the benefits and other compensation to be offered to the hired applicant. For the purposes of this section, "posting" means any solicitation intended to recruit job applicants for a specific available position, including recruitment done directly by an employer or indirectly through a third party, and includes any postings done electronically, or with a printed hard copy, that includes qualifications for desired applicants.

(2) The wage scale or salary range must reflect the employer's most reasonable and genuinely expected range of compensation for the job at the time of posting. The range must include a minimum and maximum dollar amount. An employer may also include a more specific hiring wage scale, salary range, or amount.

(3) A general description of all benefits must provide the applicant with the employer's most reasonable and genuinely expected benefits offered for the specific available position. A "general description of all benefits" includes, but is not limited to, health care benefits, retirement benefits, any benefits permitting paid days off (including more generous paid sick leave accruals, parental leave, and paid time off or vacation benefits), and any other benefits that must be reported for federal tax purposes, such as fringe benefits.

(4) Upon request of an employee offered an internal transfer to a new position or promotion, the employer must provide the wage scale or salary range for the employee's new position.

(5) This section only applies to employers with 15 or more employees. For the purposes of this section, the employer's size is based on the number of employees employed at the time the job opening is posted and includes employees who do not have a physical presence in Washington.

(6) A job applicant or an employee is entitled to the remedies in RCW 49.58.060 and 49.58.070 and associated rules for violations of this section. Recovery of any wages and interest must be calculated from the first date wages were owed to the employee.

NEW SECTION

WAC 296-123-070 Employer retaliation prohibited. (1) An employer may not retaliate, discharge, or otherwise discriminate against an employee because the employee has filed any complaint, or instituted or caused to be instituted any proceeding under this chapter, or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of themselves or others of any right afforded by this chapter.

(2) An employer may not interfere with, restrain, or deny the exercise of any employee right provided under or in connection with chapter 49.58 RCW or associated rules. An employer may not use an employee's exercise of any of the rights provided under chapter 49.58 RCW or associated rules as a negative factor in any employment action such as evaluation, promotion, or termination, or otherwise subject an employee to discipline for the exercise of any rights provided under chapter 49.58 RCW or associated rules.

NEW SECTION

WAC 296-123-080 Violation of chapter. A violation of this chapter occurs when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

NEW SECTION

WAC 296-123-090 Complaint by employee—Investigation by director. (1)(a) An employee or applicant may file a complaint with the department alleging a violation under chapter 49.58 RCW or this chapter within four years of the date of the last alleged violation.

(b) Former employees may file a complaint with the department for alleged violations that occurred while working for the employer, even if the employee is not currently employed by the employer.

(2) Upon complaint by an employee or applicant, the director must investigate to determine if there has been compliance with chapter 49.58 RCW and this chapter. The director, upon complaint, may also initiate an investigation on behalf of one or more employees or applicants for a violation of chapter 49.58 RCW and this chapter. The director may require the testimony of witnesses and production of documents as part of an investigation.

(3) The director may initiate an investigation without a complaint to ensure compliance with this chapter. The director may also initiate an investigation when the director otherwise has reason to believe that a violation has occurred.

(4) The director may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such pla-

ces and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as they may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter.

(5) An employer who fails to allow adequate inspection of records in an inspection by the department within a reasonable time period may not use such records in any appeal to challenge the correctness of any citation and notice issued by the department.

(6) The department may request an employer perform a self-audit of any records relating to chapter 49.58 RCW and associated rules which must be provided within a reasonable time. Reasonable timelines will be specified in the self-audit request. The department must determine reasonable time based on the number of affected employees and the period of time covered by the self-audit. The records examined by the employer in order to perform the self-audit must be made available to the department upon request.

(7) The department may conduct a consolidated investigation for any alleged violation identified under chapter 49.58 RCW, or associated rules, when there are common questions of law or fact. If the department consolidates such matters into a single investigation, it will provide notice to the employer.

NEW SECTION

WAC 296-123-100 Resolving the violation. (1)(a) If, following an investigation, the director determines that a violation occurred, the director shall attempt to resolve the violation by conference and conciliation.

(b) If no agreement is reached to resolve the violation, the director may issue a citation and notice of assessment and order:

(i) The employer to pay to the complainant actual damages;

(ii) The employer to pay to the complainant statutory damages equal to the actual damages or \$5,000, whichever is greater;

(iii) Interest of one percent per month on all compensation owed until the balance is paid in full;

(iv) Payment to the department of the costs of investigation and enforcement; and

(v) Any other appropriate relief including, but not limited to:

(A) Ordering an employer to correct, revise, or update a policy or practice.

(B) Order the employer to restore the employee to the position of employment held by the employee when the retaliation occurred, or restore the employee to an equivalent position with equivalent employment hours, work schedule, benefits, pay, and other terms and conditions of employment for violations of WAC 296-123-070.

(2) For the purpose of department enforcement under RCW 49.58.060 and associated rules, a job applicant or employee must demonstrate that compensation or any other damages have been denied or lost by reason of a violation of WAC 296-123-060 to be entitled to damages under RCW 49.58.060 and this section. This does not diminish the right of a job applicant or employee to pursue remedies under RCW 49.58.070. Filing a civil action under RCW 49.58.070 shall terminate the director's processing of the complaint under RCW 49.58.060 and associated rules.

(3) Any wages and interest owed must be calculated from the last violation before the complaint, up to a period of four years.

(4) In accordance with RCW 49.58.060, in addition to the citation and notice of assessment, the director may order payment to the department of a civil penalty. For purposes of a civil penalty for violation of RCW 49.58.020, 49.58.030, 49.58.040, 49.58.050, 49.58.100, 49.58.110, and associated rules, the violation as to each affected employee or applicant constitutes a separate violation.

(a) For a first violation, the civil penalty may not exceed \$500.

(b) For a repeat violation, the civil penalty may not exceed \$1,000 or 10 percent of the damages, whichever is greater.

(5) For enforcement actions under this section, if any person fails to pay an assessment under this chapter, or under any rule under this chapter, after it has become a final and binding order, or after the court has entered final judgment in favor of the agency, the director may initiate collection procedures in accordance with the collection procedures under RCW 49.48.086.

(6) The department must deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

NEW SECTION

WAC 296-123-110 Appeals. An appeal from the director's determination received within 30 days may be taken in accordance with chapter 34.05 RCW. An employee who prevails is entitled to costs and reasonable attorneys' fees from the employer.

NEW SECTION

WAC 296-123-120 Severability. If any provision of the rules in this chapter, or their application to any person or circumstance is held invalid, the remainder of these rules or their application of the provision to other persons or circumstances is not affected.

WSR 25-11-082

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Community Services)

(Home and Community Living Administration)

[Filed May 21, 2025, 8:29 a.m., effective July 1, 2025]

Effective Date of Rule: July 1, 2025.

