

WSR 25-16-099
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Home and Community Living Administration)

[Filed August 6, 2025, 8:23 a.m., effective September 6, 2025]

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

Purpose: This CR-103P adds new sections to chapter 388-76 WAC and amends WAC 388-76-10000 Definitions, 388-76-10980 Remedies—Specific—Stop placement—Admissions prohibited, 388-78A-2020 Definitions, 388-78A-2390 Resident records, 388-78A-2440 Resident register, 388-78A-2450 Staff, 388-78A-2600 Policies and procedures, 388-78A-2610 Infection control, 388-78A-2660 Resident rights, 388-78A-2730 Licensee's responsibilities, 388-78A-2930 Communication system, 388-97-0001 Definitions, 388-97-0180 Resident rights, 388-97-0520 Access and visitation rights, 388-97-1640 Required notification and reporting, 388-97-2300 Telephones on resident care units, 388-97-4320 Relocation of residents, 388-107-0001 Definitions, 388-107-0570 Resident records—System, 388-107-1010 Telephone on resident care units, and 388-107-1430 Enforcement authority, penalties, and sanctions.

The department of social and health services (department) originally included WAC 388-78A-2700 Emergency and disaster preparedness, 388-97-1740 Disaster and emergency preparedness, and 388-107-1600 Emergency disaster plan, in the proposal, but has decided not to move forward with those sections as part of this CR-103P.

Citation of Rules Affected by this Order: New WAC 388-76-10221 and 388-76-10596; and amending WAC 388-76-10000, 388-76-10980, 388-78A-2020, 388-78A-2390, 388-78A-2440, 388-78A-2450, 388-78A-2600, 388-78A-2610, 388-78A-2660, 388-78A-2730, 388-78A-2930, 388-97-0001, 388-97-0180, 388-97-0520, 388-97-1640, 388-97-2300, 388-97-4320, 388-107-0001, 388-107-0570, 388-107-1010, and 388-107-1430.

Statutory Authority for Adoption: RCW 18.20.090, 70.97.230, 70.128.040, and chapters 70.129 and 74.42 RCW.

Other Authority: Chapter 74.39 RCW.

Adopted under notice filed as WSR 25-10-071 on May 5, 2025.

Changes Other than Editing from Proposed to Adopted Version: The department has decided not to proceed with permanent adoption of amendments to WAC 388-78A-2700, 388-97-1740, and 388-107-1600.

A final cost-benefit analysis is available by contacting Amy Grimsley, Disaster Preparedness Policy Program Manager, P.O. Box 45600, Olympia, WA 98504, phone 360-725-2488, TTY 711 relay service, email rcspolicy@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 2, Amended 21, 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 2, Amended 21, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 5, 2025.

Lisa N.H. Yanagida
Chief of Staff

SHS-5077.7

AMENDATORY SECTION (Amending WSR 23-12-075, filed 6/6/23, effective 8/1/23)

WAC 388-76-10000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a (~~frail-elder~~ ~~or~~) vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the intentional, willful, or reckless action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult.

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish.

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual conduct, including but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.

(c) **"Mental abuse"** means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(d) **"Personal exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(e) **"Improper use of restraint"** means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(ii) Is not medically authorized; or

(iii) Otherwise constitutes abuse under this section.

"Adult family home" or **"AFH"** means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood, adoption, or marriage to a provider, entity representative, resident manager, or caregiver, who resides in the home. An adult family home may be licensed to provide care to up to eight adults if the home receives approval under WAC 388-76-10031 or 388-76-10032.

(2) As used in this chapter, the term "entity" includes corporations, partnerships, and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, entity representative, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"Affiliated entity" means any entity owned, controlled, or managed by the applicant or licensed provider, or associated with a parent or subsidiary entity applying for, or holding, an adult family home license.

"Applicant" means:

(1) An individual, partnership, corporation, or other entity seeking a license to operate an adult family home; and

(2) For the following sections only, also includes an entity representative solely for the purposes of fulfilling requirements on behalf of the entity:

(a) WAC 388-76-10020(1);

(b) WAC 388-76-10035(1);

(c) (~~WAC 388-76-10060;~~

~~(d)~~) WAC 388-76-10064;

(~~(e)~~) (d) WAC 388-76-10120;

(~~(f)~~) (e) WAC 388-76-10125;

(~~(g)~~) (f) WAC 388-76-10129;

(~~(h)~~) (g) WAC 388-76-10130;

(~~(i)~~) (h) WAC 388-76-10146(4);

(~~(j)~~) (i) WAC 388-76-10265;

(~~(k)~~) (j) WAC 388-76-10500; and

(~~(l)~~) (k) WAC 388-76-10505.

"Capacity" means the maximum number of persons receiving personal or special care who are permitted in an adult family home at a given time. Capacity includes:

(1) The total capacity, which is the number of residents and any children or adults related to the provider who receive personal or special care and services in the home; and

(2) The licensed capacity, which is the number of residents the adult family home may admit and retain (resident capacity), which is the number listed on the license.

"Caregiver" means any person 18 years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student, or volunteer.

"Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

"Consent" means express written consent granted after the vulnerable adult or their legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

"Dementia" means a condition documented through the assessment process required by WAC 388-76-10335.

"Department" means the Washington state department of social and health services.

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means the same as defined under WAC 388-823-0015.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

- (1) On the premises; and
- (2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

"Essential Support Person" means an individual who is:

- (1) At least 18 years of age;
- (2) Designated by the resident, or by the resident's representative, if the resident is determined to be incapacitated or otherwise legally incapacitated; and
- (3) Necessary for the resident's emotional, mental, or physical well-being during situations that include, but are not limited to:
 - (a) Circumstances involving compassionate care or end-of-life care;
 - (b) Circumstances where visitation from a familiar person will assist with important continuity of care or the reduction of confusion and anxiety for residents with cognitive impairments; or
 - (c) Other circumstances where the presence of an essential support person will prevent or reduce significant emotional distress to the resident.

"Entity representative" means the individual designated by an entity provider or entity applicant as its representative for the purposes of fulfilling the training and qualification requirements under this chapter that only an individual can fulfill where an entity cannot. The entity representative is responsible for overseeing the operation of the home. The entity representative does not hold the license on behalf of the entity.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(7).

"Financial solvency" means that the applicant or provider has sufficient funds to operate the home. An applicant or provider is considered financially solvent when they have no delinquent debt. At the department's discretion, the department may consider an applicant or

provider financially solvent if their only delinquent debt is for medical reasons.

"Home" means adult family home.

"Household member" means a person who uses the address of the adult family home as their primary address and who is not a resident.

"Imminent danger" or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health, or safety.

"Indirect supervision" means oversight by a person who is quickly and easily available to the caregiver, but not necessarily on-site and:

(1) Has demonstrated competency in the basic and specialty training, if required; or

(2) Is exempt from basic training requirements.

"Inspection" means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department or the department of children, youth, and families; law enforcement officer; social worker; professional school personnel; individual provider; an operator of a facility or a certified residential services and supports agency under chapter 71A.12 RCW, an employee of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, hospice; or certified residential services and supports agency, county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (assisted living facilities), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that they cannot easily remove and restricts freedom of movement or normal access to the vulnerable adult's body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

(a) Medically authorized, as required; and

(b) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist, or nurse.

"Medication organizer" (~~(is)~~) means a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the (~~aging and disability services~~)) home and community living administration).

"Minimal" means violations that result in little or no negative outcome or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple home provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to, conduct prohibited under RCW 9A.42.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants, home care aides, or qualified long-term care workers in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" (~~(is)~~) means any medication that can be purchased without a prescriptive order, including but not limited to, vitamin, mineral, or herbal preparations.

"Permanent restraining order" means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent restraining order" order may be in force for a specific time period (for example, one year), after which it expires.

"Personal care services" means both physical assistance and prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force a vulnerable adult in order to calm or comfort them, or holding a vulnerable adult's hand to safely escort them from one area to another.

"Placement agency" (~~(is)~~) means an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" (~~(includes)~~) means a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" (~~(refers to)~~) means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

(1) Any individual who is licensed to operate an adult family home and meets the requirements of this chapter;

(2) Any corporation, partnership, limited liability company, or other entity that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter; and

(3) For the following sections only, also includes an entity representative solely for the purposes of fulfilling requirements on behalf of the entity:

(a) WAC 388-76-10020(1);

(b) WAC 388-76-10035(1);

(c) (~~WAC 388-76-10060;~~

~~(d))~~ WAC 388-76-10064;

(~~(e))~~ (d) WAC 388-76-10120;

(~~(f))~~ (e) WAC 388-76-10125;

(~~(g))~~ (f) WAC 388-76-10129;

(~~(h))~~ (g) WAC 388-76-10130;

(~~(i))~~ (h) WAC 388-76-10146(4);

(~~(j))~~ (i) WAC 388-76-10265;

(~~(k))~~ (j) WAC 388-76-10500; and

(~~(l))~~ (k) WAC 388-76-10505.

"Psychopharmacologic medications" means the class of prescription medications, which includes but is not limited to, antipsychotics, anti-anxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

"Recurring" or **"repeated"** means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) or (2) of this definition are present and if the previous violation in subsection (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current rule or law is sufficient:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding 36 months.

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding 36 months.

"Resident" means any adult living in the adult family home and who is unrelated to the provider and who receives personal or special care from the adult family home. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Serious" means violations that either result in one or more negative outcomes and significant actual harm to residents that does not

constitute imminent danger, or there is a reasonable predictability of recurring actions, practices, situations, or incidents with potential for causing significant harm to a resident, or both.

"Severity" means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental, or psychosocial well-being (such as safety, quality of life, quality of care).

"Significant change" means:

(1) A lasting change, decline, or improvement in the resident's baseline physical, mental, or psychosocial status;

(2) The change is significant enough so either the current assessment, or negotiated care plan, or both, do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who is employed or used by an adult family home, directly or by contract, to provide care and services to any residents.

Staff must meet all the requirements in this chapter and chapter 388-112A WAC.

"Temporary restraining order" means a restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or individuals with developmental disabilities or vulnerable adults to which the employee, student, or volunteer has access during the course of their employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules; and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Vulnerable adult" ((includes)) means a person:

(1) 60 years of age or older who has the functional, mental, or physical inability to care for themselves; or

(2) Subject to a guardianship under RCW 11.130.265 or adult subject to conservatorship under RCW 11.130.360; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider; or

(7) Who self-directs their own care and receives services from a personal aide under chapter 74.39 RCW.

"Water hazard" means any body of water over 24 inches in depth that can be accessed by a resident, and includes but is not limited to:

(1) In-ground, above-ground, and on-ground pools;

(2) Hot tubs, spas;

(3) Fixed-in-place wading pools;

(4) Decorative water features;

(5) Ponds; or

(6) Natural bodies of water such as streams, lakes, rivers, and oceans.

"Working day" means any day the department is open for business.

NEW SECTION

WAC 388-76-10221 Resident roster-Requirements. (1) The adult family home must create, maintain, and regularly update a resident roster. The roster must include:

(a) The list of current resident names; and

(b) Room identifier assigned to each resident.

(2) The adult family home will provide a written copy immediately upon an in-person request from any long-term care ombud or department staff.

(3) The adult family home must comply with RCW 70.128.155(1), and all related statutory requirements.

NEW SECTION

WAC 388-76-10596 Essential support persons. (1) In circumstances in which limitations must be placed on resident visitation due to a public health emergency or other threat to the health and safety of the residents and staff of a facility or nursing home, residents must still be allowed access to an essential support person, subject to reasonable limitations on such access tailored to protecting the health and safety of essential support persons, residents, and staff.

(2) The facility must comply with RCW 70.129.190, and all related statutory requirements.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10980 Remedies—Specific—Stop placement—Admissions prohibited. (1) The department may order stop placement and prohibit the admission of residents if the home does not meet the requirements of chapters 70.128, 70.129, (~~(74.32)~~) 74.34 RCW or this chapter.

(2) Once imposed, the adult family home must:

(a) Post the stop placement order or limited stop placement order per requirements listed in RCW 70.128.306; and

(b) Not admit any person until the stop placement order is terminated.

(3) If the home requests, the department may approve readmission of a resident to the home from a hospital or nursing home during the stop placement.

(4) The department must end the stop placement only after the department finds the:

(a) Deficiencies necessitating the stop placement have been corrected; and

(b) Home can show it has the capacity to maintain adequate care and service.

AMENDATORY SECTION (Amending WSR 18-18-004, filed 8/23/18, effective 9/23/18)

WAC 388-78A-2020 Definitions. "Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult, which have the following meanings:

(1) **"Sexual abuse"** means any form of nonconsensual sexual conduct, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or a client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.

(3) **"Mental abuse"** means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(4) **"Personal exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(5) **"Improper use of restraint"** means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(a) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(b) Is not medically authorized; or

(c) Otherwise constitutes abuse under the section.

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Administrator" means an assisted living facility administrator who must be in active administrative charge of the assisted living facility as required in this chapter. Unless exempt under RCW 18.88B.041, the administrator must complete long-term care training and home care aide certification.

"Adult day services" means care and services provided to a non-resident individual by the assisted living facility on the assisted living facility premises, for a period of time not to exceed ~~((ten))~~ 10 continuous hours, and does not involve an overnight stay.

"Ambulatory" means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) **"Nonambulatory"** means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) **"Semiambulatory"** means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

"Applicant" means a person, as defined in this section, that has submitted, or is in the process of submitting, an application for an assisted living facility license.

"Assisted living facility" means any home or other institution, however named, that is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, an assisted living facility that is licensed for three to six residents prior to or on July 1, 2000, may maintain its assisted living facility license as long as it is continually licensed as an assisted living facility. "Assisted living facility" may also include persons associated with the assisted living facility to carry out its duties under this chapter. "Assisted living facility" does not include facilities certified as group training homes under RCW 71A.22.040, nor any home, institution, or section that is otherwise licensed and regulated under state law that provides specifically for the licensing and regulation of that home, institution, or section. "Assisted living facility" also does not include independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the U.S. Department of Housing and Urban Development.

"Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

"Bathing fixture" means a bathtub, shower, or sit-down shower.

"Bathroom" means a room containing at least one bathing fixture.

"Building code" means the building codes and standards adopted by the Washington state building code council.

"Caregiver" means anyone providing direct personal care to another person including, but not limited to ~~((+))~~ 1 Cuing, reminding, or su-

pervision of residents, on behalf of an assisted living facility, except volunteers who are directly supervised.

"Construction review services" means the office of construction review services within the Washington state department of health.

"Continuing care contract" means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

"Continuing care retirement community" means, as stated in RCW 70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Contractor" means an agency or person who contracts with a licensee to provide resident care, services, or equipment.

"Crimes relating to financial exploitation" means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

"Department" means the Washington state department of social and health services.

"Dietitian" means an individual certified under chapter 18.138 RCW.

"Direct supervision" means oversight by a person on behalf of the assisted living facility who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Document" means to record, with signature, title, date, and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence, or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events, or activities that are required by law, rule, or policy.

"Domiciliary care" means:

(1) Assistance with activities of daily living provided by the assisted living facility either directly or indirectly;

(2) Health support services, if provided directly or indirectly by the assisted living facility; or

(3) Intermittent nursing services, if provided directly or indirectly by the assisted living facility.

"Enforcement remedy" means one or more of the department's responses to an assisted living facility's noncompliance with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

"Essential Support Person" means an individual who is: at least 18 years of age; designated by the resident, or by the resident's representative, if the resident is determined to be incapacitated or otherwise legally incapacitated; and necessary for the resident's emotional, mental, or physical well-being during situations that include, but are not limited to, circumstances involving compassionate care of end-of-life care, circumstances where visitation from a familiar person will assist with important continuity of care or the reduction of

confusion and anxiety for residents with cognitive impairments, or other circumstances where the presence of an essential support person will prevent or reduce significant emotional distress to the resident.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(~~(+6)~~).

"Food service worker" means according to chapter 246-217 WAC, an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackageged food or who may contribute to the transmission of infectious diseases through the nature of the individual's contact with food products or equipment and facilities. This does not include persons who simply assist residents with meals.

"General responsibility for the safety and well-being of the resident" means the provision of any one or more of the following:

- (1) Prescribed general low sodium diets;
- (2) Prescribed general diabetic diets;
- (3) Prescribed mechanical soft foods;
- (4) Emergency assistance;
- (5) Monitoring of the resident;
- (6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;
- (7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;
- (8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;
- (9) Observation of the resident for changes in overall functioning;
- (10) Blood pressure checks as scheduled;
- (11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning;
- (12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter (~~(246-888)~~) 246-945 WAC.

"Harm" means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

"Health support services" means any of the following optional services:

- (1) Blood glucose testing;
- (2) Puree diets;
- (3) Calorie controlled diabetic diets;
- (4) Dementia care;
- (5) Mental health care;
- (6) Developmental disabilities care.

"Independent living unit" means:

- (1) Independent senior housing;
- (2) Independent living unit in a continuing care retirement community or other similar living environments;
- (3) Assisted living facility unit where domiciliary services are not provided; or
- (4) Assisted living facility unit where one or more items listed under "general responsibilities" are not provided.

"Independent senior housing" means an independent living unit occupied by an individual or individuals (~~(sixty)~~) 60 or more years of age.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Licensee" means a person, as defined in this section, to whom the department issues an assisted living facility license.

"Licensed resident bed capacity" means the resident occupancy level requested by a licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the licensed resident bed capacity. Adult day services clients do not count towards the licensed resident bed capacity.

"Long-term care worker" or **"caregiver"** means the same as "long-term care workers" is defined in RCW 74.39A.009.

"Majority owner" means any person that owns:

- (1) More than (~~(fifty percent)~~) 50% interest;
- (2) If no one person owns more than (~~(fifty percent)~~) 50% interest, the largest interest portion; or
- (3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

"Manager" means a person, as defined in this section, that provides management services on behalf of a licensee.

"Management agreement" means a written, executed agreement between a licensee and manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter:"

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, employee of a facility, operator of a facility, employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "facility" means a residence licensed or required to be licensed under chapter 18.20 RCW (assisted living facility), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Maximum facility capacity" means the maximum number of individuals that the assisted living facility may serve at any one time, as determined by the department.

(1) The maximum facility capacity includes all residents, respite care residents, and adult day services clients.

(2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3) of this section;

(b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (~~((+1)(h))~~);

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030;

(d) For assisted living facilities licensed on or before December 31, 1988, the total day room area in square feet divided by ~~((ten))~~ 10 square feet, consistent with WAC 388-78A-3050; or

(e) For assisted living facilities licensed after December 31, 1988, the total day room area in square feet divided by ~~((twenty))~~ 20 square feet, consistent with WAC 388-78A-3050.

(3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional ~~((sixty))~~ 60 square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by ~~((twenty))~~ 20 square feet, provided that:

(a) There is at least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 ~~((1-h))~~; and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the resident's body by an individual legally authorized to do so.

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a resident of an assisted living facility in accordance with chapter ~~((246-888))~~ 246-945 WAC.

"Medication organizer" means a container with separate compartments for storing oral medications organized in daily doses.

"Medication service" means any service provided either directly or indirectly by an assisted living facility related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

"Neglect" means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to, conduct prohibited under RCW 9A.42.100.

"Nonresident individual" means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, other similar living environment, or an unlicensed room located within an assisted living facility. A nonresident individual must not receive from the assisted living facility:

(1) Domiciliary care directly or indirectly; or

(2) Items or services listed in the definition of "general responsibility for the safety and well-being of the resident," except as allowed under WAC 388-78A-2032 or when the person is receiving adult day services.

"Nonpractitioner" means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

"Nurse" means an individual currently licensed under chapter 18.79 RCW as either a:

- (1) **Licensed practical nurse** (LPN); or
- (2) **Registered nurse** (RN).

"Over-the-counter (OTC) medication" means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or any other legal or commercial entity.

"Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

"Practitioner" (~~includes~~) means a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

"Prescribed medication" means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe drugs.

"Problem" means a violation of any WAC or RCW applicable to the operation of an assisted living facility:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the assisted living facility for a violation of WAC or RCW and the circumstances of either (a) or (b) of this subsection are present. If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient. When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that assisted living facility if any person affiliated with the new licensee was affiliated with the prior licensee at the same assisted living facility. A person is considered affiliated with the licensee if the person is an applicant for the assisted living facility license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding (~~thirty-six~~) 36 months.

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding (~~thirty-six~~) 36 months.

(2) **"Serious problem"** means that there has been a violation of a WAC or RCW and:

(a) The resident was significantly harmed; or

(b) It is likely that the resident will be significantly harmed or die.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When there is a change in licensee, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of correction in effect immediately prior to the change in licensee.

"Prospective resident" means an individual who seeks admission to a licensed assisted living facility and has completed and signed an application for admission, or the individual's legal representative or designated representative, if any, completed and signed the application on their behalf.

"Reasonable accommodation" or **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the assisted living facility must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of assisted living facility services;

(b) Make reasonable modification to its policies, practices, or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the assisted living facility; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Resident" means an individual who:

(1) Chooses to reside in an assisted living facility, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the assisted living facility;

(3) Receives basic services; and

(4) Receives one or more of the services listed in the definition of "general responsibility for the safety and well-being of the resident," and may receive domiciliary care or respite care provided directly, or indirectly, by the assisted living facility. Whereas, a nonresident individual may receive services that are permitted under WAC 388-78A-2032.

"Resident's representative" means one of the following:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pur-

suant to the scope of their legal authority. The legal representative must not be affiliated with the licensee, assisted living facility, or management company, unless the affiliated person is a family member of the resident.

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the assisted living facility, and to receive information from the assisted living facility if there is no legal representative. The resident's representative must not be affiliated with the licensee, assisted living facility, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection must not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence must be determined using the criteria in RCW (~~(11.88.010(1)(e))~~) 70.129.020.

"Respite care" means short-term care for any period in excess of (~~twenty-four~~) 24 continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

"Restraint" means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) (~~Confinement,~~) **"Confinement"** unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

(3) **"Mechanical restraint"** means any device attached or adjacent to the vulnerable adult's body that they cannot easily remove and restricts freedom of movement or normal access to the vulnerable adult's body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

(a) Medically authorized, as required, and;

(b) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

(4) **"Physical restraint"** means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include:

(a) Briefly holding without undue force a vulnerable adult in order to calm or comfort the vulnerable adult; or

(b) Holding a vulnerable adult's hand to safely escort the vulnerable adult from one area to another.

"Room" means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom, or closet.

"Significant change" means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

"Special needs" means a developmental disability, mental illness, or dementia.

"Staff person" means any assisted living facility employee, temporary employee, or contractor, whether employed or retained by the licensee or any management company or volunteer.

"State fire marshal" means the director of fire protection under the direction of the chief of the Washington state patrol.

"Toilet" means a disposal apparatus used for urination and defecation fitted with a seat and flushing device.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" ((includes)) means a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for themselves;
- (2) Found incapacitated under ((chapter 11.88)) RCW 74.34.020;
- (3) Who has a developmental disability as defined under RCW 71A.10.020;
- (4) Admitted to any facility, including any assisted living facility;
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;
- (6) Receiving services from an individual provider; or
- (7) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, includes a person who is an adult of any age who lacks the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

"Wellness program" means an educational program provided by the assisted living facility. It is a proactive and preventative approach to assist residents and nonresident individuals in achieving optimal levels of health, social, and emotional functioning. A wellness program does not include medical care or interventions.

"Willful" means the deliberate, or nonaccidental action or inaction by an alleged perpetrator that the alleged perpetrator knows, or reasonably should have known, could cause a negative outcome, including harm, injury, pain, or anguish.

"WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2390 Resident records. The assisted living facility must maintain adequate records concerning residents to enable the assisted living facility:

- (1) To effectively provide the care and services agreed upon with the resident; ((and))
- (2) To allow the resident to communicate with family, medical providers, and others; and
- (3) To respond appropriately in emergency situations, including, but not limited to, contacting the residents' emergency contact.

AMENDATORY SECTION (Amending WSR 14-05-035, filed 2/12/14, effective 3/15/14)

WAC 388-78A-2440 Resident register. (1) The assisted living facility must maintain in the assisted living facility a single current register of all assisted living facility residents, their roommates, and identification of the rooms in which such persons reside or sleep, as required under the resident roster in RCW 18.20.095.

(2) The assisted living facility must maintain a readily available permanent, current book, computer file, or register with entries in ink or typewritten, of all individuals who resided in the assisted living facility within the past five years, including:

- (a) Move-in date;
- (b) Full name;
- (c) Date of birth;
- (d) Date of moving out;
- (e) Reason for moving out; and
- (f) Location and address to which the resident was discharged.

(3) The assisted living facility must make this register immediately available to:

- (a) Authorized department staff;
- (b) Representatives of the long-term care ombud's office; and
- (c) Representatives of the Washington state fire marshal when conducting fire safety inspections.

AMENDATORY SECTION (Amending WSR 18-20-018, filed 9/21/18, effective 10/22/18)

WAC 388-78A-2450 Staff. (1) Each assisted living facility must provide sufficient, trained staff persons to:

(a) Furnish the services and care needed by each resident consistent with ~~((his or her))~~ their negotiated service agreement;

(b) Maintain the assisted living facility free of safety hazards; and

(c) Implement fire and disaster plans.

(2) The assisted living facility must:

(a) Develop and maintain written job descriptions for the administrator and each staff position and provide each staff person with a copy of ~~((his or her))~~ their job description before or upon the start of employment;

(b) Verify staff persons' work references prior to hiring;

(c) Verify prior to hiring that staff persons have the required licenses, certification, registrations, or other credentials for the position, and that such licenses, certifications, registrations, and credentials are current and in good standing;

(d) Document and retain for ~~((twelve))~~ 12 weeks, weekly staffing schedules, as planned and worked;

(e) Ensure all resident care and services are provided only by staff persons who have the training, credentials, experience, and other qualifications necessary to provide the care and services;

(f) Ensure at least one caregiver, who is ~~((eighteen))~~ 18 years of age or older and has current cardiopulmonary resuscitation and first-aid cards, is present and available to assist residents at all times:

- (i) When one or more residents are present on the assisted living facility premises; and
- (ii) During assisted living facility activities off of the assisted living facility premises.
- (g) Ensure caregiver provides on-site supervision of any resident voluntarily providing services for the assisted living facility;
- (h) Provide staff orientation and appropriate training for expected duties when staff begin work in the facility, including, but not limited to:
 - (i) Organization of the assisted living facility;
 - (ii) Physical assisted living facility layout;
 - (iii) Specific duties and responsibilities;
 - (iv) How to report resident abuse and neglect consistent with chapter 74.34 RCW and assisted living facility policies and procedures;
 - (v) Policies, procedures, and equipment necessary to perform duties;
 - (vi) Needs and service preferences identified in the negotiated service agreements of residents with whom the staff persons will be working; ~~((and))~~
 - (vii) Resident rights, including without limitation, those specified in chapter 70.129 RCW; and
 - (viii) The facility's comprehensive disaster plan and related on-duty staff procedures.
- (i) Develop and implement a process to ensure caregivers:
 - (i) Acquire the necessary information from the preadmission assessment, on-going assessment, and negotiated service agreement relevant to providing services to each resident with whom the caregiver works;
 - (ii) Are informed of changes in the negotiated service agreement of each resident with whom the caregiver works; and
 - (iii) Are given an opportunity to provide information to responsible staff regarding the resident when assessments and negotiated service agreements are updated for each resident with whom the caregiver works.
- (j) Ensure all caregivers have access to resident records relevant to effectively providing care and services to the resident.
- (3) The assisted living facility must:
 - (a) Protect all residents by ensuring any staff person suspected or accused of abuse, neglect, financial exploitation, or abandonment does not have access to any resident until the assisted living facility investigates and takes action to ensure resident safety;
 - (b) Not interfere with the investigation of a complaint, coerce a resident or staff person regarding cooperating with a complaint investigation, or conceal or destroy evidence of alleged improprieties occurring within the assisted living facility;
 - (c) Prohibit staff persons from being directly employed by a resident or a resident's family during the hours the staff person is working for the assisted living facility;
 - (d) Maintain the following documentation on the assisted living facility premises, during employment, and at least two years following termination of employment:
 - (i) Staff orientation and training or certification pertinent to duties, including, but not limited to:
 - (A) Training required by chapter 388-112A WAC;
 - (B) Home care aide certification as required by this chapter and chapter 246-980 WAC;

- (C) Cardiopulmonary resuscitation;
- (D) First aid; and
- (E) HIV/AIDS training.

(ii) Disclosure statements and background checks as required in WAC 388-78A-2461 through 388-78A-2471; and

(iii) Documentation of contacting work references and professional licensing and certification boards as required by subsection (2) of this section.

(4) The assisted living facility is not required to keep on the assisted living facility premises, staff records that are unrelated to staff performance of duties. Such records include, but are not limited to, pay records, and health and insurance benefits for staff.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2600 Policies and procedures. (1) The assisted living facility must develop and implement policies and procedures in support of services that are provided and are necessary to:

(a) Maintain or enhance the quality of life for residents including resident decision-making rights;

(b) Provide the necessary care and services for residents, including those with special needs;

(c) Safely operate the assisted living facility; and

(d) Operate in compliance with state and federal law, including, but not limited to, chapters 7.70, (~~(11.88, 11.92, 11.94,)~~) 69.41, 70.122, 70.129, and 74.34 RCW, and any rules promulgated under these statutes.

(2) The assisted living facility must develop, implement, and train staff persons on policies and procedures to address what staff persons must do:

(a) Related to suspected abandonment, abuse, neglect, exploitation, or financial exploitation of any resident;

(b) When there is reason to believe a resident is not capable of making necessary decisions and no substitute decision maker is available;

(c) When a substitute decision maker is no longer appropriate;

(d) When a resident stops breathing or a resident's heart appears to stop beating, including, but not limited to, any action staff persons must take related to advance directives and emergency care;

(e) When a resident does not have a personal physician or health care provider;

(f) In response to medical emergencies;

(g) When there are urgent situations in the assisted living facility requiring additional staff support;

(h) In the event of an internal or external disaster, consistent with WAC 388-78A-2700;

(i) To supervise and monitor residents, including accounting for residents who leave the premises;

(j) To appropriately respond to aggressive or assaultive residents, including, but not limited to:

(i) Actions to take if a resident becomes violent;

(ii) Actions to take to protect other residents; and

(iii) When and how to seek outside intervention.

(k) To prevent and limit the spread of infections consistent with WAC 388-78A-2610;

(l) To manage residents' medications, consistent with WAC 388-78A-2210 through 388-78A-2290; sending medications with a resident when the resident leaves the premises;

(m) When services related to medications and treatments are provided under the delegation of a registered nurse consistent with chapter 246-840 WAC;

(n) Related to food services consistent with chapter 246-215 WAC and WAC 388-78A-2300;

(o) Regarding the safe operation of any assisted living facility vehicles used to transport residents, and the qualifications of the drivers;

(p) To coordinate services and share resident information with outside resources, consistent with WAC 388-78A-2350;

(q) To coordinate with state and local agencies and ombuds;

(r) Regarding the management of pets in the assisted living facility, if permitted, consistent with WAC 388-78A-2620;

~~((r))~~ (s) When receiving and responding to resident grievances consistent with RCW 70.129.060; and

~~((s))~~ (t) Related to providing respite care services consistent with RCW 18.20.350, if respite care is offered.

(3) The assisted living facility must make the policies and procedures specified in subsection (2) of this section available to staff persons at all times and must inform residents and residents' representatives of their availability and make them available upon request.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2610 Infection control. (1) The assisted living facility must institute appropriate infection control practices in the assisted living facility to prevent and limit the spread of infections.

(2) The assisted living facility must:

(a) Develop and implement a system to identify and manage infections;

(b) Restrict a staff person's contact with residents when the staff person has a known communicable disease in the infectious stage that is likely to be spread in the assisted living facility setting or by casual contact;

(c) Maintain and provide staff persons with the necessary training, supplies, equipment, and personal protective ~~((clothing))~~ equipment for preventing and controlling the spread of infections ~~((r))~~ by:

(i) Maintaining a list of vendors and suppliers; and

(ii) Ordering supplies when necessary.

(d) Provide all resident care and services according to current acceptable standards for infection control;

(e) Perform all housekeeping, cleaning, laundry, and management of infectious waste according to current acceptable standards for infection control; and

(f) Report communicable diseases in accordance with the requirements in chapter 246-100 WAC.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2660 Resident rights. The assisted living facility must:

- (1) Comply with chapter 70.129 RCW, Long-term care resident rights;
- (2) Ensure all staff persons provide care and services to each resident consistent with chapter 70.129 RCW;
- (3) Not use restraints on any resident;
- (4) Promote and protect the residents' exercise of all rights granted under chapter 70.129 RCW;
- (5) Provide care and services to each resident in compliance with applicable state statutes related to substitute health care decision making, including chapters 7.70(~~(7)~~) and 70.122(~~(7, 11.88, 11.92, and 11.94)~~) RCW;
- (6) Reasonably accommodate residents consistent with applicable state and(~~/or~~) federal law; (~~and~~)
- (7) Not allow any staff person to abuse or neglect any resident;
and
- (8) In circumstances in which limitations must be placed on resident visitation due to a public health emergency or other threat to the health and safety of the residents and staff of a facility or nursing home, residents must still be allowed access to an essential support person, subject to reasonable limitations on such access tailored to protecting the health and safety of essential support persons, residents, and staff, as defined in WAC 388-78A-2020.