Purpose: The developmental disabilities community services (DDCS) division of the home and community living administration (HCLA) amended these rules primarily to add agencies as a provider type for alternative living and to create a connection to the new certification rules under development at HCLA, which will be codified as new chapter 388-825A WAC. Other changes have been made to update procedures and provider requirements, repeal unnecessary sections, clarify the six-month service limit for clients living with a parent, and more.

Effective May 1, 2025, developmental disabilities administration (DDA) moved under HCLA. The former DDA is known as DDCS within HCLA.

Citation of Rules Affected by this Order: New WAC 388-829A-095, 388-829A-115, 388-829A-145, and 388-829A-175; repealing WAC 388-829A-005, 388-829A-030, 388-829A-100, 388-829A-120, 388-829A-150, 388-829A-160, 388-829A-180, 388-829A-230, 388-829A-250, 388-829A-270, 388-829A-320, and 388-829A-330; and amending WAC 388-829A-010, 388-829A-020, 388-829A-040, 388-829A-050, 388-829A-060, 388-829A-070, 388-829A-080, 388-829A-090, 388-829A-110, 388-829A-130, 388-829A-140, 388-829A-170, 388-829A-190, 388-829A-200, 88-829A-210, 388-829A-220, 388-829A-240, 388-829A-260, 388-829A-280, 388-829A-290, 388-829A-300, and 388-829A-310.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.110.

Adopted under notice filed as WSR 25-04-058 on January 30, 2025.

A final cost-benefit analysis is available by contacting Lori Gianetto Bare, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1565, fax 360-407-0955, TTY 1-800-833-6388, email Lori.Bare@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 22, Repealed 12.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 22, Repealed 12.

Date Adopted: May 21, 2025.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 25-12 issue of the Register.

WSR 25-11-087

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Home and Community Living Administration)

[Filed May 21, 2025, 10:09 a.m., effective July 1, 2025]

Effective Date of Rule: July 1, 2025.

Purpose: The purpose of this new chapter is to establish and streamline requirements for the certification process for providers certified by the home and community living administration (HCLA), including certification evaluations, corrective action plans, informal dispute resolution, and more. Provider types impacted by this rule include: Alternative living under chapter 388-829A WAC; companion homes under chapter 388-829C WAC; enhanced respite services under chapter 388-841 WAC; intensive habilitation services for children under chapter 388-833 WAC; children's residential habilitation services under chapters 388-826 and 388-842 WAC; overnight planned respite services under chapter 388-829R WAC; and stabilization, assessment, and intervention facility under chapter 388-847 WAC.

Effective May 1, 2025, developmental disabilities administration (DDA) moved under HCLA. The former DDA is known as developmental disability community service division within HCLA.

Citation of Rules Affected by this Order: New WAC 388-825A-0010, 388-825A-0020, 388-825A-0030, 388-825A-0040, 388-825A-0050, 388-825A-0060, 388-825A-0070, 388-825A-0080, 388-825A-0090, 388-825A-0100, 388-825A-0110, 388-825A-0120, 388-825A-0130, 388-825A-0150, 388-825A-0160, 388-825A-0170, 388-825A-0180, 388-825A-0190, 388-825A-0200, 388-825A-0210, 388-825A-0220, 388-825A-0230, and 388-825A-0240.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.080.

Adopted under notice filed as WSR 25-08-052 on March 28, 2025.

A final cost-benefit analysis is available by contacting Lori Gianetto Bare, 1009 College Street S.E. #100, Lacey, WA 98503, phone 360-407-1565, email Lori.Bare@dshs.wa.gov, website <https://www.dshs.wa.gov/dda>.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 23, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 23, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 23, Amended 0, Repealed 0.

Date Adopted: May 21, 2025.

Katherine I. Vasquez
Rules Coordinator

SHS-5070.3

**Chapter 388-825A WAC
DDA-CERTIFIED PROVIDERS**

NEW SECTION

WAC 388-825A-0010 What is the purpose of this chapter? This chapter establishes certification requirements for the following programs:

- (1) Alternative living under chapter 388-829A WAC;
- (2) Companion homes under chapter 388-829C WAC;
- (3) Enhanced respite services under chapter 388-841 WAC;
- (4) Intensive habilitation services for children under chapter 388-833 WAC;
- (5) Children's residential habilitation services under chapter 388-826 and 388-842 WAC;
- (6) Overnight planned respite services under chapter 388-829R WAC;
- (7) Stabilization, assessment, and intervention facility under chapter 388-847 WAC; and
- (8) Other provider type regulated by rules that incorporate this chapter by reference.

NEW SECTION

WAC 388-825A-0020 What definitions apply to this chapter? "**Applicant**" means an individual or entity applying for certification from DDA under this chapter.

"**Certification evaluation**" means a process used by DDA to determine if an applicant or provider complies with applicable WAC, policy, and contract requirements.

"**Certification decision**" means a length of certification, a certification approval or denial, a citation, or an enforcement action.

"**Certified**" or "**certification**" means a status that indicates a provider is approved under this chapter to provide services to clients.

- "**Preliminary certification**" means a temporary certification that is valid for 120 days, or until the provider receives their first certification evaluation. Preliminary certification is a prerequisite for the provider to begin delivering services to clients.

- "**Initial certification**" means the certification after the provider completes their preliminary certification and first certification evaluation. Initial certification is valid for up to 12 months.

- "**Regular certification**" means the routine certification for a provider to continue delivering services to clients, which is valid for up to 24 months.

- "**Special preliminary certification**" means a temporary certification that is valid for no more than 12 months and is issued to existing children's residential habilitation services, intensive habilitation services, and enhanced respite services providers.

"**Citation**" means a standard or regulation with which a provider is out of compliance.

"**Client**" means a person who has a developmental disability as defined in RCW 71A.10.020 and who has been determined eligible to receive services by DDA under chapter 388-823 WAC.

"**Corrective action**" means action taken to remedy a citation.

"**Corrective action plan**" means a plan developed by DDA and the provider to address a citation or citations.

"**Decertification**" means revocation of a provider's certification.

"**Enforcement action**" means an action DDA may apply to a provider's certification if the provider is issued a citation or fails to comply with a corrective action.

"**Evaluator**" means an individual or entity contracted with DDA to conduct certification evaluations and other follow-up compliance reviews as requested by DDA.

"**Provider**" means an individual or entity who is certified by DDA under this chapter.

"**Site**" means the private residence or facility where a client receives services from a provider certified under this chapter.

"**Site visit**" means a mandatory survey of a provider's service site to assess compliance with program-specific site requirements.

NEW SECTION

WAC 388-825A-0030 How does an applicant obtain preliminary certification? (1) To obtain preliminary certification and begin serving clients an applicant must:

- (a) Complete the DDA-provided application;
- (b) Complete an interview with DDA if requested;
- (c) Complete training according to program-specific rules;
- (d) Have policies as required by program-specific rules;
- (e) Meet contract requirements, if applicable; and
- (f) Pass a site visit under program-specific rules.

(2) DDA must notify the applicant in writing that the preliminary certification is:

- (a) Approved; or
- (b) Denied, and state the reason for the denial.

(3) A preliminary certification is valid for no more than 120 days unless an extension is granted.

(4) DDA may extend a provider's preliminary certification beyond 120 days only if:

(a) The provider is not yet supporting a client or the provider has delivered services for less than 60 days; and

(b) DDA verifies the provider meets program-specific WAC and contract requirements.

(5) An applicant denied a preliminary certification may reapply.

(6) DDA may close out an application if the applicant is nonresponsive for 10 business days.

(7) If a provider no longer meets preliminary certification requirements, DDA may revoke the provider's preliminary certification. If DDA revokes a preliminary certification, DDA must notify the provider in writing of the reason for the revocation.

NEW SECTION

WAC 388-825A-0040 How does an existing children's residential habilitation services, intensive habilitation services, or enhanced respite services provider obtain certification? (1) For an existing children's residential habilitation services, intensive habilitation services, or enhanced respite services provider who delivered services before [enter effective date of chapter], DDA will issue the provider a special preliminary certification.

(2) For the existing children's residential habilitation services, intensive habilitation services, and enhanced respite services providers only:

(a) The special preliminary certification is valid no more than 12 months after the special preliminary certification is issued.

(b) Before the special preliminary certification expires, a provider must obtain regular certification. An initial certification is not required.

(c) A site visit is not required before DDA issues the special preliminary certification.

NEW SECTION**WAC 388-825A-0050 What occurs during a certification evaluation?**

During a certification evaluation, an evaluator must:

(1) Review compliance with:

(a) Program-specific rules;

(b) Policies; and

(c) Setting requirements under 42 C.F.R. 441.301 (c)(4), unless the provider is delivering overnight planned respite services under chapter 388-829R WAC;

(2) Review provider and client records per program-specific rules and policies;

(3) Review satisfaction survey results, if any;

(4) Conduct a program-specific site visit;

(5) Complete an interview with the provider;

(6) Complete an interview with a client if the client agrees;

(7) Complete an interview with the client's legal representative if the legal representative agrees;

(8) Conduct an exit meeting with the provider and DDA under WAC 388-825A-0080; and

(9) Provide a summary of each finding, record corrective actions, and provide completion dates if any.

NEW SECTION

WAC 388-825A-0060 When do site visits occur? (1) DDA must complete a site visit before issuing a preliminary certification.

(2) An evaluator must complete a site visit during a certification evaluation.

(3) DDA may conduct unannounced and routine site visits at any time.

(4) Alternative living providers are exempt from site visits.

NEW SECTION

WAC 388-825A-0070 How must a provider participate in the certification evaluation process? The provider must participate in the certification evaluation process with DDA employees and DDA-contracted evaluators by completing actions such as:

- (1) Participating in scheduled and unscheduled visits;
- (2) Cooperating in scheduling visits;
- (3) Providing information and documentation as requested;
- (4) Responding to questions or issues identified;
- (5) Participating in an exit meeting; and
- (6) Implementing a corrective action plan.

NEW SECTION

WAC 388-825A-0080 What happens during a certification evaluation exit meeting? (1) During a certification evaluation exit meeting:

- (a) The evaluator must present a summary of each finding;
 - (b) DDA and the provider must work together to determine a corrective action plan and due dates in accordance with WAC 388-825A-0180; and
 - (c) A DDA program representative:
 - (i) Must recommend a length for the provider's initial certification not to exceed 12 months, or regular certification not to exceed 24 months; and
 - (ii) May recommend an enforcement action under WAC 388-825A-0200.
- (2) If recommending an enforcement action, the DDA program representative must invite the DDA quality assurance representative to the exit meeting.
- (3) The evaluator must record the corrective action plan, due date, and certification length in a draft certification evaluation and submit to a DDA quality assurance representative for final review.

NEW SECTION

WAC 388-825A-0090 What action does DDA take after a certification evaluation? (1) Based on the draft certification evaluation, a DDA quality assurance representative may:

- (a) Certify the provider for the recommended certification length or revise the certification length; or
 - (b) Apply an enforcement action to the provider's certification under WAC 388-825A-0200.
- (2) A DDA quality assurance representative must send the provider a copy of the completed certification evaluation and notify the provider in writing of the length of the provider's certification.

NEW SECTION

WAC 388-825A-0100 How does DDA determine the length of a provider's certification? When determining the length of a provider's certification, DDA considers the following:

- (1) Whether it is a provider's first evaluation for initial certification;
- (2) Number of citations received during certification evaluations or other DDA reviews;
- (3) Category of citations issued; and
- (4) Whether a repeat citation is issued.

NEW SECTION

WAC 388-825A-0110 How must a provider maintain their certification? To maintain certification, a certified provider must:

- (1) Deliver client services;
- (2) Maintain provider qualifications under program-specific rules; and
- (3) Complete a certification evaluation under WAC 388-825A-0040.

NEW SECTION

WAC 388-825A-0120 What if a certified provider transfers services to a new site? (1) Before a certified provider transfers services to a new site and continues supporting the same client or clients, the site must meet program-specific site requirements and pass a site visit to maintain certified status.

(2) If a provider temporarily relocates services due to an emergency, as soon as client safety can be assured, the provider must notify DDA with the new address, phone number, and anticipated duration of the change in location.

(3) For alternative living, the provider holds one certification regardless of where services are delivered.

NEW SECTION

WAC 388-825A-0130 Does a certification apply to more than one site? Each service site must be separately certified.

NEW SECTION

WAC 388-825A-0150 Can a provider's certification period be extended? (1) DDA may extend a provider's certification period if an evaluation cannot be completed timely. DDA must notify the provider of their new certification due date.

(2) The provider's performance during the extension period is reviewed as part of the provider's evaluation.

(3) The provider's new certification period begins at the end of the extension period.

NEW SECTION

WAC 388-825A-0160 Must a provider complete a certification evaluation if the provider is not currently providing services to a client? (1) If a provider delivered services during a certification period but is temporarily not delivering services when their certification evaluation is due:

(a) The certification evaluation must be conducted; and

(b) An evaluator must attempt to interview a client (or the client's legal representative, if appropriate) who received services from the provider during the certification period.

(2) If a provider has not delivered services to a client during a certification period, DDA may extend the certification period under WAC 388-825A-0030.

NEW SECTION

WAC 388-825A-0170 When may DDA issue a citation? DDA may issue a citation based on information discovered during a certification evaluation or other DDA review.

NEW SECTION

WAC 388-825A-0180 How are corrective actions determined and what are the timelines for correction? (1) DDA and the provider work together to develop a corrective action plan in response to a citation.

(2) DDA determines the timeline for correction based on the nature of the citation, according to the following degrees of severity.

(a) A minor citation is an infrequent or isolated incident that does not:

(i) Impact client well-being; or

(ii) Jeopardize client funding.

(b) A major citation is an isolated incident or systemic problem that results in:

(i) Inadequate treatment of a client; or

(ii) Jeopardized client well-being (i.e., no imminent danger).

(c) A significant citation is an isolated incident or systemic problem that results in an imminent health and safety risk impacting client well-being.