AMENDATORY SECTION (Amending WSR 14-05-035, filed 2/12/14, effective 3/15/14)

WAC 388-78A-2730 Licensee's responsibilities. (1) The assisted living facility licensee is responsible for:

- (a) The operation of the assisted living facility;
 - (b) Complying at all times with the requirements of this chapter, chapter 18.20 RCW, and other applicable laws and rules; and
 - (c) The care and services provided to the assisted living facility residents.
- (2) The licensee must:
- (a) Maintain the occupancy level at or below the licensed resident bed capacity of the assisted living facility;
 - (b) Maintain and post in a size and format that is easily read, in a conspicuous place on the assisted living facility premises:
 - (i) A current assisted living facility license, including any related conditions on the license;
 - (ii) The name, address, and telephone number of:
 - (A) The department;
 - (B) Appropriate resident advocacy groups; and
 - (C) The state and local long-term care ombuds with a brief description of ombuds services.
 - (iii) A copy of the report, including the cover letter, and plan of correction of the most recent full inspection conducted by the department; and
 - (iv) Post stop placement and limited stop placement orders as required in RCW 18.20.520.

(c) Ensure any party responsible for holding or managing residents' personal funds is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds; and provides proof of bond or insurance to the department.

(3) The licensee must not delegate to any person responsibilities that are so extensive that the licensee is relieved of responsibility for the daily operations and provisions of services in the assisted living facility.

(4) The licensee must act in accord with any department-approved management agreement, if the licensee has entered into a management agreement.

(5) The licensee must appoint the assisted living facility administrator consistent with WAC 388-78A-2520.

AMENDATORY SECTION (Amending WSR 20-02-104, filed 12/31/19, effective 1/31/20)

WAC 388-78A-2930 Communication system. (1) The assisted living facility must:

(a) Provide residents and staff persons with the means to summon on-duty staff assistance from all resident-accessible areas including:

(i) Bathrooms and toilet rooms;

(ii) Resident living rooms and resident sleeping rooms; and

(iii) Corridors, as well as common and outdoor areas accessible to residents.

(b) Provide the resident with personal wireless communication devices, such as pendants or wristbands, when a communication device is not installed in the resident's sleeping room, and when wireless communications are used:

(i) The system must be designed and installed consistent with industry standards and perform reliably throughout the facility; and

(ii) The facility must have a policy and procedure describing the mitigating measures in the event of system disruption, including for maintenance and loss of power; and

(c) Provide residents, families, and other visitors with a means to contact a staff person inside the building from outside the building after hours.

(2) The assisted living facility must provide one or more nonpay telephones to allow for communication between residents and their family members, medical providers, the resident's emergency contact, interested parties, ombuds, and other individuals the resident chooses to communicate with outside of the facility:

(a) In each building located for ready access for staff persons; ((and))

(b) On the premises with reasonable access and privacy by residents; and

(c) Accessible for resident use 24/7.

(3) The assisted living facility must equip each resident room with access to telephone service.

(4) If an assisted living facility chooses to install an intercom system, the intercom system must be equipped with a mechanism that allows a resident to control:

(a) Whether or not announcements are broadcast into the resident's room; and

(b) Whether or not voices or conversations within the resident's room can be monitored or listened to by persons outside the resident's room.

(5) The facility must provide wireless internet access.

AMENDATORY SECTION (Amending WSR 21-23-036, filed 11/8/21, effective 12/9/21)

WAC 388-97-0001 Definitions. "Abandonment" means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(1) **"Mental abuse"** means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.

(3) **"Sexual abuse"** means any form of nonconsensual sexual conduct, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual conduct may include interactions that do not involve touching, including but not limited to, sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual conduct between a staff person and a resident, whether or not it is consensual.

(4) **"Personal exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(5) **"Improper use of restraint"** means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(a) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(b) Is not medically authorized; or

(c) Otherwise constitutes abuse under this section.

"Administrative hearing" is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

"Administrative law judge (ALJ)" means an impartial decision-maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

"Administrator" means a nursing home administrator, licensed under chapter 18.52 RCW, who must be in active administrative charge of the nursing home, as that term is defined in the board of nursing home administrator's regulations.

"Advanced registered nurse practitioner (ARNP)" means an individual who is licensed to practice as an advanced registered nurse practitioner under chapter 18.79 RCW.

"Applicant" means an individual, partnership, corporation, or other legal entity seeking a license to operate a nursing home.

"ASHRAE" means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.

"Attending physician" means the doctor responsible for a particular individual's total medical care.

"Berm" means a bank of earth piled against a wall.

"Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

"Civil adjudication proceeding" means judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation, or financial exploitation of a child or vulnerable adult under any provision of law, including, but not limited to, chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Civil fine" (~~is~~) means a civil monetary penalty assessed against a nursing home as authorized by chapters 18.51 and 74.42 RCW. There are two types of civil fines, "per day" and "per instance."

(1) **"Per day fine"** means a fine imposed for each day that a nursing home is out of compliance with a specific requirement. Per day fines are assessed in accordance with WAC 388-97-4580(1); and

(2) **"Per instance fine"** means a fine imposed for the occurrence of a deficiency.

"Condition on a license" means that the department has imposed certain requirements on a license and the licensee cannot operate the nursing home unless the requirements are observed.

"Consent" means express written consent granted after the vulnerable adult or (~~his or her~~) their legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

"Commuting distance radius" means the one-way travel time between any two points traveling on the generally fastest route without any impediments such as traffic, road work, or road closure.

"Deficiency" ((is)) means a nursing home's failed practice, action, or inaction that violates any or all of the following:

(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and

(2) In the case of a medicare and medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

"Deficiency citation" or **"cited deficiency"** means written documentation by the department that describes a nursing home's deficiency(ies); the requirement that the deficiency(ies) violates; and the reasons for the determination of noncompliance.

"Deficient facility practice" or **"failed facility practice"** means the nursing home action(s), error(s), or lack of action(s) that provide the basis for the deficiency.

"Dementia care" means a therapeutic modality or modalities designed specifically for the care of persons with dementia.

"Denial of payment for new admissions" ((is)) means an action imposed on a nursing home (facility) by the department that prohibits payment for new medicaid admissions to the nursing home after a specified date. Nursing homes certified to provide medicare and medicaid services may also be subjected to a denial of payment for new admissions by the federal Centers for Medicare and Medicaid Services.

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

"Department on-site monitoring" means an optional remedy of on-site visits to a nursing home by department staff according to department guidelines for the purpose of monitoring resident care or services or both.

"Dietitian" means a qualified dietitian. A qualified dietitian is one who is registered by the American Dietetic Association or certified by the state of Washington.

"Direct care staff" means the staffing domain identified and defined in the Centers for Medicare and Medicaid Service's five-star quality rating system and as reported through the Centers for Medicare and Medicaid Service's payroll-based journal.

"Directly supervising" means that the individual responsible for providing oversight to staff is on the premises and quickly and easily available to provide necessary assessments and other direct care of residents.

"Disclosure statement" means a signed statement by an individual in accordance with the requirements under RCW 43.43.834. The statement should include a disclosure of whether or not the individual has been convicted of certain crimes or has been found by any court, state licensing board, disciplinary board, or protection proceeding to have neglected, sexually abused, financially exploited, or physically abused any minor or adult individual.

"Drug" means a substance:

(1) Recognized as a drug in the official *United States Pharmacopoeia*, *Official Homeopathic Pharmacopoeia of the United States*, *Official National Formulary*, or any supplement to any of them; or

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

"Drug facility" means a room or area designed and equipped for drug storage and the preparation of drugs for administration.

"Emergency closure" ((is)) means an order by the department to immediately close a nursing home.

"Emergency transfer" means immediate transfer of residents from a nursing home to safe settings.

"Entity" means any type of firm, partnership, corporation, company, association, or joint stock association.

"Essential community provider" means a nursing home, which is the only nursing home within a commuting distance radius of at least (~~forty~~) 40 minutes duration, traveling by automobile.

"Essential support person" means an individual who is: at least 18 years of age; designated by the resident, or by the resident's representative, if the resident is determined to be incapacitated or otherwise legally incapacitated; and necessary for the resident's emotional, mental, or physical well-being during situations that include, but are not limited to, circumstances involving compassionate care of end-of-life care, circumstances where visitation from a familiar person will assist with important continuity of care or the reduction of confusion and anxiety for residents with cognitive impairments, or other circumstances where the presence of an essential support person will prevent or reduce significant emotional distress to the resident.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person or entity's profit or advantage other than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(7).

"Geriatric behavioral health worker" means a person with a bachelor's or master's degree in social work, who has received specialized training devoted to mental illness and treatment of older adults.

"Habilitative services" means the planned interventions and procedures which constitute a continuing and comprehensive effort to teach an individual previously undeveloped skills.

"Highest practicable physical, mental, and psychosocial well-being" means providing each resident with the necessary individualized care and services to assist the resident to achieve or maintain the highest possible health, functional, and independence level in accordance with the resident's comprehensive assessment and plan of care. Care and services provided by the nursing home must be consistent with all requirements in this chapter, chapters 74.42 and 18.51 RCW, and the resident's informed choices. For medicaid and medicare residents, care and services must also be consistent with Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

"Informal department review" (~~is~~) means a dispute resolution process that provides an opportunity for the licensee or administrator to informally present information to a department representative about disputed, cited deficiencies. Refer to WAC 388-97-4420.

"Inspection" or **"survey"** means the process by which department staff evaluates the nursing home licensee's compliance with applicable statutes and regulations.

"Intermediate care facility for individuals with intellectual disabilities (ICF/IID)" means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, and licensed under chapter 18.51 RCW.

"Large nonessential community providers" means nonessential community providers that have more than (~~sixty~~) 60 licensed nursing home beds, even if some of those beds are not set up or are not in use.

"License revocation" (~~is~~) means an action taken by the department to cancel a nursing home license in accordance with RCW 18.51.060 and WAC 388-97-4220.

"License suspension" (~~(is)~~) means an action taken by the department to temporarily revoke a nursing home license in accordance with RCW 18.51.060 and this chapter.

"Licensee" means an individual, partnership, corporation, or other legal entity licensed to operate a nursing home.

"Licensed practical nurse" means an individual licensed to practice practical nursing under chapter 18.79 RCW.

"Mandated reporter" as used in this chapter means any employee of a nursing home, any health care provider subject to chapter 18.130 RCW, the Uniform Disciplinary Act, and any licensee or operator of a nursing home. Under RCW 74.34.020, mandated reporters also include any employee of the department of social and health services, law enforcement officers, social workers, professional school personnel, individual providers, employees and licensees of assisted living facilities, adult family homes, soldiers' homes, residential habilitation centers, or any other facility licensed by the department, employees of social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agencies, county coroners or medical examiners, or Christian Science practitioners.

"Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that (~~(he or she)~~) they cannot easily remove that restricts freedom of movement or normal access to (~~(his or her)~~) their body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

(1) Medically authorized, as required; and

(2) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities.

"Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

"NFPA" means National Fire Protection Association, Inc.

"Neglect":

(1) In a nursing home licensed under chapter 18.51 RCW, neglect means:

(a) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(b) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

(2) In a skilled nursing facility or nursing facility, neglect also means a failure to provide a resident with the goods and services necessary to avoid physical harm, mental anguish, or mental illness.

"Noncompliance" means a state of being out of compliance with either state (~~(and/)~~) or federal requirements for nursing homes/facilities.

"Nonessential community provider" means a nursing home located within a commuting distance radius of less than (~~(forty)~~) 40 minutes duration by automobile from another nursing home.

"Nursing assistant" means a nursing assistant as defined under RCW 18.88A.020 or successor laws.

"Nursing facility (NF)" or **"medicaid-certified nursing facility"** means a nursing home, or any portion of a hospital, veterans' home, or

residential habilitation center, that is certified to provide nursing services to medicaid recipients under section 1919(a) of the federal Social Security Act. All beds in a nursing facility are certified to provide medicaid services, even though one or more of the beds are also certified to provide medicare skilled nursing facility services.

"Nursing home" means any facility licensed to operate under chapter 18.51 RCW.

"Officer" means an individual serving as an officer of a corporation.

"Owner of five percent or more of the assets of a nursing home" means:

(1) The individual, and if applicable, the individual's spouse, who operates, or is applying to operate, the nursing home as a sole proprietorship;

(2) In the case of a corporation, the owner of at least five percent of the shares or capital stock of the corporation; or

(3) In the case of other types of business entities, the owner of a beneficial interest in at least five percent of the capital assets of an entity.

"Partner" means an individual in a partnership owning or operating a nursing home.

"Permanent restraining order" means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (for example, one year), after which it expires.

"Person" means any individual, firm, partnership, corporation, company, association, or joint stock association.

"Pharmacist" means an individual licensed by the Washington state board of pharmacy under chapter 18.64 RCW.

"Pharmacy" means a place licensed under chapter 18.64 RCW where the practice of pharmacy is conducted.

"Physical restraint" means the application of physical force without the use of any device for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force a vulnerable adult in order to calm or comfort him or her, or holding a vulnerable adult's hand to safely escort him or her from one area to another.

"Physician's assistant (PA)" means a physician's assistant as defined under chapter (~~18.57A-01~~) 18.71A RCW or successor laws.

"Plan of correction" (~~is~~) means a nursing home's written response to cited deficiencies that explains how it will correct the deficiencies and how it will prevent their reoccurrence.

"Reasonable accommodation" and **"reasonably accommodate"** has the meaning given in federal and state antidiscrimination laws and regulations. For the purpose of this chapter:

(1) Reasonable accommodation means that the nursing home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of nursing home services;

(b) Make reasonable modification to its policies, practices, or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the nursing home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"Receivership" is established by a court action and results in the removal of a nursing home's current licensee and the appointment of a substitute licensee to temporarily operate the nursing home.

"Recurring deficiency" means a deficiency that was cited by the department, corrected by the nursing home, and then cited again within (~~fifteen~~) 15 months of the initial deficiency citation.

"Registered nurse" means an individual licensed to practice as a registered nurse under chapter 18.79 RCW.

"Rehabilitative services" means the planned interventions and procedures which constitute a continuing and comprehensive effort to restore an individual to the individual's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

"Resident" generally means an individual residing in a nursing home. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law. The term resident excludes out-patients and individuals receiving adult day or night care, or respite care.

"Resident care unit" means a functionally separate unit including resident rooms, toilets, bathing facilities, and basic service facilities.

"Respiratory isolation" is a technique or techniques instituted to prevent the transmission of pathogenic organisms by means of droplets and droplet nuclei coughed, sneezed, or breathed into the environment.

"Siphon jet clinic service sink" means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inches in diameter.

"Skilled nursing facility (SNF)" or **"medicare-certified skilled nursing facility"** means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under section 1819(a) of the federal Social Security Act.

"Small nonessential community providers" means nonessential community providers that have (~~sixty~~) 60 or fewer nursing home licensed beds, even if some of those beds are not set up or are not in use.

"Social/therapeutic leave" means leave which is for the resident's social, emotional, or psychological well-being; it does not include medical leave.

"Staff work station" means a location at which nursing and other staff perform charting and related activities throughout the day.

"Stop placement" or **"stop placement order"** (~~is~~) means an action taken by the department prohibiting nursing home admissions, readmissions, and transfers of patients into the nursing home from the outside.

"Substantial compliance" means the nursing home has no deficiencies higher than severity level 1 as described in WAC 388-97-4500, or for medicaid certified facility, no deficiencies higher than a scope and severity "C."

"Surrogate decision maker" means a resident representative or representatives as outlined in WAC 388-97-0240, and as authorized by RCW 7.70.065.

"Survey" means the same as **"inspection"** as defined in this section.

"Temporary manager" means an individual or entity appointed by the department to oversee the operation of the nursing home to ensure the health and safety of its residents, pending correction of deficiencies or closure of the facility.

"Temporary restraining order" means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Termination" means an action taken by:

- (1) The department, or the nursing home, to cancel a nursing home's medicaid certification and contract; or
- (2) The department of health and human services Centers for Medicare and Medicaid Services, or the nursing home, to cancel a nursing home's provider agreement to provide services to medicaid or medicare recipients, or both.

"Toilet room" means a room containing at least one toilet fixture.

"Uncorrected deficiency" ((is)) means a deficiency that has been cited by the department and that is not corrected by the licensee by the time the department does a revisit.

"Violation" means the same as **"deficiency"** as defined in this section.

"Volunteer" means an individual who is a regularly scheduled individual not receiving payment for services and having unsupervised access to a nursing home resident.

"Vulnerable adult" ((includes)) means a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for ((himself or herself)) themselves;
- (2) Found incapacitated under ((chapter 11.88)) RCW 74.34.020;
- (3) Who has a developmental disability as defined under RCW 71A.10.020;
- (4) Admitted to any facility;
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;
- (6) Receiving services from an individual provider; or
- (7) Who self directs ((his or her)) their own care and receives services from a personal aide under chapter 74.39 RCW.

"Whistle blower" means a resident, employee of a nursing home, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, the department of health, or to a law enforcement agency.

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

WAC 388-97-0180 Resident rights. (1) The nursing home must meet the resident rights requirements of this section and those in the rest of the chapter.

(2) The resident has a right to a dignified existence, self-determination, and timely communication with, and access to individuals

and services inside and outside the nursing home, including but not limited to, state and local agencies, and long-term care ombuds.

(3) A nursing home must promote and protect the rights of each resident, including those with limited cognition or other barriers that limit the exercise of rights.