(3) A repeat citation may be elevated to a higher degree of severity. A repeat citation occurs when a provider is cited for the same incident or systemic problem two or more times.

(4) Providers must complete corrective actions as follows.

(a) **Minor.** No more than 30 calendar days after a minor citation is issued, the provider must:

(i) Apply the correction across the site and to all clients and employees in the sample. The provider must submit to DDA evidence that the citation has been corrected.

(ii) Inform DDA of the provider's plan to ensure the correction is applied to all other clients, employees, and sites under the certification, as appropriate.

(b) **Major.** No more than 10 calendar days after a major citation is identified, the provider must correct the citation for all clients,

employees, and sites under the certification, as appropriate. The provider must submit to DDA evidence that the citation has been corrected.

(c) **Significant.** No more than 24 hours after a significant citation is identified, the provider must correct the citation for all clients, employees, and sites under the certification, as appropriate. The provider must submit to DDA evidence that the citation has been corrected.

(5) DDA headquarters may approve modified timelines in subsection (4) of this section.

NEW SECTION

WAC 388-825A-0190 What if a provider fails to complete a corrective action plan? If a provider fails to complete a corrective action plan, DDA may apply an enforcement action to a provider's certification under WAC 388-825A-0200.

NEW SECTION

WAC 388-825A-0200 What enforcement actions may DDA take? (1) If a provider is issued a citation, DDA may apply one or more of the following enforcement actions to a provider's certification:

(a) Conditions, which requires the provider to complete an action determined by DDA by a specific date;

(b) Referral suspension, which temporarily prohibits the provider from delivering services to new clients until approved by DDA;

(c) Provisional certification, which sets a provider's certification to expire on a specific date if the provider does not correct identified areas of noncompliance; and

(d) Decertification.

(2) DDA must decertify a provider who is no longer qualified according to program-specific rules.

(3) To issue an enforcement action, DDA must send the provider a written notification. The notification must:

(a) State the enforcement action;

(b) State the effective date and length of the enforcement action;

(c) List a specific regulation for which the provider is issued a citation;

(d) State the conditions, if any, and list the date by which each condition must be met;

(e) Include additional supporting documentation, if available; and

(f) Explain the informal dispute resolution process and the provider's appeal rights.

(4) If a provider receives an enforcement action, DDA sends each client supported by the provider and their legal representative or necessary supplemental accommodation a notice of that action as described in chapter 71A.26 RCW.

(5) A DDA representative or the evaluator must ensure citations listed in the notice from DDA have been corrected before lifting an

enforcement action. DDA must issue a letter notifying the provider when the enforcement action is lifted.

(6) DDA may issue a new citation if a DSHS representative or evaluator discovers a new finding.

NEW SECTION

WAC 388-825A-0210 When may DDA apply an enforcement action? DDA may apply an enforcement action to a provider's certification if:

(1) DDA issues the provider a citation in the major or significant category under WAC 388-825A-0180;

(2) The provider fails to cooperate, prevents, or interferes with a certification evaluation, or review by the department or applicable licensing agency;

(3) There is an immediate issue affecting client health and safety potentially involving provider action or inaction;

(4) The provider is non-compliant with certification requirements;

(5) The provider failed to comply with any applicable requirements regarding vulnerable adults under chapter 74.34 RCW or children under chapter 26.44 RCW;

(6) The provider failed to submit a plan of correction; or

(7) The provider failed to implement a plan of correction.

NEW SECTION

WAC 388-825A-0220 What if a contracted provider disagrees with a citation, certification decision, or enforcement action? If a contracted provider disagrees with a citation, certification decision, or enforcement action, the provider may request one or both of the following:

(1) Informal dispute resolution under WAC 388-825A-0230.

(2) Administrative hearing under WAC 388-825A-0240.

NEW SECTION

WAC 388-825A-0230 What is an informal dispute resolution and how does a provider request one? (1) A provider who disagrees with a citation, certification decision, or enforcement action may request an informal dispute resolution with DDA where DDA will review evidence from the provider.

(2) To request an informal dispute resolution, the provider must:

(a) Submit a written request to DDA no more than 15 calendar days after the date of the certification letter or written notice of an enforcement action; and

(b) Include a written statement that identifies:

(i) Each disputed citation, certification decision, or enforcement action;

(ii) The grounds for disagreement with DDA's finding; and

(iii) The provider's preferred method for evidence presentation (i.e., face-to-face, video conference, teleconference, or document review).

(3) No more than 10 business days after receiving an informal dispute resolution request, DDA must notify the provider the request was received.

(4) No more than 30 calendar days after DDA receives the provider's request, DDA must:

(a) Review the evidence and argument presented;

(b) Notify the provider in writing which action DDA is taking under subsection (5) of this section; and

(c) Issue an amended notice if a citation, certification decision, or enforcement action is rescinded or changed.

(5) DDA may take the following action:

(a) Rescind a citation, certification decision, or enforcement action;

(b) Change a citation, certification decision, or enforcement action;

(c) Make editorial changes to a citation, certification decision, or enforcement action; and

(d) Take no action.

(6) The DDA assistant secretary or designee makes the final decision following an informal dispute resolution.

(7) The effective date of an enforcement action must not be delayed or suspended pending an informal dispute resolution process.

(8) A corrective action due date must not be delayed or suspended pending an informal dispute resolution process.

NEW SECTION

WAC 388-825A-0240 Does a provider have a right to appeal decisions under this chapter? (1) If a contracted provider, or provider whose contract has been terminated, disagrees with an enforcement action or the outcome of an informal dispute resolution, the provider may request an administrative hearing under chapter 388-02 WAC.

(2) To request an administrative hearing the provider must submit a written request to the office of administrative hearings no more than 28 days after receiving a written notice of enforcement action or written notice of the outcome of the informal dispute resolution, which must include:

(a) A copy of the contested citation, certification decision, or enforcement action; and

(b) The reason the provider is contesting the citation, certification decision, or enforcement action.

WSR 25-11-093

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Community Services)

(Home and Community Living Administration)

[Filed May 21, 2025, 11:20 a.m., effective July 1, 2025]

Effective Date of Rule: July 1, 2025.

Purpose: The developmental disabilities community services division of the home and community living administration (HCLA) amended these companion home rules primarily to: Establish a connection to the new certification rules under development at HCLA, which will be adopted as a new chapter 388-825A WAC; and update the methodology for adjusting a companion home provider's daily rate when approved for more than the allowed amount of waiver-funded respite.

Citation of Rules Affected by this Order: New WAC 388-829C-043, 388-829C-085, 388-829C-371, and 388-829C-461; repealing WAC 388-829C-044, 388-829C-061, 388-829C-062, 388-829C-063, 388-829C-064, 388-829C-065, 388-829C-233, 388-829C-325, 388-829C-492, and 388-829C-494; and amending WAC 388-829C-010, 388-829C-020, 388-829C-040, 388-829C-042, 388-829C-070, 388-829C-080, 388-829C-110, 388-829C-234, 388-829C-280, 388-829C-305, 388-829C-310, 388-829C-320, 388-829C-340, 388-829C-345, 388-829C-370, and 388-829C-460.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.040, 71A.12.110, and 71A.12.120.