(4) The resident has the right to:

(a) Exercise (~~his or her~~) their rights as a resident of the nursing home and as a citizen or resident of the United States. Refer to WAC 388-97-0240;

(b) Be free of interference, coercion, discrimination, and reprisal from the nursing home in exercising (~~his or her~~) their rights; and

(c) Not be asked or required to sign any contract or agreement that includes provisions to waive:

(i) Any resident right set forth in this chapter or in the applicable licensing or certification laws; or

(ii) Any potential liability for personal injury or losses of personal property.

(5) The nursing home must take steps to safeguard residents and their personal property from foreseeable risks of injury or loss.

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

WAC 388-97-0520 Access and visitation rights. (1) The resident has the right and the nursing home must provide immediate access to any resident by the following:

(a) For medicare and medicaid residents any representative of the U.S. department of health and human services (DHHS);

(b) Any representative of the state;

(c) The resident's personal physician;

(d) Any representative of the state long-term care ombuds program (established under section 307 (a)(12) of the Older American's Act of 1965);

(e) Any representative of the Washington protection and advocacy system, or any other agency (established under part c of the Developmental Disabilities Assistance and Bill of Rights Act);

(f) Any representative of the Washington protection and advocacy system, or any agency (established under the Protection and Advocacy for Mentally Ill Individuals Act);

(g) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(h) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(2) The nursing home must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The nursing home must allow representatives of the state ombuds, described in subsection (1)(d) of this section, to examine a resident's clinical records with the permission of the resident or the resident's surrogate decision maker, and consistent with state law. The ombuds may also, under federal and state law, access resident's records when the resident is incapacitated and has no surrogate deci-

sion maker, and may access records over the objection of a surrogate decision maker if access is authorized by the state ombuds pursuant to 42 U.S.C. § 3058g(b) and RCW 43.190.065.

(4) Access to their essential support person, as outlined in RCW 70.129.190.

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

WAC 388-97-1640 Required notification and reporting. (1) The nursing home must immediately notify the department's (~~aging and disability services~~) home and community living administration of:

(a) Any allegations of resident abandonment, abuse, or neglect, including substantial injuries of an unknown source, financial exploitation and misappropriation of a resident's property;

(b) Any unusual event, having an actual or potential negative impact on residents, requiring the actual or potential implementation of the nursing home's disaster plan. These unusual events include but are not limited to those listed under WAC 388-97-1740 (1)(a) through (~~(k)~~) (o), and could include the evacuation of all or part of the residents to another area of the nursing home or to another address; and

(c) Circumstances which threaten the nursing home's ability to ensure continuation of services to residents.

(2) Mandated reporters must notify the department and law enforcement as directed in WAC 388-97-0640, and according to department established nursing home guidelines.

(3) The nursing home must notify the department's (~~aging and disability services~~) home and community living administration of:

(a) Physical plant changes, including but not limited to:

(i) New construction;

(ii) Proposed resident area or room use change;

(iii) Resident room number changes; and

(iv) Proposed bed banking.

(b) Mechanical failure of equipment important to the everyday functioning of the nursing home, which cannot be repaired within a reasonable time frame, such as an elevator; and

(c) An actual or proposed change of ownership (CHOW).

(4) The nursing home must notify, in writing, the department's (~~aging and disability services~~) home and community living administration and each resident, of a loss of, or change in, the nursing home's administrator or director of nursing services at the time the loss or change occurs.

(5) The nursing home licensee must notify the department's (~~aging and disability services~~) home and community living administration in writing of any change in the name of the licensee, or of the nursing home, at the time the change occurs.

(6) If a licensee operates in a building it does not own, the licensee must immediately notify the department of the occurrence of any event of default under the terms of the lease, or if it receives verbal or written notice that the lease agreement will be terminated, or that the lease agreement will not be renewed.

(7) The nursing home must report any case or suspected case of a reportable disease to the appropriate department of health officer and

must also notify the appropriate department(s) of other health and safety issues, according to state and local laws.

(8) In the event of a nursing home's voluntary closure, the nursing home must:

(a) Notify all residents and resident representatives, the department's designated (~~(aging and disability services)~~) home and community living administration office, the state long-term ombuds, and, if the facility is medicare-certified, the Centers for Medicare and Medicaid Services;

(b) Send the written notification at least (~~(sixty)~~) 60 days before closure;

(c) Ensure that the relocation of residents and any required notice to the Centers for Medicare and Medicaid Services and the public is done in accordance with WAC 388-97-4320.

(9) The nursing home licensee must provide written notice of its intention to voluntarily terminate its medicare or medicaid contract, to:

(a) The department's designated (~~(aging and disability services)~~) home and community living administration office;

(b) The Washington health care authority;

(c) The Centers for Medicare and Medicaid Services;

(d) All residents and, when appropriate, resident representatives; and

(e) The public.

(10) The written notice required in subsection (9) of this section must be provided, at least (~~(sixty)~~) 60 days before contract termination, except notice to Centers for Medicare and Medicaid Services and the public must be provided in accordance with the requirements of 42 C.F.R. 489.52.

(11) If a nursing home voluntarily withdraws from participation in the medicaid program, but continues to provide nursing facility services, the nursing home will be subject to 42 U.S.C. 1396r

(c)(2)(F), which prohibits the discharge of medicaid residents who are residing in the facility before the effective date of the withdrawal.

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

WAC 388-97-2300 Telephones on resident care units. The nursing home must provide (~~(twenty-four)~~) 24 hour access to a telephone for resident use per RCW 18.51.575 which:

(1) Provides auditory privacy;

(2) Allows for communications with family, medical providers, and others;

(3) Allows for emergency contact to and from facility staff;

(4) Is accessible to a person with a disability and accommodates a person with sensory impairment; and

(~~(3) Is not located in a staff office or at a nurse's station;~~ and

(~~(4)~~) (5) Does not require payment for local calls.

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

WAC 388-97-4320 Relocation of residents. (1) In the event of license revocation or suspension, decertification, or other emergency closures the department will:

(a) Notify residents and, when appropriate, (~~resident representatives~~) residents' emergency contacts of the action;

(b) Assist with residents' relocation and identify possible alternative living choices and locations; and

(c) The nursing home will assist the residents to the extent it is directed to do so by the department.

(2) When a resident's relocation occurs due to an emergency closure from a natural disaster, the nursing home may not be required to cease its business operations unless directed to do so by the department.

(3) When a resident's relocation occurs due to a nursing home's voluntary closure, or voluntary termination of its medicare or medic-aid contract or both, the nursing home must:

(a) Notify the department and all residents and resident representatives in accordance with WAC 388-97-1640;

(b) Notify the Centers for Medicare and Medicaid Services and the public as required by 42 C.F.R. 489.52, or a successor regulation, if the closure or termination affects the provision of medicare services; and

(c) Provide appropriate discharge planning and coordination for all residents including a plan to the department for safe and orderly transfer or discharge of residents from the nursing home.

(4) The department may provide residents assistance with relocation.

AMENDATORY SECTION (Amending WSR 18-20-040, filed 9/25/18, effective 10/26/18)

WAC 388-107-0001 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse is also defined in RCW 74.34.020. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints except as described in section 388-107-0420;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to, sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Administrative hearing" (~~is~~) means a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

"Administrator" means an enhanced services facility administrator who must be in active administrative charge of the enhanced services facility as required in this chapter. Unless exempt under RCW 18.88B.041, the administrator must complete long-term care worker training and home care aide certification.

"Advance directive," as used in this chapter, means any document indicating a resident's choice with regard to a specific service, treatment, medication, or medical procedure option that may be implemented in the future such as power of attorney health care directive, limited or restricted treatment cardiopulmonary resuscitation (CPR), do not resuscitate (DNR), and organ tissue donation.

"Aggressive behavior" means actions by the individual that constitute a threat to the individual's health and safety or the health and safety of others in the environment.

"Antipsychotic medications" means that class of medications primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to, atypical antipsychotic medications.

"Applicant" means the individual or entity, as defined in this section that has submitted, or is in the process of submitting, an application for an enhanced services facility license.

"Capacity" means the maximum amount an enhanced services facility can serve is (~~sixteen~~) 16 residents.

"Caregiver" means the same as "long-term care worker" as defined in RCW 74.39A.009, as follows: "Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to, individual providers of home care services, direct care workers employed

by home care agencies, providers of home care agencies to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed enhanced services facilities, assisted living facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

"Challenging behavior" means a persistent pattern of behaviors that inhibit the individual's functioning in public places, in the facility and integration within the community, or uncontrolled symptoms of a physical or mental condition. These behaviors may have been present for long periods of time or have manifested as an acute onset.

"Chemical dependency" means alcoholism, medication addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires and as those terms are defined in (~~chapter 70.96A~~) RCW 70.83C.010.

"Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

"Deficiency" means an enhanced services facility's practice, action, or inaction that violates any or all of the requirements of chapter 70.97 RCW or this chapter.

"Department" means the department of social and health services.

"Direct supervision" means oversight by a person on behalf of the enhanced services facility who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Enhanced services facility" or "ESF" means a facility licensed under chapter 70.97 RCW that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues. For the purposes of this chapter, an enhanced services facility is not an evaluation and treatment facility certified under chapter 71.05 RCW.

"Essential Support Person" means an individual who is: at least 18 years of age; designated by the resident, or by the resident's representative, if the resident is determined to be incapacitated or otherwise legally incapacitated; and necessary for the resident's emotional, mental, or physical well-being during situations that include, but are not limited to, circumstances involving compassionate care of end-of-life care, circumstances where visitation from a familiar person will assist with important continuity of care or the reduction of confusion and anxiety for residents with cognitive impairments, or other circumstances where the presence of an essential support person will prevent or reduce significant emotional distress to the resident.

"Facility" means an enhanced services facility.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(~~(+6)~~).

"Holding technique" means using the least amount of force necessary to manually hold all or part of a person's body in a way that re-

stricts the person's free movement; also includes any approved controlling maneuvers identified in the person-centered service plan. Examples include holds taught in approved training for deescalation techniques and control of self-harm or aggressive behavior. This definition does not apply to briefly holding, without force, a person in order to calm the person, or holding a person's hand to escort the person safely from one area to another.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Inspection" means the process by which department staff evaluates the enhanced services facility licensee's compliance with applicable statutes and regulations.

"License suspension" (~~(is)~~) means an action taken by the department to temporarily revoke an enhanced services facility license in accordance with RCW 70.97.120 and this chapter.

"Licensee" means the individual or entity, as defined in this chapter, to whom the department issues the enhanced services facility license.

"Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

"Likelihood of serious harm" means a substantial risk that:

(1) Physical harm will be inflicted by an individual upon (~~his or her~~) their own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(2) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(3) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others.

"Long-term care worker" as defined in RCW 74.39A.009, has the same meaning as the term "caregiver."

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter":

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, Assisted living facility; chapter 18.51 RCW, Nursing homes; chapter 70.128 RCW, Adult family homes; chapter 72.36 RCW, Soldiers' homes; chapter 71A.20 RCW, Residential habilitation centers; chapter 70.97 RCW, Enhanced services facility or any other facility licensed by the department.

"Medically fragile" means a chronic and complex physical condition which results in prolonged dependency on specialized medical care that requires frequent daily skilled nursing interventions. If these medically necessary interventions are interrupted or denied, the resident may experience irreversible damage or death. Examples of special-

ized medical care and treatment for medically fragile residents include, but are not limited to: IV therapies requiring monitoring of vital signs and dose titration dependent on lab values; wound care requiring external vacuum or other mechanical devices for debridement; complicated wound care requiring other specialized or extensive interventions and treatment; ventilator or other respiratory device dependence and monitoring; dependence on licensed staff for complex respiratory support; and peritoneal or hemodialysis (on-site).

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication service" means any service provided either directly or indirectly by an enhanced services facility related to medication administration, medication assistance, or resident self-administration of medication.

"Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

"Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, licensed mental health counselor, licensed mental health counselor-associate, licensed marriage and family therapist, licensed marriage and family therapist-associate, licensed independent clinical social worker, licensed independent clinical social worker-associate, licensed advanced social worker, or licensed advanced social worker-associate and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

"Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to, conduct prohibited under RCW 9A.42.100.

"Permanent restraining order" means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 5 years), after which it expires.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe medications.

"Professional person" means a mental health professional and also means a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

"Psychopharmacologic medications" means a class of prescription medications that affect the mind, emotions, and behavior, including but not limited to, antipsychotics, antianxiety medication, and antidepressants.

"Reasonable accommodation" and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the enhanced services facility must:

(a) Not impose an admission criterion that excludes individuals unless the criterion is necessary for the provision of enhanced services facility services;

(b) Make reasonable modification to its policies, practices, or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the enhanced services facility; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

"Resident" means a person admitted to an enhanced services facility.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, enhanced services facility, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the enhanced services facility and to receive information from the enhanced services facility if there is no legal representative. The resident's representative may not be affiliated with the licensee, enhanced services facility, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW (~~11.88.010 (1) (e)~~) 74.34.020.

"Secretary" means the secretary of the department or the secretary's designee.

"Significant change" means:

(1) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(2) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for discharge or for treatment in a less intensive or less secure setting.

"Significant medication error" (~~includes~~) means any failure to administer or receive a medication according to an authorized health care provider's order, or according to the manufacturer's directions for nonprescription medications, that results in an error involving the wrong medication, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration.

"Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

"Staff" or **"staff person"** means any person who:

(1) Is employed or used by an enhanced services facility, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements of chapter 388-112A WAC.

"Stop placement" or **"stop placement order"** (~~is~~) means an action taken by the department prohibiting enhanced services facility admissions, readmissions, and transfers of patients into the enhanced services facility from the outside.

"Temporary restraining order" means restraining order or order of protection that expired without a hearing, was terminated following an initial hearing, or was terminated by stipulation of the parties in lieu of an initial hearing.

"Treatment" means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or chemical dependency education and counseling, medical, physical therapy, restorative nursing, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling.

"Violation" means the same as "deficiency" as defined in this section.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" (~~includes~~) means a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for (~~himself or herself~~) themselves; or

(2) Found incapacitated under (~~chapter 11.88~~) RCW 74.34.020; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any enhanced services facility; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

(7) Who self-directs (~~his or her~~) their own care and receives services from a personal aide under chapter 74.39 RCW.

(8) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any

age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

- WAC 388-107-0570 Resident records—System.** (1) The enhanced services facility must:
- (a) Designate an individual responsible for the record system who:
 - (i) Has appropriate training and experience in clinical record management; or
 - (ii) Receives consultation from a qualified clinical record practitioner, such as a registered health information administrator or registered health information technician.
 - (b) Make all records available for review by:
 - (i) Authorized representatives of the department;
 - (ii) Representatives of the long term care and mental health ombud's office with authorization or permission from the resident or resident's representative;
 - (iii) Representatives of disability rights Washington; and
 - (iv) Representatives of the Washington state fire marshal when conducting fire safety inspections.
 - (c) Maintain the following:
 - (i) A master resident index having a reference for each resident including the health record number, if applicable; full name; date of birth; admission dates; and discharge dates; and
 - (ii) A chronological census register, including all admissions, discharge, deaths and transfers, and noting the receiving facility. The enhanced services facility must ensure the register includes discharges and transfers to other treatment facilities in excess of (~~twenty-four~~) 24 hours.
- (2) The enhanced services facility must ensure the clinical record of each resident:
- (a) Is documented and authenticated accurately, promptly, and legibly by individuals giving the order, making the observation, performing the examination, assessment, treatment, or providing the care and services. "**Authenticated**" means the authorization of a written entry in a record by signature, including the first initial and last name and title, or a unique identifier allowing identification of the responsible individual; and:
 - (i) Documents from other health care facilities that are clearly identified as being authenticated at that facility will be considered authenticated at the receiving facility; and
 - (ii) The original or a durable, legible, direct copy of each document will be accepted.
 - (b) Contains appropriate information for a deceased resident including:
 - (i) The time and date of death;
 - (ii) Apparent cause of death;
 - (iii) Notification of the physician and appropriate resident representative; and
 - (iv) The disposition of the body and personal effects.

(3) The enhanced services facility must maintain a resident roster per RCW 70.97.205.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-1010 Telephone on resident care units. The facility must provide (~~twenty-four~~) 24 hour access to a telephone for resident use per RCW 70.97.195, which:

- (1) Provides auditory privacy;
- (2) Is accessible to a resident with a disability and accommodates a resident with sensory impairment;
- (3) Is not located in a staff office or at a nurse's station;
- (4) Does not require payment for local calls; and
- (5) Does not utilize any cords.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-1430 Enforcement authority—Penalties and sanctions.

(1) In any case in which the department finds that a licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, managing employee, any person who may have unsupervised access to residents, or failed or refused to comply with the requirements of this chapter or the rules established under them, the department may take any or all of the following actions:

- (a) Suspend, revoke, or refuse to issue or renew a license;
- (b) Order stop placement; or
- (c) Assess civil monetary penalties.
- (2) Once a stop placement order or limited stop placement order is imposed, the enhanced services facility must post the stop placement order or limited stop placement order per RCW 70.97.235.
- (3) The department may suspend, revoke, or refuse to renew a license, assess civil monetary penalties, or both, in any case in which it finds that the licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, or managing employee:
 - (a) Operated a facility without a license or under a revoked or suspended license;
 - (b) Knowingly or with reason to know made a false statement of a material fact in the license application or any data attached thereto, or in any matter under investigation by the department;
 - (c) Refused to allow representatives or agents of the department to inspect all books, records, and files required to be maintained or any portion of the premises of the facility;
 - (d) Willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter;
 - (e) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or of the rules adopted under it; or

(f) Failed to pay any civil monetary penalty assessed by the department under this chapter within ~~((ten))~~ 10 days after the assessment becomes final.