Adopted under notice filed as WSR 25-04-057 on January 30, 2025.

A final cost-benefit analysis is available by contacting Lori Gianetto Bare, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1565, fax 360-407-0955, TTY 1-800-833-6388, email Lori.Bare@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 16, Repealed 10.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 16, Repealed 10.

Date Adopted: May 21, 2025.

Katherine I. Vasquez
Rules Coordinator

SHS-5066.2

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-010 What definitions apply to this chapter? The following definitions apply to this chapter:

"Case manager" means the DDA case manager or DDA social worker assigned to a client.

~~("Certification"))~~ "Certified" or "certification" means a ~~((process used by DDA to determine if an applicant or service provider complies with the requirements of this chapter and the companion home contract))~~ status that indicates a provider is approved under chapter 388-825A WAC to provide services to clients.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020 ~~((+5))~~ and who has been determined DDA-eligible ~~((to receive services by DDA))~~ under chapter 388-823 WAC.

"Companion home provider" or "provider" means a provider of certified community residential support services under RCW 71A.10.020(2) who is contracted with DDA to deliver residential habilitation services. ~~((A companion home provider does not have an individual provider contract.))~~

"Consent" means express written consent granted by the client, or the client's legal representative if the client has one, after the client or the client's legal representative has been informed of the nature of a service being offered.

"Corrective action" means action taken to remedy a citation.

"DDA" means the developmental disabilities administration.

"DSHS" or "the department" means the state of Washington department of social and health services and its employees and authorized agents.

"Instruction" means goal-oriented teaching that is designed for acquiring and enhancing skills.

"Instruction techniques" means step-by-step instruction, mentoring, role modeling, and developing visual cues.

~~("Integrated setting" means typical community settings not designed specifically for people with disabilities in which the majority of people employed and participating are people without disabilities.))~~

"Legal representative" means a parent of a client if the client is under age ~~((eighteen))~~ 18, a court-appointed guardian if a decision is within the scope of the guardianship order, or any other person authorized by law to act for the client.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, application, or other means, to a client by a person legally authorized to do so under chapter 246-840 WAC.

"Medication assistance" means assistance with self-administration of medication under ~~((chapters))~~ chapter 69.41 RCW ~~((and 246-888 WAC))~~, rendered by a nonpractitioner to a person receiving certified community residential support services.

"Nurse delegation" means the process by which a registered nurse transfers the performance of select nursing tasks to a registered or certified nursing assistant under chapter 18.79 RCW and WAC 246-840-910 through 246-840-970.

"Person-centered service plan" means a document that identifies a client's goals and assessed health and welfare needs. The person-centered service plan also indicates the paid services and natural sup-

ports that will assist the client to achieve their goals and address their assessed needs.

"Plan of correction" means a ~~((signed))~~ plan developed by the companion home provider and DDA resource manager and created to address an issue identified by DDA outside of the provider's certification evaluation.

"Representative payee" means a person or an organization appointed by the Social Security Administration to receive Social Security or SSI benefits for anyone who cannot manage or direct the management of their benefits.

"Residential habilitation services" has the same meaning as is under WAC 388-845-1500.

"Resource manager" means the DDA employee who establishes rates, monitors contract compliance, and acts as DDA's liaison with the ~~((service))~~ provider.

"Room and board" means the amount a client must pay each month for food, shelter, and utilities.

~~("Service provider" means a person or entity contracted by DSHS and authorized to deliver services and supports to meet a client's assessed needs.)~~

"Support" means assistance a ~~((service))~~ provider gives a client based on needs identified in the client's person-centered service plan.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-020 How does a companion home provider provide residential habilitation services? (1) A companion home provider provides residential habilitation services:

- (a) To no more than one client;
- (b) In a home the companion home provider owns or leases;
- (c) In an integrated setting that meets the requirements under WAC 388-823-1096; and
- (d) Based on the client's person-centered service plan.

(2) The companion home provider must be available to the client ~~((twenty-four))~~ 24 hours a day to provide supervision and support.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-040 Who may become a companion home provider? To become a companion home provider, a person must:

- (1) Be ~~((twenty-one))~~ 21 or older;
- (2) Have a high school diploma or general equivalency diploma (GED);
- (3) Have a nondisqualifying background check result under chapter 388-825 WAC;
- (4) Have a Washington state business license as an independent contractor;
- (5) Meet the ~~((companion home provider qualifications and))~~ minimum skills and abilities requirements under WAC 388-829C-080; and

(6) Be selected by the client or the client's legal representative if the client has one.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-042 ~~((What are the qualifications for a person to provide residential habilitation services in))~~ **Must a companion home provider be certified?** To provide residential habilitation services ~~((in))~~ as a companion home ~~((a))~~ provider, a person must ~~((:))~~ be certified by DDA under chapter 388-825A WAC.

~~((1) Complete training required under chapter 388-829 WAC;
(2) Be certified by DDA as a companion home provider; and
(3) Be contracted with DDA as a companion home provider.))~~

NEW SECTION

WAC 388-829C-043 **What does DDA review during a site visit?** (1) To be certified, a provider must participate in site visits as required under chapter 388-825A WAC.

(2) During a site visit, DDA reviews the provider's service site for the following safety requirements:

(a) The common areas of the home are accessible.

(b) All entrances and exits are unblocked.

(c) The home is maintained in a safe and healthy manner.

(d) The home has a storage area for flammable and combustible materials.

(e) Every floor of the home has working smoke and carbon monoxide detectors.

(f) The home has a fire extinguisher that meets requirements for the residence type. There must be a fire extinguisher in the kitchen and one on at least every floor of the home.

(g) The home has a stocked first-aid kit.

(h) The home has a working and accessible telephone.

(i) The home has a working and accessible flashlight or alternative light source.

(j) Emergency contact information is available and accessible in the home (e.g., 911, poison control, nonemergency 911, adult protective services, child protective services).

(k) The contact information for the developmental disabilities ombuds is available and accessible in the home.

(l) The water temperature at the home is 120 degrees Fahrenheit or less.

(m) There is a safety plan for any body of water more than 24 inches deep at the home.

(n) Any door or gate that directly leads to the body of water must have an audible alarm.

(o) The home has an evacuation plan and an emergency food and water supply.

(p) The home meets integrated setting requirements under WAC 388-823-1096.

(q) The home has a backup power source (e.g., generator, battery pack) if the provider supports a client who uses life sustaining medical equipment.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-070 Who must have a background check? (1) All people, except the client, must have a background check if they are ~~((sixteen))~~ 16 or older and:

(a) Live in or routinely stay overnight in the companion home; or
(b) May have unsupervised access to the client in the companion home.