~~((3))~~ (4) Civil penalties:

(a) Civil penalties collected under this chapter must be deposited into a special fund administered by the department.

(b) Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day the facility is or was out of compliance. Civil monetary penalties must not exceed ~~((three thousand dollars))~~ \$3,000 per day. Each day upon which the same or a substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.

~~((4))~~ (5) The department may use the civil penalty monetary fund for the protection of the health or property of residents of facilities found to be deficient including:

(a) Payment for the cost of relocation of residents to other facilities;

(b) Payment to maintain operation of a facility pending correction of deficiencies or closure; and

(c) Reimbursement of a resident for personal funds or property loss.

~~((5))~~ (6) ~~((a))~~ The department may issue a stop placement order on a facility, effective upon oral or written notice, when the department determines:

~~((i))~~ (a) The facility no longer substantially meets the requirements of this chapter; and

~~((ii))~~ (b) The deficiency or deficiencies in the facility:

~~((A))~~ (i) Jeopardizes the health and safety of the residents;

or

~~((B))~~ (ii) Seriously limits the facility's capacity to provide adequate care.

~~((b))~~ (c) When the department has ordered a stop placement, the department may approve a readmission to the facility from a hospital, residential treatment facility, or crisis intervention facility when the department determines the readmission would be in the best interest of the individual seeking readmission.

~~((6))~~ (7) If the department determines that an emergency exists and resident health and safety is immediately jeopardized as a result of a facility's failure or refusal to comply with this chapter, the department may summarily suspend the facility's license and order the immediate closure of the facility, or the immediate transfer of residents, or both.

~~((7))~~ (8) If the department determines that the health or safety of the residents is immediately jeopardized as a result of a facility's failure or refusal to comply with requirements of this chapter, the department may appoint temporary management to:

(a) Oversee the operation of the facility; and

(b) Ensure the health and safety of the facility's residents while:

(i) Orderly closure of the facility occurs; or

(ii) The deficiencies necessitating temporary management are corrected.

WSR 25-18-020
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Home and Community Living Administration)

[Filed August 21, 2025, 10:46 a.m., effective September 21, 2025]

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

Purpose: The new chapter of rule implements requirements under chapter 50B.04 RCW related to defining approved services, requirements for determining eligibility to receive approved services, and requirements to provide approved services. The rules govern beneficiaries of the long-term services and supports trust, and providers who want to provide approved services to eligible beneficiaries.

Citation of Rules Affected by this Order: New WAC 388-116-1000, 388-116-1010, 388-116-2010, 388-116-2020, 388-116-3010, 388-116-3020, 388-116-3030, 388-116-3040, 388-116-3050, 388-116-3060, and 388-116-3070.

Statutory Authority for Adoption: RCW 50B.04.020 (3) (k).

Adopted under notice filed as WSR 25-13-096 on June 17, 2025.

A final cost-benefit analysis is available by contacting Arielle Finney, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-764-0384, TTY 711 relay service, email Arielle.Finney2@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 11, 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 11, Amended 0, Repealed 0.

Date Adopted: August 21, 2025.

Lisa N.H. Yanagida
Chief of Staff

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 25-19 issue of the Register.

WSR 25-18-026

PERMANENT RULES

TRANSPORTATION COMMISSION

[Filed August 22, 2025, 10:29 a.m., effective October 1, 2025]

Effective Date of Rule: October 1, 2025.

Purpose: In order to meet statutory direction, this rule eliminates tolling exemptions for publicly and privately operated transit buses, vans, and ride share vehicles on tolled bridges (State Route (SR) 520 Bridge and the SR 16 Tacoma Narrows Bridge), effective October 1, 2025.

Citation of Rules Affected by this Order: Amending WAC 468-270-085.

Statutory Authority for Adoption: RCW 47.46.100, 47.56.030, 47.46.105, 47.56.795, and 47.56.850.

Adopted under notice filed as WSR 25-13-097 on June 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 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 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: August 19, 2025.

Reema Griffith
Executive Director

RDS-6449.2

AMENDATORY SECTION (Amending WSR 18-17-163, 19-01-066 and 19-10-006, filed 8/21/18, 12/14/18 and 4/18/19, effective 8/1/19)

WAC 468-270-085 What vehicles are exempt from paying tolls on all toll facilities on Washington state highways? (1) Except as provided herein, all vehicles using a toll facility must pay the required toll. Vehicles crossing the Tacoma Narrows Bridge are required to pay a toll only in the eastbound direction. Additional exemptions for high occupancy vehicles apply on the SR 167 (~~HOT~~) express toll lanes and I-405 express toll lanes as defined in WAC 468-270-105 and 468-270-115 respectively.

(2) Only qualified vehicles may be exempted from paying tolls. Exempted vehicles must provide directly for the operation, maintenance, safety, and/or person-carrying capacity of the tolled roadway or for emergency response. The registered owner and operator of the qualified vehicle must comply with the requirements of the department to obtain the exemption as specified in WAC 468-270-095.

(3) The following vehicles, as defined further in WAC 468-270-030, shall qualify for exemption on the I-405 and SR 167 express toll lanes, the SR 99 Tunnel, and the Puget Sound Gateway facility (SR 509 Expressway and SR 167 Expressway):

- ~~((1))~~ (a) Highway and transit operating and maintenance vehicles, as authorized by the department;
- ~~((2))~~ (b) Tow trucks authorized by the Washington state patrol responding to clear vehicles from the toll facility;
- ~~((3))~~ (c) Authorized, on-duty emergency vehicles;
- ~~((4))~~ (d) Publicly owned or operated transit buses;
- ~~((5))~~ (e) Passenger motor vehicles licensed for ride-sharing as defined in RCW 46.18.285;
- ~~((6))~~ (f) School buses; and
- ~~((7))~~ (g) Privately owned and operated passenger buses meeting annual certification requirements of the department.

(4) The following vehicles, as defined further in WAC 468-270-030, shall qualify for exemption on the Tacoma Narrows Bridge and SR 520 Bridge:

- (a) Highway and transit operating and maintenance vehicles, as authorized by the department;
- (b) Tow trucks authorized by the Washington state patrol responding to clear vehicles from the toll facility;
- (c) Authorized, on-duty emergency vehicles; and
- (d) School buses.

WSR 25-18-037
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Home and Community Living Administration)

[Filed August 25, 2025, 10:11 a.m., effective January 1, 2026]

Effective Date of Rule: January 1, 2026.

Purpose: The purpose of this rule making is to comply with Centers for Medicare and Medicaid [Services] regulations related to home and community-based settings in adult family homes (AFH), assisted living facilities (ALF), and enhanced services facilities (ESF). Compliance with the regulations is necessary to administer the state's medicaid funded long-term services and supports programs, RCW 74.09.520(2) and 74.39A.007.

Changes to the chapters create a new requirement for the operators of AFH, ALF, and ESF to enter into a residency agreement with current and new residents with medicaid as a payor that addresses resident rights in relation to transfer and discharge. The changes require these operators to include, for residents with medicaid, information upon transfer or discharge that explains the residents' rights, which includes the right to an attorney to represent the residents' interests in response to the transfer or discharge notice. This right is subject to legislative appropriation. The changes make minor updates to existing rules to include a requirement that the residency agreement for residents with medicaid must be kept in the residents' record. The new and amended rules will be effective January 1, 2026.

Citation of Rules Affected by this Order: New WAC 388-76-10506, 388-76-10617, 388-78A-2651, 388-78A-2661, 388-107-0161, and 388-107-0281; and amending WAC 388-76-10320, 388-78A-2410, and 388-107-0560.

Statutory Authority for Adoption: RCW 18.20.090, 70.97.230, 70.128.040, 74.09.520(2), and 74.39A.007.

Other Authority: 42 C.F.R. 441.530 (a) (1) (vi) (A) and 441.301 (c) (4) (vi) (A).

Adopted under notice filed as WSR 25-11-012 on May 8, 2025.

Changes Other than Editing from Proposed to Adopted Version: In response to comments received during the public hearing and formal comment period, these changes were made:

Removed "if applicable" from the rule text in:

- WAC 388-76-10320(12)
- WAC 388-78A-2410(14)
- WAC 388-107-0560 (2) (1)

changed "upon" (transfer or discharge) to "before" in:

- WAC 388-76-10506 (2) (c)
- WAC 388-78A-2651 (2) (c)
- WAC 388-107-0161 (2) (c)

Added "that is signed and dated by both parties" in:

- WAC 388-76-10506(4)
- WAC 388-78A-2651(4)
- WAC 388-107-0161(4)

Added "provided to the resident or their representative" in:

- WAC 388-76-10506 (4) (b)
- WAC 388-78A-2651 (4) (b)
- WAC 388-107-0161 (4) (b)

Added "and date" in the model agreement language in:

- WAC 388-76-10506 (5) (d)

- WAC 388-78A-2651 (5) (d)
- WAC 388-107-0161 (5) (d)

Added "your health, safety, welfare, and rights as a long-term care resident" and removed "other issues." Added "find out more about" in place of "request assistance from." Added "contact a long-term care ombuds" in place of "make your request" in:

- WAC 388-76-10617 (5) (h) (ii)
- WAC 388-78A-2661 (5) (h) (ii)
- WAC 388-107-0281 (5) (h) (ii)

Added "You have the right to make a complaint to the" (complaint resolution unit) in:

- WAC 388-76-10617 (5) (h) (iv)
- WAC 388-78A-2661 (5) (h) (iv)
- WAC 388-107-0281 (5) (h) (iv)

Since the aging and long-term support administration became home and community living administration on May 1, 2025, we removed "aging and long-term support administration" and replaced it with "home and community living administration" in:

- WAC 388-76-10617 (5) (h) (iv)
- WAC 388-78A-2661 (5) (h) (iv)
- WAC 388-107-0281 (5) (h) (iv)

A final cost-benefit analysis is available by contacting Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, phone 564-999-3182, TTY 711 relay service, email rcspolicy@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 6, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 2, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 2, Repealed 0.

Date Adopted: August 22, 2025.

Lisa N.H. Yanagida
Chief of Staff

SHS-5081.4

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10320 Resident record—Content. The adult family home must ensure that each resident record contains, at a minimum, the following information:

- (1) Identifying information about the resident;
- (2) The name, address, and telephone number of the resident's:

- (a) Representative;
- (b) Health care providers;
- (c) Significant family members identified by the resident; and
- (d) Other individuals the resident wants involved or notified.
- (3) Current medical history;
- (4) The resident assessment information;
- (5) The preliminary service plan;
- (6) The negotiated care plan;
- (7) List of resident medications;
- (8) The resident's Social Security number;
- (9) When the resident was:
 - (a) Admitted to the home;
 - (b) Absent from the home; and
 - (c) Discharged from the home.
- (10) A current inventory of the resident's personal belongings dated and signed by:
 - (a) The resident; and
 - (b) The adult family home.
- (11) Financial records.
- (12) The residency agreement for residents with medicaid as a payor.

RESIDENCY AGREEMENT—RESIDENTS WITH MEDICAID

NEW SECTION

WAC 388-76-10506 Written residency agreement—Residents with medicaid as a payor. (1) For the purposes of this section "residency agreement" means a legally enforceable written document prepared by the adult family home that contains the rights and responsibilities of the facility and the resident specific to transfer and discharge and is signed by both parties.

(2) For residents with medicaid as a payor the facility must complete a signed written residency agreement with each resident that:

(a) Is signed by the resident or their legal representative and the facility upon admission of the resident to the facility;

(b) Requires the facility to agree to comply with the long-term care residents rights statute transfer and discharge requirements pursuant to RCW 70.129; and

(c) Requires the facility to provide notice to residents before transfer and discharge that includes information about available legal resources and notice that, subject to legislative appropriation, residents have the right to legal counsel at public expense upon notice of transfer or discharge.

(3) For residents whose payor status changes from medicaid to private pay, a new residency agreement is required if the resident's payor status returns to medicaid.

(4) A copy of the residency agreement that is signed and dated by both parties must be:

- (a) Kept in the resident record; and
- (b) Provided to the resident or their representative.

(5) The residency agreement must be in substantially the following form:

Residency agreement—residents with medicaid as a payor.

(a) [facility name] agrees to comply with the long-term care residents rights statute transfer and discharge requirements pursuant to RCW 70.129.

(b) Subject to legislative appropriation [resident name] has a right to a free lawyer to help them in response to a notice of transfer or discharge. If they want a free lawyer to help them, they must call the long-term care discharge defense screening line at [phone number].

(c) [Signature of resident/legal representative and date].

(d) [Signature of facility and date].

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-76-10617 Resident rights—Transfer and discharge notice—Residents with medicaid as a payor. For residents with medicaid as a payor, in addition to the requirements in WAC 388-76-10616, the adult family home must do the following when issuing a written notice of transfer or discharge:

(1) Include in the notice contact information provided by the department for the legal services agencies assigned to provide legal counsel;

(2) Clearly state in the notice that, subject to legislative appropriation, legal counsel at public expense is available to represent the resident's interests in the transfer or discharge process. This language must be substantially in the following form: "Subject to legislative appropriation you have a right to a free lawyer to help you respond to a notice of transfer or discharge. If you want a free lawyer to help you, please call the long-term care discharge defense screening line at [phone number].";

(3) Within three calendar days of issuing the notice, provide a copy of the notice to the resident's assigned department case manager;

(4) Within three calendar days of issuing the notice, provide a copy of the notice to the Washington state long-term care ombudsman program; and

(5) Issue the transfer and discharge notice in substantially the following form:

Notice of transfer or discharge—residents with medicaid as a payor:

- (a) Resident information;
 - (i) Resident name;
 - (ii) Resident address;
- (b) Facility information;
 - (i) Facility name;
 - (ii) Facility address;
 - (iii) Contact person's name;
- (c) Date notice given;

(d) Effective date: Effective date must be at least 30 days from the date notice is given unless an exception applies according to RCW 70.129.110;

(e) Location to where resident is transferred or discharged:

- (i) Name;
- (ii) Address;
- (iii) Phone;

(f) Reason for transfer or discharge: The specific reason for the transfer or discharge must be one or more of the reasons in (i)-(v) of this subsection:

(i) Transfer or discharge is necessary for the resident's welfare and the residents' needs cannot be met in the facility;

(ii) The safety of individuals in the facility is endangered;

(iii) The health of individuals in the facility would otherwise be endangered;

(iv) The resident has failed to make the required payment for their stay;

(v) The facility ceases to operate.

(g) Copy of notice given within three days to:

- (i) Department case manager;
- (ii) Washington state long-term care ombudsman program;
- (h) Your rights and resources.

(i) Legal counsel: Subject to legislative appropriation, you have a right to a free lawyer to help you respond to a notice of transfer or discharge. If you want a free lawyer to help you, please call the long-term care discharge defense screening line at [phone number].

(ii) Washington state ombuds: The Washington state long-term care ombudsman program is available to answer questions and provide assistance regarding this notice and your health, safety, welfare, and rights as a long-term care resident. If you wish to find out more about the long-term care ombuds, call 1-800-562-6028. You may also contact a long-term care ombuds in writing, by fax at (253) 815-8173, email at ltpcop@mschelp.org, or mail at PO Box 23699, Federal Way, WA 98093-0699.

(iii) Disability rights Washington: If you have a diagnosis of a mental illness or an intellectual disability, you may contact disability rights Washington 1-800-562-2702 or (206) 324-1521. You may also make your request in writing by fax at (206) 957-0729, email at info@dr-wa.org or mail at Disability rights Washington, 315 5th Ave S, Suite 850, Seattle WA, 98104.