(2) Any person required to have a background check under this section must have a nondisqualifying background check result every ~~((two))~~ three years, or more frequently if requested by DSHS.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-080 What minimum skills and abilities must companion home providers demonstrate? A companion home provider must:

- (1) Be able to read, understand, and provide the services outlined in the client's person-centered service plan;
- (2) Participate in the development of the person-centered service plan;
- (3) Communicate with the client in the client's preferred language;
- (4) Accommodate the client's preferences;
- (5) Know the community resources, such as medical facilities, emergency resources, and recreational opportunities;
- (6) Enable the client to keep in touch with family and friends in a way preferred by the client;
- (7) Use instruction techniques appropriate for the client's learning style;
- (8) Protect the client's financial interests;
- (9) Follow mandatory reporting requirements under chapter 74.34 RCW;
- (10) Know how and when to contact the client's legal representative;
- (11) Know how and when to contact the client's case manager;
- (12) Meet training requirements under chapter 388-829 WAC;
- (13) Maintain all necessary license and certification requirements under this chapter; ~~((and))~~
- (14) Comply with all applicable laws, regulations, and contract requirements; ~~((and))~~
- (15) Complete nurse delegation training if the client needs medication administration or delegated nursing tasks ~~((-))~~; and
- (16) Have the ability to electronically:
 - (a) Submit reimbursement claims;
 - (b) Complete and submit mandatory forms;
 - (c) Complete mandatory trainings; and

(d) Receive and respond to communications from DSHS within pre-scribed time frames.

NEW SECTION

WAC 388-829C-085 Must the provider disclose information about other people living in the home and other obligations? (1) The provider must maintain a provider profile that discloses:

(a) The name and age of any person living in the home besides the provider;

(b) The number and type of pets living in the home;

(c) Other obligations (e.g., employment, volunteer work, caring for a dependent) the provider has that may impact the client's choice of provider.

(2) The provider must send the provider profile to:

(a) A potential client at initial client contact; and

(b) DDA at time of application and any time a change occurs.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-110 When must a companion home provider complete their training requirements? (1) Before a companion home provider may deliver services to a client, the provider must complete:

(a) Five hours of ~~((safety and))~~ orientation and safety training;

(b) Forty hours of DDA-developed residential services curriculum;

(c) Six hours of first aid certification and CPR training;

~~((and))~~

(d) Six hours of DDA companion home orientation~~((=))~~; and

(e) Nurse delegation training if the client needs delegation and criteria are met under WAC 246-840-930.

(2) No more than ~~((one hundred twenty))~~ 120 days after the ~~((effective date of the companion home provider's contract))~~ date of hire, the provider must complete ~~((eighteen))~~ 18 hours of population-specific or client-specific training under chapter 388-829 WAC.

(3) ~~((A companion home provider))~~ In accordance with chapter 388-829 WAC, a provider must complete ((twelve continuing education credits annually.)) and keep current:

(a) Continuing education;

(b) CPR and first aid training and certification; and

(c) Bloodborne pathogens training.

~~((4) If the client needs medication administration or delegated nursing tasks, the companion home provider must complete nurse delegation training before they deliver services to the client.))~~

AMENDATORY SECTION (Amending WSR 23-13-030, filed 6/12/23, effective 7/13/23)

WAC 388-829C-234 Will DDA reduce the companion home daily rate if additional waiver-funded respite hours are approved? (1) If DDA approves ~~((additional))~~ waiver-funded respite hours in addition to the

client's annual respite allocation, DDA ((may)) will reduce the companion home daily rate.

~~((2) To reduce the companion home daily rate, DDA:~~

~~(a) Divides the cost of the additional respite hours by the number of days remaining in the client's plan year; and~~

~~(b) Subtracts that amount from the companion home daily rate for the remaining number of days in the plan year.~~

~~(3) The cost of the additional respite hours is based on the identified respite provider's hourly rate.))~~

(2) To reduce the provider's daily rate, DDA:

(a) Converts the provider's daily rate into an hourly rate;

(b) Multiplies the hourly rate by the number of additional respite hours approved to determine the total rate reduction;

(c) Subtracts the total rate reduction from the total amount the provider would have earned for the remaining plan year to determine the adjusted total the provider will earn for the remaining plan year; and

(d) Divides the adjusted total by the number of days remaining in the plan year to determine the adjusted daily rate.

(3) Example: If a provider has a daily rate of \$200 per day and the provider is approved for 50 additional hours of respite with 60 days left in the plan year, DDA will calculate the provider's reduced daily rate as follows:

(a) $\$200/24$ hours per day = $\$8.33$ cost of respite per hour.

(b) $\$8.33 \times 50$ hours of additional respite = $\$416.50$ total rate reduction.

(c) $\$200 \times 60$ days remaining in plan year = $\$12,000$ amount provider would have earned for remaining plan year.

(d) $\$12,000 - \416.50 total rate reduction = $\$11,583.50$ total the provider will earn for the remaining plan year.

(e) $\$11,583.50/60$ days remaining in plan year = $\$193.06$ adjusted daily rate.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-280 What are the companion home provider's responsibilities when managing client funds? (1) When managing a client's funds, the companion home provider must:

(a) Protect the client's financial interests;

(b) Include the client to the highest degree possible in decision making about how their funds are spent;

(c) Maintain a detailed ledger with a running balance for each account managed by the provider, including:

(i) Cash received from writing checks over the purchase amount; and

(ii) A list of where the money was spent or gift card funds were used;

(d) Deposit any client funds into the client's bank account within one week of receiving the funds;

(e) Reconcile the client's accounts, including cash and gift card accounts, on a monthly basis;

(f) Retain receipts, bills, and invoices for purchases (~~over twenty-five dollars~~) made with client funds;

(g) Notify DDA if the client's resources reach (~~one thousand seven hundred dollars~~) \$1,700; and

(h) Assist the client with writing checks, if needed.

(2) When managing a client's funds, the companion home provider must not:

(a) Commingle the client's funds with the provider's funds;

(b) Ask the client to sign a blank check unless stated otherwise in the client's individual financial plan;

(c) Let the client's bank account be overdrawn; or

(d) Let the client's cash funds exceed (~~seventy-five dollars~~) \$75, unless stated otherwise in the client's individual financial plan.

(3) If the client manages their own funds and requests that the companion home provider hold their checkbook, debit card, or credit card:

(a) The provider is not considered to be managing the client's funds;

(b) The client must continue to have access to their funds; and

(c) The provider must document the request in the client's individual financial plan.

(4) Social Security Administration requirements for managing the client's Social Security benefits take precedence over these rules if:

(a) The (~~service~~) provider is the client's representative payee; and

(b) The Social Security Administration requirement conflicts with these rules.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-305 When must the companion home provider transfer the client's funds? (1) If a client chooses a new (~~service~~) provider and the current provider manages the client's funds, the current provider must:

(a) Establish a written agreement with the client, before the client moves, that states the amount of money the provider may withhold to cover any unpaid bills and room and board;

(b) Provide to the client's case manager a copy of any agreement under subsection (1)(a) of this section;

(c) Give the client, and the client's legal representative if the client has one, a ledger of all known client funds;

(d) Transfer the funds to the client or the client's designee as soon as possible, but no more than thirty days after the client leaves the companion home;

(e) Give the new provider a ledger of all transferred client funds if the new provider manages the client's funds; and

(f) Obtain a written receipt for all transferred funds.