(iv) DSHS home and community living administration (HCLA): You have the right to make a complaint to the complaint resolution unit (CRU/complaint hotline) 1-800-562-6078.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2410 Content of resident records. The assisted living facility must organize and maintain resident records in a format that the assisted living facility determines to be useful and functional to enable the effective provision of care and services to each resident. Active resident records must include the following:

- (1) Resident identifying information, including resident's:

- (a) Name;
- (b) Birth date;
- (c) Move-in date; and
- (d) Sleeping room identification.
- (2) Current name, address, and telephone number of:
 - (a) Resident's primary health care provider;
 - (b) Resident's representative, if the resident has one;
 - (c) Individual(s) to contact in case of emergency, illness, or death; and
 - (d) Family members or others, if any, the resident requests to be involved in the development or delivery of services for the resident.
- (3) Resident's written acknowledgment of receipt of:
 - (a) Required disclosure information prior to moving into the assisted living facility; and
 - (b) Information required by long-term care resident rights per RCW 70.129.030.
 - (4) The resident's assessment and reassessment information.
 - (5) Clinical information such as admission weight, height, blood pressure, temperature, blood sugar, and other laboratory tests required by the negotiated service agreement.
 - (6) The resident's negotiated service agreement consistent with WAC 388-78A-2140.
 - (7) Any orders for medications, treatments, and modified or therapeutic diets, including any directions for addressing a resident's refusal of medications, treatments, and prescribed diets.
 - (8) Medical and nursing services provided by the assisted living facility for a resident, including:
 - (a) A record of providing medication assistance and medication administration, which contains:
 - (i) The medication name, dose, and route of administration;
 - (ii) The time and date of any medication assistance or administration;
 - (iii) The signature or initials of the person providing any medication assistance or administration; and
 - (iv) Documentation of a resident choosing to not take (~~his or her~~) their medications.
 - (b) A record of any nursing treatments, including the signature or initials of the person providing them.
 - (9) Documentation consistent with WAC 388-78A-2120 monitoring resident well-being.
 - (10) Staff interventions or responses to subsection (9) of this section, including any modifications made to the resident's negotiated service agreement.
 - (11) Notices of and reasons for relocation as specified in RCW 70.129.110.
 - (12) The individuals who were notified of a significant change in the resident's condition and the time and date of the notification.
 - (13) When available, a copy of any legal documents in which:
 - (a) The resident has appointed another individual to make (~~his or her~~) their health care, financial, or other decisions;
 - (b) The resident has created an advance directive or other legal document that establishes a surrogate decision maker in the future (~~and~~) or provides directions to health care providers or both; and
 - (c) A court has established guardianship on behalf of the resident.
 - (14) The residency agreement for residents with medicaid as a payor.

Residency Agreement—Residents with MedicaidNEW SECTION

WAC 388-78A-2651 Written residency agreement—Residents with medicaid as a payor. (1) For the purposes of this section "residency agreement" means a legally enforceable written document prepared by the assisted living facility that contains the rights and responsibilities of the facility and the resident specific to transfer and discharge and is signed by both parties.

(2) For residents with medicaid as a payor the facility must complete a signed written residency agreement with each resident that:

(a) Is signed by the resident or their legal representative and the facility upon admission of the resident to the facility;

(b) Requires the facility to agree to comply with the long-term care residents rights statute transfer and discharge requirements pursuant to RCW 70.129; and

(c) Requires the facility to provide notice to residents before transfer and discharge that includes information about available legal resources, and notice that, subject to legislative appropriation, residents have the right to legal counsel at public expense upon notice of transfer or discharge.

(3) For residents whose payor status changes from medicaid to private pay, a new residency agreement is required if the resident's payor status returns to medicaid.

(4) A copy of the residency agreement that is signed and dated by both parties must be:

(a) Kept in the resident record; and

(b) Provided to the resident or their representative.

(5) The residency agreement must be in substantially the following form:

Residency agreement—residents with medicaid as a payor.

(a) [facility name] agrees to comply with the long-term care residents rights statute transfer and discharge requirements pursuant to RCW 70.129.

(b) Subject to legislative appropriation [resident name] has a right to a free lawyer to help them in response to a notice of transfer or discharge. If they want a free lawyer to help them, they must call the long-term care discharge defense screening line at [phone number].

(c) [Signature of resident/legal representative and date].

(d) [Signature of facility and date].

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-78A-2661 Resident rights—Transfer and discharge notice—Residents with medicaid as a payor. For residents with medicaid as a

payor, in addition to the requirements in WAC 388-78A-2660, the assisted living facility must do the following when issuing a written notice of transfer or discharge:

(1) Include in the notice contact information provided by the department for the legal services agencies assigned to provide legal counsel;

(2) Clearly state in the notice that, subject to legislative appropriation, legal counsel at public expense is available to represent the resident's interests in the transfer or discharge process. This language must be substantially in the following form: "Subject to legislative appropriation you have a right to a free lawyer to help you respond to a notice of transfer or discharge. If you want a free lawyer to help you, please call the long-term care discharge defense screening line at [phone number].";

(3) Within three calendar days of issuing the notice, provide a copy of the notice to the resident's assigned department case manager;

(4) Within three calendar days of issuing the notice, provide a copy of the notice to the Washington state long-term care ombudsman program; and

(5) Issue the transfer and discharge notice in substantially the following form:

Notice of transfer or discharge—residents with medicaid as a payor:

(a) Resident information;

(i) Resident name;

(ii) Resident address;

(b) Facility information;

(i) Facility name;

(ii) Facility address;

(iii) Contact person's name;

(c) Date notice given;

(d) Effective date: Effective date must be at least 30 days from the date notice is given unless an exception applies according to RCW 70.129.110;

(e) Location to where resident is transferred or discharged:

(i) Name;

(ii) Address;

(iii) Phone;

(f) Reason for transfer or discharge: The specific reason for the transfer or discharge must be one or more of the reasons in (i)-(v) of this subsection:

(i) Transfer or discharge is necessary for the resident's welfare and the residents' needs cannot be met in the facility;

(ii) The safety of individuals in the facility is endangered;

(iii) The health of individuals in the facility would otherwise be endangered;

(iv) The resident has failed to make the required payment for their stay;

(v) The facility ceases to operate.

(g) Copy of notice given within three days to:

(i) Department case manager;

(ii) Washington state long-term care ombudsman program;

(h) Your rights and resources;

(i) Legal counsel: Subject to legislative appropriation, you have a right to a free lawyer to help you respond to a notice of transfer

or discharge. If you want a free lawyer to help you, please call the long-term care discharge defense screening line at [phone number].

(ii) Washington state ombuds: The Washington state long-term care ombudsman program is available to answer questions and provide assistance regarding this notice and your health, safety, welfare, and rights as a long-term care resident. If you wish to find out more about the long-term care ombuds, call 1-800-562-6028. You may also contact a long-term care ombuds in writing, by fax at (253) 815-8173, email at lrcop@mschelp.org, or mail at PO Box 23699, Federal Way, WA 98093-0699.

(iii) Disability rights Washington: If you have a diagnosis of a mental illness or an intellectual disability, you may contact disability rights Washington 1-800-562-2702 or (206) 324-1521. You may also make your request in writing by fax at (206) 957-0729, email at info@dr-wa.org or mail at disability rights Washington, 315 5th Ave S, Suite 850, Seattle WA, 98104.

(iv) DSHS home and community living administration (HCLA): You have the right to make a complaint to the complaint resolution unit (CRU/complaint hotline) 1-800-562-6078.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

RESIDENCY AGREEMENT—RESIDENTS WITH MEDICAID

NEW SECTION

WAC 388-107-0161 Written residency agreement—Residents with medicaid as a payor. (1) For the purposes of this section "residency agreement" means a legally enforceable written document prepared by the enhanced services facility that contains the rights and responsibilities of the facility and the resident specific to transfer and discharge and is signed by both parties.

(2) For residents with medicaid as a payor the facility must complete a signed written residency agreement with each resident that:

(a) Is signed by the resident or their legal representative and the facility upon admission of the resident to the facility;

(b) Requires the facility to agree to comply with the long-term care residents rights statute transfer and discharge requirements pursuant to RCW 70.129; and

(c) Requires the facility to provide notice to residents before transfer and discharge that includes information about available legal resources, and notice that, subject to legislative appropriation, residents have the right to legal counsel at public expense upon notice of transfer or discharge.

(3) For residents whose payor status changes from medicaid to private pay, a new residency agreement is required if the resident's payor status returns to medicaid.

(4) A copy of the residency agreement that is signed and dated by both parties must be:

- (a) Kept in the resident record; and
- (b) Provided to the resident or their representative.
- (5) The residency agreement must be in substantially the following form:

Residency agreement—residents with medicaid as a payor.

(a) [facility name] agrees to comply with the long-term care residents rights statute transfer and discharge requirements pursuant to RCW 70.129.

(b) Subject to legislative appropriation [resident name] has a right to a free lawyer to help them in response to a notice of transfer or discharge. If they want a free lawyer to help them, they must call the long-term care discharge defense screening line at [phone number].

(c) [Signature of resident/legal representative and date].

(d) [Signature of facility and date].

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-107-0281 Transfer and discharge notice—Residents with medicaid as a payor. For residents with medicaid as a payor, in addition to the requirements in WAC 388-107-0280, the enhanced services facility must do the following when issuing a written notice of transfer or discharge:

(1) Include in the notice contact information provided by the department for the legal services agencies assigned to provide legal counsel;

(2) Clearly state in the notice that, subject to legislative appropriation, legal counsel at public expense is available to represent the resident's interests in the transfer or discharge process. This language must be substantially in the following form: "Subject to legislative appropriation you have a right to a free lawyer to help you respond to a notice of transfer or discharge. If you want a free lawyer to help you, please call the long-term care discharge defense screening line at [phone number].";

(3) Within three calendar days of issuing the notice, provide a copy of the notice to the resident's assigned department case manager;

(4) Within three calendar days of issuing the notice, provide a copy of the notice to the Washington state long-term care ombudsman program; and

(5) Issue the transfer and discharge notice in substantially the following form:

Notice of transfer or discharge—residents with medicaid as a payor:

- (a) Resident information;
 - (i) Resident name;
 - (ii) Resident address;
- (b) Facility information;
 - (i) Facility name;
 - (ii) Facility address;
 - (iii) Contact person's name;
- (c) Date notice given;

(d) Effective date: Effective date must be at least 30 days from the date notice is given unless an exception applies according to RCW 70.129.110;

(e) Location to where resident is transferred or discharged:

- (i) Name;
- (ii) Address;
- (iii) Phone;

(f) Reason for transfer or discharge: The specific reason for the transfer or discharge must be one or more of the reasons in (i)-(v) of this subsection:

(i) Transfer or discharge is necessary for the resident's welfare and the residents' needs cannot be met in the facility;

(ii) The safety of individuals in the facility is endangered;

(iii) The health of individuals in the facility would otherwise be endangered;

(iv) The resident has failed to make the required payment for their stay;

(v) The facility ceases to operate.

(g) Copy of notice given within three days to:

- (i) Department case manager;
- (ii) Washington state long-term care ombudsman program;

(h) Your rights and resources:

(i) Legal counsel: Subject to legislative appropriation, you have a right to a free lawyer to help you respond to a notice of transfer or discharge. If you want a free lawyer to help you, please call the long-term care discharge defense screening line at [phone number].

(ii) Washington state ombuds: The Washington state long-term care ombudsman program is available to answer questions and provide assistance regarding this notice and your health, safety, welfare, and rights as a long-term care resident. If you wish to find out more about the long-term care ombuds, call 1-800-562-6028. You may also contact a long-term care ombuds in writing, by fax at (253) 815-8173, email at lrcop@mschelp.org, or mail at PO Box 23699, Federal Way, WA 98093-0699.

(iii) Disability rights Washington: If you have a diagnosis of a mental illness or an intellectual disability, you may contact disability rights Washington 1-800-562-2702 or (206) 324-1521. You may also make your request in writing by fax at (206) 957-0729, email at info@dr-wa.org or mail at disability rights Washington, 315 5th Ave S, Suite 850, Seattle WA, 98104.

(iv) DSHS home and community living administration (HCLA): You have the right to make a complaint to the complaint resolution unit (CRU/complaint hotline) 1-800-562-6078.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 16-14-078, filed 7/1/16, effective 8/1/16)

WAC 388-107-0560 Resident records—Clinical records. (1) The enhanced services facility must:

(a) Maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

- (i) Complete;
- (ii) Accurately documented;

- (iii) Readily accessible; and
- (iv) Systematically organized;
- (b) Safeguard clinical record information against alteration, loss, destruction, and unauthorized use; and
- (c) Keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:
 - (i) Transfer to another health care institution;
 - (ii) Law; or
 - (iii) The resident.
- (2) The enhanced services facility must ensure the clinical record of each resident includes a minimum of the following:
 - (a) Resident identification and sociological data, including the name and address of the individual or individuals the resident designates as significant;
 - (b) Medical information;
 - (c) Physician's orders;
 - (d) Assessments;
 - (e) Person-centered service plans;
 - (f) Services provided;
 - (g) Progress notes;
 - (h) Medications administered;
 - (i) Consents, authorizations, releases;
 - (j) Allergic responses;
 - (k) Laboratory, X-ray, and other findings;
 - (l) The residency agreement for residents with medicaid as a payor; and
 - ~~((1))~~ (m) Other records as appropriate.
- (3) The enhanced services facility must maintain resident records and preserve their confidentiality in accordance with applicable state and federal statutes and rules, including ~~((chapters))~~ chapter 70.02 ~~((and 70.96A))~~ RCW.

WSR 25-18-049

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed August 27, 2025, 1:05 p.m., effective September 27, 2025]

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

Purpose: The health care authority revised these rules to ensure alignment with its current billing practices. The amendments standardize billing policies while maintaining compliance with applicable federal guidelines.

Citation of Rules Affected by this Order: Amending WAC 182-531-0050, 182-531-0450, 182-531-0900, 182-531-1150, 182-531-1250, and 182-531-1350.

Statutory Authority for Adoption: RCW 41.05.021 and 41.05.160.

Adopted under notice filed as WSR 25-14-056 on June 26, 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 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, 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 6, Repealed 0.

Date Adopted: August 27, 2025.

Wendy Barcus
Rules Coordinator

RDS-6391.2

AMENDATORY SECTION (Amending WSR 25-07-078, filed 3/17/25, effective 4/17/25)

WAC 182-531-0050 Physician-related services definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC, apply to this chapter.

"Actual acquisition cost" - See WAC 182-530-1050.

"Acute care" - Care provided for clients who are not medically stable. These clients require frequent monitoring by a health care professional in order to maintain their health status. See also WAC 246-335-015.

"Acute physical medicine and rehabilitation (PM&R)" - A comprehensive inpatient and rehabilitative program coordinated by a multidisciplinary team at a medicaid agency-approved rehabilitation facility. The program provides 24-hour specialized nursing services and an intense level of specialized therapy (speech, physical, and occupational) for a diagnostic category for which the client shows significant potential for functional improvement (see WAC 182-550-2501).

"Add-on procedure(s)" - Secondary procedure(s) that are performed in addition to another procedure.

"Admitting diagnosis" - The medical condition responsible for a hospital admission, as defined by the ICD diagnostic code.

"Advanced registered nurse practitioner (ARNP)" - A registered nurse prepared in a formal educational program to assume an expanded health services provider role in accordance with WAC 246-840-300 and 246-840-305.

"Allowed charges" - The maximum amount reimbursed for any procedure that is allowed by the medicaid agency.

"Anesthesia technical advisory group (ATAG)" - An advisory group representing anesthesiologists who are affected by the implementation of the anesthesiology fee schedule.

"Bariatric surgery" - Any surgical procedure, whether open or by laparoscope, which reduces the size of the stomach with or without bypassing a portion of the small intestine and whose primary purpose is the reduction of body weight in an obese individual.

"Base anesthesia units (BAU)" - A number of anesthesia units assigned to a surgical procedure that includes the usual preoperative, intraoperative, and postoperative visits. This includes the administration of fluids and/or blood incident to the anesthesia care, and interpretation of noninvasive monitoring by the anesthesiologist.

"Bundled services" - Services integral to the major procedure that are included in the fee for the major procedure. Bundled services are not reimbursed separately.

"Bundled supplies" - Supplies that are considered to be included in the practice expense RVU of the medical or surgical service of which they are an integral part.

"By report (BR)" - See WAC 182-500-0015.

"Call" - A face-to-face encounter between the client and the provider resulting in the provision of services to the client.

"Cast material maximum allowable fee" - A reimbursement amount based on the average cost among suppliers for one roll of cast material.

"Center of excellence (COE)" - A hospital, medical center, or other health care provider that meets or exceeds standards set by the agency for specific treatments or specialty care.

"Centers for Medicare and Medicaid Services (CMS)" - See WAC 182-500-0020.

"Certified registered nurse anesthetist (CRNA)" - An advanced registered nurse practitioner (ARNP) with formal training in anesthesia who meets all state and national criteria for certification. The American Association of Nurse Anesthetists specifies the national certification and scope of practice.

"Children's health insurance plan (CHIP)" - See chapter 182-505 WAC.

"Clinical Laboratory Improvement Amendment (CLIA)" - Regulations from the U.S. Department of Health and Human Services that require all laboratory testing sites to have either a CLIA registration or a CLIA certificate of waiver in order to legally perform testing anywhere in the U.S.

"Conversion factors" - Dollar amounts the medicaid agency uses to calculate the maximum allowable fee for physician-related services.

"Covered service" - A service that is within the scope of the eligible client's medical care program, subject to the limitations in this chapter and other published WAC.

"CPT" - See "current procedural terminology."

"Critical care services" - Physician services for the care of critically ill or injured clients. (~~(A critical illness or injury acutely impairs one or more vital organ systems such that the client's survival is jeopardized.)~~) Critical care is given in a critical care area, such as the coronary care unit, intensive care unit, respiratory care unit, or the emergency care facility.

"Critical illness or injury" - An impairment to one or more vital organ systems with an increased risk of rapid or imminent life-threatening health deterioration.

"Current procedural terminology (CPT)" - A systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians and other practitioners who provide physician-related services. CPT is copyrighted and published annually by the American Medical Association (AMA).

"Emergency medical condition(s)" - See WAC 182-500-0030.

"Emergency services" - Medical services required by and provided to a patient experiencing an emergency medical condition.

"Evaluation and management (E&M) codes" - Procedure codes that categorize physician services by type of service, place of service, and patient status.

"Expedited prior authorization" - The process of obtaining authorization that must be used for selected services, in which providers use a set of numeric codes to indicate to the medicaid agency which acceptable indications, conditions, diagnoses, and/or criteria are applicable to a particular request for services.

"Experimental" - A term to describe a health care service that lacks sufficient scientific evidence of safety and effectiveness. A service is not "experimental" if the service:

(a) Is generally accepted by the medical profession as effective and appropriate; and

(b) Has been approved by the federal Food and Drug Administration or other requisite government body, if such approval is required.

"Federally approved hemophilia treatment center" - A hemophilia treatment center (HTC) that:

(a) Receives funding from the U.S. Department of Health and Human Services, Maternal and Child Health Bureau National Hemophilia Program;

(b) Is qualified to participate in 340B discount purchasing as an HTC. See WAC 182-530-7900;

(c) Has a U.S. Center for Disease Control (CDC) and prevention surveillance site identification number and is listed in the HTC directory on the CDC website;

(d) Is recognized by the Federal Regional Hemophilia Network that includes Washington state; and

(e) Is a direct care provider offering comprehensive hemophilia care consistent with treatment recommendations set by the Medical and Scientific Advisory Council (MASAC) of the National Hemophilia Foundation in their standards and criteria for the care of persons with congenital bleeding disorders.

"Fee-for-service" - See WAC 182-500-0035.

"Flat fee" - The maximum allowable fee established by the agency for a service or item that does not have a relative value unit (RVU) or has an RVU that is not appropriate.

"Geographic practice cost index (GPCI)" - As defined by medicare, means a medicare adjustment factor that includes local geographic area estimates of how hard the provider has to work (work effort), what the practice expenses are, and what malpractice costs are. The GPCI re-

flects one-fourth the difference between the area average and the national average.

"Global surgery reimbursement" - See WAC 182-531-1700.

"HCPCS Level II" - Health care common procedure coding system, a coding system established by Centers for Medicare and Medicaid Services (CMS) to define services and procedures not included in CPT.

"Health care financing administration common procedure coding system (HCPCS)" - The name used for the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) codes made up of CPT and HCPCS level II codes.

"Health care team" - A group of health care providers involved in the care of a client.

"Hospice" - A medically directed, interdisciplinary program of palliative services which is provided under arrangement with a Title XVIII Washington licensed and certified Washington state hospice for terminally ill clients and the clients' families.

"ICD" - See "International Classification of Diseases."

"Informed consent" - That an individual consents to a procedure after the provider who obtained a properly completed consent form has done all the following:

- (a) Disclosed and discussed the client's diagnosis;
- (b) Offered the client an opportunity to ask questions about the procedure and to request information in writing;
- (c) Given the client a copy of the consent form;
- (d) Communicated effectively using any language interpretation or special communication device necessary per 42 C.F.R. Chapter IV 441.257; and
- (e) Given the client oral information about all the following:
 - (i) The client's right to not obtain the procedure, including potential risks, benefits, and the consequences of not obtaining the procedure;
 - (ii) Alternatives to the procedure including potential risks, benefits, and consequences; and
 - (iii) The procedure itself, including potential risks, benefits, and consequences.

"Inpatient hospital admission" - An admission to a hospital that is limited to medically necessary care based on an evaluation of the client using objective clinical indicators, assessment, monitoring, and therapeutic service required to best manage the client's illness or injury, and that is documented in the client's medical record.

"International Classification of Diseases (ICD)" - The systematic listing that transforms verbal descriptions of diseases, injuries, conditions, and procedures into numerical or alphanumerical designations (coding).

"Investigational" - A term to describe a health care service that lacks sufficient scientific evidence of safety and effectiveness for a particular condition. A service is not "investigational" if the service:

- (a) Is generally accepted by the medical professional as effective and appropriate for the condition in question; or
- (b) Is supported by an overall balance of objective scientific evidence, that examines the potential risks and potential benefits and demonstrates the proposed service to be of greater overall benefit to the client in the particular circumstance than another generally available service.

"Life support" - Mechanical systems, such as ventilators or heart-lung respirators, which are used to supplement or take the place of the normal autonomic functions of a living person.

"Limitation extension" - See WAC 182-501-0169.

"Long-acting reversible contraceptive (LARC)" - Subdermal implants and intrauterine devices (IUDs).

"Maximum allowable fee" - The maximum dollar amount that the medicaid agency will reimburse a provider for specific services, supplies, and equipment.

"Medically necessary" - See WAC 182-500-0070.

"Medicare clinical diagnostic laboratory fee schedule" - The fee schedule used by medicare to reimburse for clinical diagnostic laboratory procedures in the state of Washington.

"Medicare physician fee schedule database (MPFSDB)" - The official CMS publication of the medicare policies and RVUs for the RBRVS reimbursement program.

"Medicare program fee schedule for physician services (MPFSPS)" - The official CMS publication of the medicare fees for physician services.

"Medication for opioid use disorder (MOUD)" - The use of Food and Drug Administration-approved medications that have published evidence of effectiveness, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders.

"Mentally incompetent" - A client who has been declared mentally incompetent by a federal, state, or local court.

"Modifier" - A two-digit alphabetic or numeric, or both, identifier that is added to the procedure code to indicate the type of service performed. The modifier provides the means by which the reporting physician can describe or indicate that a performed service or procedure has been altered by some specific circumstance but not changed in its definition or code. The modifier can affect payment or be used for information only. Modifiers are listed in fee schedules.

"Outpatient" - See WAC 182-500-0080.

"Peer-reviewed medical literature" - A research study, report, or findings regarding a medical treatment that is published in one or more reputable professional journals after being critically reviewed by appropriately credentialed experts for scientific validity, safety, and effectiveness.

"Physician care plan" - A written plan of medically necessary treatment that is established by and periodically reviewed and signed by a physician. The plan describes the medically necessary services to be provided by a home health agency, a hospice agency, or a nursing facility.

"Physician standby" - Physician attendance without direct face-to-face client contact and which does not involve provision of care or services.

"Physician's current procedural terminology" - See "current procedural terminology (CPT)."

"PM&R" - See acute physical medicine and rehabilitation.

"Podiatric service" - The diagnosis and medical, surgical, mechanical, manipulative, and electrical treatments of ailments of the foot and ankle.

"Pound indicator (#)" - A symbol (#) indicating a CPT procedure code listed in the medicaid agency's fee schedules that is not routinely covered.

"Preventive" - Medical practices that include counseling, anticipatory guidance, risk factor reduction interventions, and the ordering of appropriate laboratory and diagnostic procedures intended to help a client avoid or reduce the risk or incidence of illness or injury.

"Prior authorization" - See WAC 182-500-0085.

"Professional component" - The part of a procedure or service that relies on the provider's professional skill or training, or the part of that reimbursement that recognizes the provider's cognitive skill.

"Prognosis" - The probable outcome of a client's illness, including the likelihood of improvement or deterioration in the severity of the illness, the likelihood for recurrence, and the client's probable life span as a result of the illness.

"Prolonged services" - Face-to-face client services furnished by a provider, either in the inpatient or outpatient setting, which involve time beyond what is usual for such services. The time counted toward payment for prolonged E&M services includes only face-to-face contact between the provider and the client, even if the service was not continuous.

"Provider" - See WAC 182-500-0085.

"Qualified health care professional (QHCP)" - An individual who is authorized to provide health care services based on their scope of practice and who may independently report those services.

"Radioallergosorbent test" or "RAST" - A blood test for specific allergies.

"RBRVS" - See resource based relative value scale.

"RBRVS RVU" - A measure of the resources required to perform an individual service or intervention. It is set by medicare based on three components - Physician work, practice cost, and malpractice expense. Practice cost varies depending on the place of service.

"Reimbursement" - Payment to a provider or other agency-approved entity who bills according to the provisions in WAC 182-502-0100.

"Reimbursement steering committee (RSC)" - An interagency work group that establishes and maintains RBRVS physician fee schedules and other payment and purchasing systems utilized by the medicaid agency and the department of labor and industries.

"Relative value guide (RVG)" - A system used by the American Society of Anesthesiologists for determining base anesthesia units (BAUs).

"Relative value unit (RVU)" - A unit that is based on the resources required to perform an individual service or intervention.

"Resource based relative value scale (RBRVS)" - A scale that measures the relative value of a medical service or intervention, based on the amount of physician resources involved.

"RSC RVU" - A unit established by the RSC for a procedure that does not have an established RBRVS RVU or has an RBRVS RVU deemed by the RSC as not appropriate for the service.

"RVU" - See relative value unit.

"Stat laboratory charges" - Charges by a laboratory for performing tests immediately. "Stat" is an abbreviation for the Latin word "statim," meaning immediately.

"Sterile tray" - A tray containing instruments and supplies needed for certain surgical procedures normally done in an office setting. For reimbursement purposes, tray components are considered by CMS to be nonroutine and reimbursed separately.

"Technical advisory group (TAG)" - An advisory group with representatives from professional organizations whose members are affected

by implementation of RBRVS physician fee schedules and other payment and purchasing systems utilized by the agency and the department of labor and industries.

"Technical component" - The part of a procedure or service that relates to the equipment set-up and technician's time, or the part of the procedure and service reimbursement that recognizes the equipment cost and technician time.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-0450 Critical care—Physician-related services. (1)

The ~~((department reimburses the following))~~ medicaid agency pays physicians or qualified health care professionals (QHCPs) for critical care physician-related services to critically ill or injured clients as follows:

~~(a) ((The attending physician who assumes responsibility for the care of a client during a life-threatening episode;~~

~~(b))~~ More than one physician or QHCP if the services provided involve ((multiple organ systems)) different specialties; or

~~((c))~~ (b) Only one physician or QHCP for services provided in the emergency room.

(2) The ~~((department reimburses))~~ agency pays preoperative and postoperative critical care in addition to ~~((a))~~ the **global surgical package** when all the following apply:

(a) The client is critically ill or injured and the physician or QHCP is engaged in work directly related to the ~~((individual))~~ client's care ~~((, whether that time is spent at the immediate bedside or elsewhere on the floor))~~;

~~(b) ((The critical injury or illness acutely impairs one or more vital organ systems such that the client's survival is jeopardized;~~

~~(c))~~ The critical care is unrelated to the specific anatomic injury or general surgical procedure performed and goes beyond the normal procedure; and

~~((d))~~ (c) The provider uses ((any necessary,)) an appropriate modifier when billing the ((department)) agency if appropriate.

(3) ~~((The department limits payment for critical care services to a maximum of three hours per day, per client.~~

~~(4))~~ The ((department)) agency does not pay separately for ((certain)) the following services performed by the provider when delivering critical care during a critical care period ~~((when the services are provided on a per hour basis. These services include, but are not limited to, the following))~~:

(a) ~~((Analysis of information data stored in computers))~~ Collection and interpretation of physiologic data; (e.g., ((ECG)) electrocardiogram, blood pressure, hematologic data, etc.);

(b) Blood draw for a specimen;

(c) Blood gases;

(d) Cardiac output measurement;

(e) Chest X-rays;

(f) Gastric intubation;

(g) Pulse oximetry;

(h) Temporary transcutaneous pacing;

(i) Vascular access procedures; and

(j) Ventilator management.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-0900 Neonatal intensive care unit (NICU) and pediatric intensive care unit (PICU) physician-related services. (1) ~~((The department pays the physician directing the care of a neonate or infant in an NICU, for NICU services.~~

~~(2) NICU services include, but are not limited to, any of the following:~~

~~(a) Patient management;~~

~~(b) Monitoring and treatment of the neonate, including nutritional, metabolic and hematologic maintenance;~~

~~(c) Parent counseling; and~~

~~(d) Personal direct supervision by the **health care team** of activities required for diagnosis, treatment, and supportive care of the patient.~~

~~(3) Payment for NICU care begins with the date of admission to the NICU.~~

~~(4) The department) The medicaid agency reimburses a provider for ~~((only))~~ one ~~((NICU))~~ neonatal intensive care unit (NICU) or pediatric intensive care unit (PICU) service per client, per day.~~

~~((5) A provider may bill))~~ (2) The agency pays for NICU and PICU physician-related services when the billing physician or other qualified health care professional (QHCP) follows standard current procedural terminology (CPT) coding guidelines.

(3) The agency pays for NICU services in addition to **prolonged services** and newborn resuscitation when the ~~((provider))~~ physician or QHCP is present at the delivery.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-1150 ((Physician)) Care plan oversight services.

(1) The ~~((department))~~ medicaid agency covers ~~((physician))~~ **care plan oversight services** only when:

(a) ~~((A))~~ The billing physician ~~((provides the service))~~ or other qualified health care professional (QHCP) follows standard current procedural terminology (CPT) coding guidelines; ~~((and))~~

(b) The client is served by a home health agency, a nursing facility, or a **hospice** ~~((-~~

~~(2) The department reimburses for physician care plan oversight services when both of the following apply:~~

~~(a))~~ ;

~~(c) The facility/agency has established a plan of care; and~~

~~((b))~~ (d) The physician or QHCP spends ~~((thirty))~~ 30 or more minutes per calendar month providing oversight for the client's care.

~~((3))~~ (2) The ~~((department reimburses))~~ medicaid agency pays for only one ~~((physician))~~ care plan oversight service per client, per month ~~((, for physician care plan oversight services.~~

~~(4) The department reimburses for physician care plan oversight services during the global surgical reimbursement period only when the care plan oversight is unrelated to the surgery).~~

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.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-1250 Physician standby services. (1) The ~~((department reimburses))~~ medicaid agency pays physician standby services only when the standby physician or qualified health care professional (QHCP) does not provide care or services to other clients during this period, and either:

(a) The services are provided in conjunction with newborn care history and examination, or result in an admission to a neonatal intensive care unit on the same day; or

(b) A physician or QHCP requests another physician or QHCP to stand by, resulting in the prolonged attendance by the second physician without face-to-face client contact.

(2) The ~~((department))~~ agency does not ~~((reimburse))~~ pay for physician standby services when any of the following occur:

(a) The standby ends in a surgery or procedure included in a global surgical reimbursement;

(b) The standby period is less than ~~((thirty))~~ 30 minutes; or

(c) Time is spent proctoring another physician.

~~(3) ((One unit of physician standby service equals thirty minutes. The department reimburses subsequent periods of physician standby service only when full thirty minutes of standby is provided for each unit billed. The department rounds down fractions of a thirty-minute time unit.~~

~~(4))~~ The ~~((provider))~~ physician or QHCP must clearly document the need for physician standby services in the client's medical record.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-1350 Prolonged physician-related services. (1) The ~~((department reimburses))~~ medicaid agency pays for prolonged services based on established medicare guidelines. The services provided may or may not be continuous. The services provided must meet both of the following:

(a) Consist of face-to-face contact between the physician or qualified health care professional (QHCP) and the client; and

(b) Be provided with other services.

(2) The ~~((department allows reimbursement))~~ medicaid agency pays for a prolonged service procedure in addition to an evaluation and management (E&M) procedure or consultation ~~((, up to three hours per client, per diagnosis, per day,))~~ subject to ~~((other))~~ applicable coding limitations ~~((in the CPT codes that may be used))~~ and appropriate modifiers. ~~((The applicable CPT codes are indicated in the fee schedule.))~~

WSR 25-18-057
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 24-01—Filed August 28, 2025, 7:55 a.m., effective September 28, 2025]

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

Purpose: The Washington state department of ecology (ecology) adopted new chapter 173-339 WAC, Cosmetic products restrictions.

The adopted rule:

- Restricts the manufacture, sale, and distribution of cosmetic products in Washington state that contain intentionally added formaldehyde and chemicals that release formaldehyde.
- Identifies 25 formaldehyde-releasing chemicals that are restricted by rule when intentionally added to cosmetic products. This will help manufacturers investigate their supply chain and formulate products without chemicals that release formaldehyde.
- Defines "intentionally added" to clarify the applicability of the restrictions on toxic chemicals in the Toxic-Free Cosmetics Act (RCW 70A.560.020¹). Applying the definition of "intentionally added" to the statutory restriction on formaldehyde restricts all chemicals that release formaldehyde.

¹ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.560.020>.

The restrictions in the rule and in the Toxic-Free Cosmetics Act:

- Affect cosmetics manufacturers, distributors, retailers, and cosmetology businesses operating in Washington state.
- Apply to cosmetic products used in services, sold online, and sold in physical stores.