(2) If the companion home provider manages a client's funds and the client's whereabouts are unknown, the provider must transfer the client's funds no more than (~~ninety~~) 90 days after notifying DDA the client's whereabouts are unknown to:

(a) The client's legal representative, if the client has one; or

(b) The department of revenue, unclaimed property.

(3) If the companion home provider manages the client's funds and the client dies, the provider must transfer the client's funds within ~~((ninety))~~ 90 days to:

- (a) The client's legal representative;
- (b) The requesting governmental entity; or
- (c) The DSHS office of financial recovery if the client does not have a legal heir.

(4) The Social Security Administration's requirements for managing the client's Social Security benefits take precedence over these rules for transferring client funds if:

- (a) The ~~((service))~~ provider is the client's representative payee; and
- (b) The Social Security Administration requirement conflicts with these rules.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-310 Must a client pay for room and board in the companion home? (1) A client who receives residential habilitation services in a companion home must pay monthly room and board to the companion home provider.

(2) The monthly room and board the client pays to the provider must be specified in a room and board agreement that includes:

- (a) Rent;
- (b) Utilities, which includes access to a telephone;
- (c) Food costs, which means at least three meals a day and snacks; ((and))
- (d) The date the provider collects the room and board payment each month ~~((--))~~; and
- (e) Eviction protections, processes, and appeals comparable to those provided under applicable landlord-tenant law.

(3) The room and board agreement must be:

- (a) Developed by the provider, the client, or the client's legal representative if the client has one;
- (b) Developed before the client moves into the ~~((companion))~~ home;
- (c) Signed by the client or the client's legal representative if the client has one;
- (d) Signed by the provider; and
- (e) Submitted to DDA for review.

(4) Before implementing any changes to the room and board agreement, the companion home provider must submit the proposed agreement to DDA for review.

(5) If the client and provider move to a new address, the room and board agreement must be reviewed and updated in accordance with subsection (3) of this section before the client moves to the new address.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-320 What are the physical and safety requirements for companion homes? (1) A companion home must:

- (a) Be accessible to the client;
 - (b) Provide the client direct, unrestricted access to all common areas;
 - (c) Have adequate space for mobility aids, such as a wheelchair, walker, or lifting device;
 - (d) Have unblocked exits;
 - (e) Be maintained, inside and outside, in a safe and healthy manner free from hazards;
 - (f) Safely store flammable and combustible materials;
 - (g) Have a working smoke detector, located close to the client's bedroom, that meets the client's specialized needs, including any vision or hearing loss;
 - (h) Have a five-pound 2A:10B-C fire extinguisher;
 - (i) Have a first-aid kit;
 - (j) Provide the client access to a telephone;
 - (k) Provide the client access to a working flashlight or alternative light source;
 - (l) Display emergency contact information in a manner accessible to the client;
 - (m) Display an evacuation plan, which must be practiced monthly with the client; ~~((and))~~
 - (n) Have a railing for any patio, deck, porch, or balcony ~~((that is more than twelve inches off the ground.))~~ when required by local building codes; and
 - (o) Have a railing for any patio, deck, porch, or balcony more than 12 inches off the ground when identified as a safety need in the client's person-centered service plan.
- (2) The companion home client must have a private bedroom with:
- (a) A door that locks from the inside, unless the client's person-centered service plan indicates that it is unsafe for the client to have a locking door; and
 - (b) An exit that does not rely solely on a window, ladder, folding stairs, or trap door.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-340 What client records must the companion home provider maintain? A companion home provider must maintain all of the following client records:

- (1) The client's name, address, and Social Security number.
- (2) The name, address, and telephone number of the client's legal representative, if the client has one, and any of the client's relatives that the client chooses to include ~~((+))~~.
- (3) Appropriate documents establishing the legal representative's legal authority to act on behalf of the client, if applicable.
- (4) Signed authorization for release of information forms.
- (5) Health care information, including:
 - (a) The name, address, and telephone number of the client's health care providers;

(b) Instructions (~~from~~), protocols, or therapy plans the provider receives from the client's health care providers, if the provider administers or assists the client with the instructions, protocols, or therapy plans;

(c) The client's health care appointment dates;

(d) The client's known major health events;

(e) The client's medication, health, and surgery records;

(f) A medication administration record if the provider administers client medication;

(g) A drug information sheet obtained from the prescriber or dispensing pharmacy for any prescribed medication, if the provider administers or assists the client with the medication;

~~((f))~~ (h) Written documentation that instructions from the client's health care providers have been followed;

~~((g))~~ (i) A copy of the client's medical insurance card;

((and))

~~((h) Refusals to participate in))~~ (j) Documentation of declined services under WAC 388-829C-370((-)); and

(k) A record of all medications administered to, assisted with, monitored, or declined by the client under WAC 388-829C-371.

(6) If the client receives nurse delegation services, nurse delegation records including:

(a) A signed consent for nurse delegation;

(b) Written instructions from the delegating nurse for performing each delegated nursing task; and

(c) A log of each delegated nursing task performed in the last six months.

(7) Current service and support plans, including the client's:

(a) Person-centered service plan;

(b) Individual education plan, if the client is in school;

(c) Individual employment plan, if the client has one;

(d) Positive behavior support plan, if the client has one; and

(e) Cross-systems crisis plan, if the client has one.

(8) Financial information, including:

(a) The client's individual financial plan under WAC 388-829C-270;

(b) Documentation of any money management and instruction provided to the client;

(c) The client's property records under WAC 388-829C-380;

(d) The client's burial plan, if the client has one; and

(e) The client's will, if the client has one.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-345 What records must the companion home provider maintain? The companion home provider must maintain:

(1) Client records under WAC 388-829C-340;

(2) Water temperature monitoring records under WAC 388-829C-330;

(3) Provider training records under WAC 388-829C-110;

(4) An evacuation plan and practice records under WAC 388-829C-320;

(5) An emergency response plan under WAC 388-829C-410;

(6) Quarterly reports under WAC 388-829C-350;

(7) A signed copy of form DSHS 10-403;

- (8) Nurse delegation records under WAC 388-829C-340;
- (9) The room and board agreement under WAC 388-829C-310; ~~((and))~~
- (10) The provider profile under WAC 388-829C-085;
- (11) Documentation of successful completion of required back-ground checks; and
- ~~((10))~~ (12) Financial records under WAC 388-829C-270 through 388-829C-280, if the provider is managing any portion of the client's funds.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-370 ~~((When must))~~ Must a companion home provider document when a ~~((client's refusal))~~ client declines to participate in services?

- (1) The companion home provider must document when a ~~((client's refusal))~~ client declines to participate in:
- (a) Monthly evacuation drills under WAC 388-829C-320; ~~((and))~~
 - (b) Health care support under WAC 388-829C-160~~((-))~~; and
 - (c) Tasks assigned to the provider in the client's person-centered service plan, including medication support.
- (2) If a client ~~((refuses))~~ declines to participate in a service, the companion home provider must document:
- (a) ~~((Events))~~ A description of events related to the ~~((client's refusal))~~ client declining to participate in the service;
 - (b) ~~((That))~~ When the client was informed of the benefits of the service and the possible risks of ~~((refusal))~~ declining;
 - (c) ~~((The service))~~ A description of the provider's efforts to provide or acquire the service for the client; ~~((and))~~
 - (d) A description of alternatives offered instead of current services; and
 - (e) Any health or safety risks posed by the ~~((refusal))~~ client declining to participate in the service.
- (3) The ~~((companion home))~~ provider must ~~((give written notice to the client's case manager and legal representative, if the client has one, if the client's))~~ develop a plan for action the provider will take to address health and safety ~~((is adversely affected by their refusal to participate in a service))~~ risks due to repeatedly declined services. The plan must include recommendations from the client's health care provider.
- (4) The companion home provider must:
- (a) Review the ~~((refusal of service document))~~ documentation with the client, or the client's legal representative if the client has one, at least every six months;
 - (b) Request that the client, or the client's legal representative if the client has one, sign and date the document after reviewing it; and
 - (c) Document the review in the quarterly report under WAC 388-829C-350.
- (5) The provider must notify the case manager if a client's health and safety may be adversely affected when the client declines to participate in services.

NEW SECTION

WAC 388-829C-371 Must a provider document when a client declines to take a prescribed medication? When a client who is receiving medication support from the provider declines to take a prescribed medication, the provider must:

- (1) Respect the client's right to choose not to take the medication;
- (2) Document the reason for the decline, if provided;
- (3) Document the time, date, and medication the client did not take;
- (4) Document the number of medication support attempts; and
- (5) Unless a written plan between the provider and prescriber or primary care practitioner is in effect, notify the client's prescriber or primary care practitioner and document directions received and follow-up action taken by the provider.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-460 When must DDA deny payment ((and terminate)) to a companion home ((provider's contract)) provider? DDA must deny payment ((and terminate)) to a companion home ((provider's contract)) provider if the provider:

- (1) Is no longer providing paid services to the client; or
- (2) Fails to maintain certification as a companion home provider.

NEW SECTION

WAC 388-829C-461 When may DDA withhold payment to a companion home provider? DDA may withhold payment to a provider if the provider fails to:

- (1) Timely submit records when requested by DDA; or
- (2) Correct a DDA-identified issue of noncompliance within the specified timeline.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-829C-044	What is the application process for a potential companion home provider?
WAC 388-829C-061	What is initial certification?
WAC 388-829C-062	What is standard certification?
WAC 388-829C-063	What is provisional certification?
WAC 388-829C-064	What must a companion home provider comply with to maintain certification?
WAC 388-829C-065	How does DDA monitor companion homes?

- WAC 388-829C-233 May the client or companion home provider request additional waiver-funded respite hours?
- WAC 388-829C-325 How must a companion home provider protect a client from risks associated with bodies of water?
- WAC 388-829C-492 What if the companion home provider disagrees with a certification evaluation or certification decision?
- WAC 388-829C-494 What if the companion home provider disagrees with a certification action or the outcome of an informal dispute resolution?

WSR 25-11-094
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Community Services)
 (Home and Community Living Administration)
 [Filed May 21, 2025, 11:23 a.m., effective July 1, 2025]

Effective Date of Rule: July 1, 2025.

Purpose: The developmental disabilities community services (DDCS) division of the home and community living administration (HCLA) is adopting these amendments primarily to: Establish a connection with the new certification rules under development at HCLA, which will be codified as chapter 388-825A WAC; and standardize provider requirements to create consistency across provider types licensed - state-operated providers and contracted. As part of this rule making, DDCS has decodified and recodified many sections. For a crosswalk of old and new section numbers, see table below:

Old WAC Number	New WAC Number
388-826-0010	388-826-0300
388-826-0016	388-826-0330
388-826-0018	388-826-0570
388-826-0019	388-826-0750
388-826-0040	388-826-0550
388-826-0041	388-826-0560
388-826-0043	388-826-0490
388-826-0044	388-826-0500
388-826-0070	388-826-0580
388-826-0071	388-826-0590
388-826-0072	388-826-0360
388-826-0073	388-826-0370
388-826-0074	388-826-0380
388-826-0075	388-826-0600
388-826-0077	388-826-0510
388-826-0095	388-826-0610
388-826-0096	388-826-0620
388-826-0097	388-826-0630
388-826-0098	388-826-0640
388-826-0130	388-826-0660
388-826-0133	388-826-0650
388-826-0138	388-826-0670
388-826-0145	388-826-0680
388-826-0150	388-826-0690
388-826-0160	388-826-0700
388-826-0170	388-826-0710
388-826-0175	388-826-0720
388-826-0200	388-826-0730
388-826-0205	388-826-0740
388-826-0230	388-826-0320
388-826-0240	388-826-0760

Effective May 1, 2025, developmental disabilities administration (DDA) moved under HCLA. The former DDA is known as DDCS division within HCLA.

Citation of Rules Affected by this Order: New WAC 388-826-0310, 388-826-0340, 388-826-0350, 388-826-0390, 388-826-0400, 388-826-0410, 388-826-0420, 388-826-0430, 388-826-0440, 388-826-0450, 388-826-0460, 388-826-0470, 388-826-0480, 388-826-0520, 388-826-0530, and 388-826-0540; repealing WAC 388-826-0042, 388-826-0078, 388-826-0079, 388-826-0231, 388-826-0232, 388-826-0233, 388-826-0234, 388-826-0235, 388-826-0236, and 388-826-0237; and amending WAC 388-826-0001, 388-826-0005, 388-826-0010, 388-826-0016, 388-826-0018, 388-826-0019, 388-826-0040, 388-826-0041, 388-826-0043, 388-826-0044, 388-826-0070, 388-826-0071, 388-826-0072, 388-826-0073, 388-826-0074, 388-826-0075, 388-826-0077, 388-826-0095, 388-826-0096, 388-826-0097, 388-826-0098, 388-826-0130, 388-826-0133, 388-826-0138, 388-826-0145, 388-826-0150, 388-826-0160, 388-826-0170, 388-826-0175, 388-826-0200, 388-826-0205, 388-826-0230, and 388-826-0240.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.040.

Adopted under notice filed as WSR 25-04-060 on January 30, 2025.

Changes Other than Editing from Proposed to Adopted Version: The department of social and health services has decided not to proceed with WAC 388-826-0019(b).

A final cost-benefit analysis is available by contacting Lori Gianetto Bare, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1565, fax 360-407-0955, TTY 1-800-833-6388, email Lori.Bare@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 16, Amended 33, Repealed 10.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 16, Amended 33, Repealed 10.

Date Adopted: May 21, 2025.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 25-12 issue of the Register.