Formaldehyde releasers in the adopted rule:

Item	Chemical name	Chemical Abstracts Service Register Number
1	DMDM hydantoin	6440-58-0
2	Diazolidinyl urea	78491-02-8
3	Imidiazolidinyl urea	39236-46-9
4	Quaternium-15	4080-31-3; 51229-78-8
5	Tosylamide/formaldehyde resin (PTSAF)	25035-71-6
6	2-Bromo-2-Nitropropane-1,3-Diol (Bronopol)	52-51-7
7	Sodium hydroxymethyl-glycinate	70161-44-3
8	Polyoxymethylene urea	9011-05-6; 68611-64-3
9	Polyoxymethylene melamine	9003-08-1
10	5-Bromo-5-Nitro-1,3-Dioxane (Bronidox)	30007-47-7
11	7-Ethylbicyclo-oxazolidine (Bioban CS1246)	7747-35-5
12	Benzylhemiformal	14548-60-8
13	Dimethylhydantoin formaldehyde (DMHF)	26811-08-5; 9065-13-8
14	Dimethylol glycol	3586-55-8
15	Dimethylol urea	140-95-4
16	Dimethyl oxazolidine	51200-87-4
17	MDM hydantoin	116-25-6; 27636-82-4; 16228-00-5
18	Methenamine	100-97-0
19	Methylal	109-87-5
20	Paraformaldehyde	30525-89-4

Item	Chemical name	Chemical Abstracts Service Register Number
21	Polyoxymethylene	9002-81-7
22	Tetramethylol-glycoluril	5395-50-6
23	Timonacic (when used in heat-activated hair straighteners)	444-27-9
24	Tris (hydroxymethyl) nitromethane	126-11-4
25	Urea, polymer with formaldehyde, isobutylated	68002-18-6

Key dates:

- The rule was adopted on August 28, 2025.
- The rule takes effect on September 28, 2025.
- The restrictions in rule take effect on January 1, 2027.
- In-state retailers may sell existing stock through December 31, 2027.

We adopted the rule to restrict the manufacture, sale, and distribution of cosmetic products in Washington state that contain intentionally added formaldehyde and chemicals that release formaldehyde. Formaldehyde can cause cancer, respiratory problems such as asthma, allergic skin responses, and irritation of and damage to eyes and skin. Restricting these chemicals will reduce consumers' and workers' exposure to formaldehyde from cosmetic products, such as makeup, shampoo, and shaving cream.

Citation of Rules Affected by this Order: New chapter 173-339 WAC, Cosmetic products restrictions.

Statutory Authority for Adoption: Chapter 70A.560 RCW, Toxic-Free Cosmetics Act.

Other Authority: Ecology completed an environmental justice assessment in accordance with RCW 70A.02.060 as a part of this rule making.

Adopted under notice filed as WSR 25-05-003 on February 6, 2025.
Changes Other than Editing from Proposed to Adopted Version:

- WAC 173-339-020 Acronyms and definitions.
 - Revised the definition of "existing stock" to clarify that "existing stock" means cosmetic products physically located in Washington state on or before the date the restriction takes effect that in-state retailers, including cosmetology businesses, intend to sell to end-use consumers.
 - Added a definition for "in-state retailer" to clarify that "in-state retailer" means a person or business, including a cosmetology business, that sells cosmetic products to end-use consumers and is located in Washington state.
 - Revised the definition of "intentionally added chemical" to clarify that "intentionally added chemical" means a chemical that serves an intended function in the cosmetic product or in an ingredient in the cosmetic product.
- WAC 173-339-110 Formaldehyde and formaldehyde releasers.
 - Revised the restriction on formaldehyde in subsection (2)(a)(ii) to clarify that the restriction also applies to the addition of a chemical selected to release formaldehyde to the product or ingredient over time or under conditions of product use.
 - Revised the list of formaldehyde releasers in Table 1. We removed three formaldehyde releasers.
 - Revised subsection (1)(c)(ii)(C) to clarify that credible evidence may include information, data, or sources.

A final cost-benefit analysis is available by contacting Stacey Callaway, Department of Ecology, Hazardous Waste and Toxics Reduction Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-584-5661, Washington relay service or TTY call 711 or 877-833-6341, email ToxicFreeCosmetics@ecy.wa.gov, website <https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-339>, <https://apps.ecology.wa.gov/publications/SummaryPages/2504045.html>.

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 8, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 28, 2025.

Casey D. Sixkiller
Director

RDS-5886.8

**Chapter 173-339 WAC
COSMETIC PRODUCTS RESTRICTIONS**

PART A - GENERAL

NEW SECTION

WAC 173-339-010 Authority and purpose. (1) **Authority.** Chapter 70A.560 Revised Code of Washington (RCW) authorizes the Washington state department of ecology (ecology) to implement, administer, and enforce chapter 70A.560 RCW.

(2) **Purpose.** The goal of this chapter is to implement chapter 70A.560 RCW. This chapter ensures the safety of cosmetic products and protects Washington residents, particularly people with higher toxic exposures.

(a) This chapter implements chapter 70A.560 RCW by establishing:

(i) Definitions to supplement those in RCW 70A.560.010.

(ii) Ecology's determination of chemicals used in cosmetic products that release formaldehyde (formaldehyde releasers), which are additionally restricted in cosmetic products (RCW 70A.560.020 (1)(c) and 70A.560.030 (2)(b) and (c)).

(iii) Other generally applicable provisions pertaining to ecology's administration and enforcement of chapter 70A.560 RCW.

(b) This chapter implements chapter 70A.560 RCW by clarifying:

(i) The restrictions pertaining to cosmetic products that contain the chemicals or compounds specified in RCW 70A.560.020 (1)(a) through (h), and lead and lead compounds specified in RCW 70A.560.020(2).

(ii) How ecology will enforce the restriction on cosmetic products that contain intentionally added formaldehyde, which takes effect January 1, 2025.

NEW SECTION

WAC 173-339-015 Applicability. (1) This chapter applies to any person who manufactures, knowingly sells (including wholesale, online, or retail), offers for sale (including wholesale, online, or retail), or distributes (including distributing for sale and distributing for use) a cosmetic product in or into Washington state.

(2) Cosmetic products.

(a) This chapter applies to cosmetic products, regardless of whether or not the product contains drug ingredients regulated by the United States Food and Drug Administration (FDA).

(b) This chapter does **not** apply to:

(i) Cosmetic products excluded from chapter 70A.560 RCW.

(ii) Cosmetic products transported or stored in Washington state solely for sale or distribution to consumers outside of Washington state.

(iii) Drug ingredients regulated by the FDA.

(iv) Prescription drugs approved by the FDA.

(v) The recycling or disposal of existing stock.

NEW SECTION

WAC 173-339-020 Acronyms and definitions. Unless ecology determines the context requires otherwise, the following definitions apply for the purposes of this chapter.

"Alias" means a synonym for a chemical or chemical in a class listed in this chapter identified using a recognized authoritative source deemed appropriate by ecology.

"Chemical abstracts service registry number" or **"CAS RN"** means the number assigned to identify a particular chemical by the chemical abstracts service, a service of the American Chemical Society that indexes and compiles abstracts of worldwide chemical literature called *chemical abstracts*.

"Cosmetic product" has the same meaning as "cosmetic product" defined in RCW 70A.560.010 and "cosmetic" defined in RCW 69.04.011:

"The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) ar-

ticles intended for use as a component of any such article; except that such term shall not include soap."

"Distributing" includes distributing for sale and distributing for use.

"Ecology" means the Washington state department of ecology.

"Existing stock" means cosmetic products physically located in Washington state on or before the date the restriction takes effect that in-state retailers, including cosmetology businesses, intend to sell to end-use consumers.

"FDA" means the United States Food and Drug Administration.

"Formaldehyde" means formaldehyde (CAS RN 50-00-0).

"In-state retailer" means a person or business, including a cosmetology business, that sells cosmetic products to end-use consumers and is located in Washington state.

"Intentionally added chemical" or **"intentionally added"** means a chemical that serves an intended function in:

- The cosmetic product.
- An ingredient in the cosmetic product.

This definition applies to the chemicals restricted in chapter 70A.560 RCW. This definition takes effect January 1, 2027.

"Manufacturer" has the same meaning as in RCW 70A.560.010:

"Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product or is an importer or domestic distributor of a product sold or offered for sale in or into the state."

"ppm" means parts per million.

"RCW" means Revised Code of Washington.

"Sell" or **"offering for sale"** includes wholesale, online, retail, and using in a service.

"WAC" means Washington Administrative Code.

NEW SECTION

WAC 173-339-025 Enforcement and penalties. (1) Any violation of chapter 70A.560 RCW or this chapter is subject to the enforcement and penalty sections of chapter 70A.560 RCW.

(2) In accordance with RCW 70A.560.030:

(a) A manufacturer that produces a product or imports or domestically distributes a product in or into Washington in violation of a requirement of chapter 70A.560 RCW or this chapter is subject to a civil penalty **not** to exceed \$5,000 for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty **not** to exceed \$10,000 for each repeat offense.

(b) A manufacturer may appeal any penalty provided for in this chapter to the pollution control hearings board.

(c) All penalties collected under this chapter shall be deposited in the model toxics control operating account created in RCW 70A.305.180.

NEW SECTION

WAC 173-339-030 Severability. If any provision of this chapter or its application to any person is held invalid, the remainder of

this chapter or the application of the provision to other persons or circumstances is **not** affected.

NEW SECTION

WAC 173-339-035 Relation to other laws and rules. In addition to the requirements of this chapter and chapter 70A.560 RCW, other laws, rules, and ordinances may apply to cosmetic products containing restricted chemicals. Nothing in this chapter is intended to excuse persons regulated by this chapter from complying with other laws, rules, ordinances, procedures, restrictions, or limitations on regulated cosmetic products.

NEW SECTION

WAC 173-339-040 Confidential business information (CBI). A person who intends to submit information to ecology may request that ecology treat that information as confidential as provided in RCW 43.21A.160 by providing appropriate documentation supporting the request.

PART B - CHEMICALS IN COSMETIC PRODUCTS

NEW SECTION

WAC 173-339-110 Formaldehyde and formaldehyde releasers. (1) **Compliance schedule.**

(a) Formaldehyde.

(i) The restriction in subsection (2) (a) of this section takes effect January 1, 2025, in accordance with RCW 70A.560.020 (1) (c).

(ii) An in-state retailer in possession of cosmetic products on the date the restriction in subsection (2) (a) of this section takes effect may exhaust their existing stock through sales to the public until January 1, 2026, in accordance with RCW 70A.560.020(3).

(b) Formaldehyde releasers.

(i) The restriction in subsection (2) (b) of this section takes effect on January 1, 2027.

(ii) An in-state retailer in possession of cosmetic products on the date the restriction in subsection (2) (b) of this section takes effect may exhaust their existing stock through sales to the public until January 1, 2028.

(2) **Restriction.**

(a) Formaldehyde.

(i) No person may manufacture, knowingly sell, offer for sale, or distribute a cosmetic product described in WAC 173-339-015(2) that

contains intentionally added formaldehyde, in accordance with RCW 70A.560.020 (1) (c).

(ii) Applying the definition of "intentionally added" in WAC 173-339-020 that takes effect on January 1, 2027:

Formaldehyde is intentionally added to a cosmetic product or ingredient when it functions as an antimicrobial, a preservative, a denaturant, a cross linker, or serves another purpose. This includes:

(A) The direct addition of formaldehyde.

(B) The addition of a chemical selected to release formaldehyde to the product or ingredient over time or under conditions of product use.

(b) Formaldehyde releasers.

No person may manufacture, knowingly sell, offer for sale, or distribute a cosmetic product described in WAC 173-339-015(2) that contains the intentionally added formaldehyde releasers, including aliases of the chemical name and aliases of the CAS RN, in the following table.

Table: Formaldehyde Releasers

Item	Chemical name	CAS RN
1	DMDM Hydantoin	6440-58-0
2	Diazolidinyl Urea	78491-02-8
3	Imidazolidinyl Urea	39236-46-9
4	Quaternium-15	4080-31-3; 51229-78-8
5	Tosylamide/Formaldehyde Resin (PTSAF)	25035-71-6
6	2-Bromo-2-Nitropropane-1,3-Diol (Bronopol)	52-51-7
7	Sodium Hydroxymethylglycinate	70161-44-3
8	Polyoxymethylene Urea	9011-05-6; 68611-64-3
9	Polyoxymethylene Melamine	9003-08-1
10	5-Bromo-5-Nitro-1,3-Dioxane (Bronidox)	30007-47-7
11	7-Ethylbicyclo-oxazolidine (Bioban CS1246)	7747-35-5
12	Benzylhemiformal	14548-60-8
13	Dimethylhydantoin formaldehyde (DMHF)	26811-08-5; 9065-13-8
14	Dimethylol Glycol	3586-55-8
15	Dimethylol Urea	140-95-4
16	Dimethyl Oxazolidine	51200-87-4
17	MDM Hydantoin	116-25-6; 27636-82-4; 16228-00-5
18	Methenamine	100-97-0
19	Methylal	109-87-5
20	Paraformaldehyde	30525-89-4
21	Polyoxymethylene	9002-81-7
22	Tetramethylolglycoluril	5395-50-6
23	Timonacic (when used in heat-activated hair straighteners)	444-27-9
24	Tris-Hydroxymethylnitromethane	126-11-4
25	Urea, polymer with formaldehyde, isobutylated	68002-18-6

(c) Compliance.

(i) Ecology may infer from any of the following actions that formaldehyde, a restricted formaldehyde releaser, or both were intentionally added.

(A) Reviewing ingredient lists.

(B) Sampling for formaldehyde in cosmetic products.

(C) Considering other relevant information.

(ii) Manufacturers may rebut this inference by submitting a statement to ecology that includes the following information.

(A) The name and address of the person submitting the statement.

(B) A statement that neither of the following were intentionally added to a cosmetic product or ingredient.

(I) Formaldehyde.

(II) A chemical known to release formaldehyde.

(C) Credible evidence supporting that statement. Credible evidence may include information, data, or sources relevant to substantiate that statement. Ecology determines what qualifies as "credible evidence" on a case-by-case basis.

(D) The following certification.

"I certify under penalty of perjury under the law of Washington that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry as the person or one of the persons who manage(s) the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete."

WSR 25-18-058

PERMANENT RULES

BATES TECHNICAL COLLEGE

[Filed August 28, 2025, 8:01 a.m., effective September 28, 2025]

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

Purpose: Bates Technical College (college) amended its student conduct code to comply with sex discrimination grievance procedures promulgated by the United States Department of Education as part of its Title IX regulations adopted in 2024. Those rules were vacated by a federal district court and are no longer effective in any jurisdiction. The purpose of these emergency rules is to bring the college's student conduct code into compliance with the Title IX regulations adopted in 2020 and currently in effect, and ensure that the code and its applicable procedures adequately protect the interests of the college's community and the constitutional and procedural rights of individual students.

Citation of Rules Affected by this Order: New WAC 495A-400-010, 495A-400-020, 495A-400-030, 495A-400-040, 495A-400-050, 495A-400-060, 495A-400-070, 495A-400-080, and 495A-400-090.

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

Other Authority: 34 C.F.R. Part 106; 20 U.S.C. §§ 1681-1688.

Adopted under notice filed as WSR 25-13-033 on June 10, 2025.

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

Date Adopted: August 28, 2025.

Hannah Herber
Executive Assistant to the President

RDS-6258.1

**Chapter 495A-400 WAC
SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES**

NEW SECTION

WAC 495A-400-010 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. § 106. To the extent these supplemental hearing procedures conflict with the Bates Technical College standard disciplinary procedures, WAC 495A-119-010 through 495A-119-210, these supplemental procedures shall take precedence. The 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 495A-400-020 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Act Amendments of 1972, 20 U.S.C. § 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 Bates Technical 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 contact with the breasts, groin, mouth, or other 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 495A-400-030 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Bates Technical 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" is defined as 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 definition 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 Section (1)(a) through (c) 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 495A-119-010 through 495A-119-210.

(4) If the student conduct officer 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 part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 495A-400-040 Initiation of discipline. (1) Upon receiving a Title IX investigation report from the Title IX coordinator, the stu-

dent 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);
- (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 a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 495A-400-050 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 495A-119-130. 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 495A-400-060 Rights of parties. (1) The Bates Technical College student conduct procedures, WAC 495A-119-010 through 495A-119-210, 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 495A-400-070 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 question 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 misconduct; 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 and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counsellors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 495A-400-080 Initial order. (1) In addition to complying with WAC 495A-119-010 through 495A-119-210, the student conduct committee will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;
 - (b) 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;
 - (c) Makes findings of fact supporting the determination;
 - (d) Reaches conclusions applying the conduct code to the facts;
 - (e) Contains a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
 - (f) Describes any disciplinary sanctions or conditions imposed against the respondent, if the committee determines the respondent violated the conduct code;
 - (g) Determines whether remedies designed to restore or preserve complainant's equal access to the Bates Technical College's education programs or activities will be provided by the college; and
 - (h) Describes the process for appealing the initial order to the college president.
- (2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 495A-400-090 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 part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the vice president of student services within 21 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 argument 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 notice of dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the vice president of student services office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing 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, vice president of student services shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the vice president of student services.

(4) Vice president of student services, 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 and conditions.

(5) The vice president of student services shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542.

WSR 25-18-088
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 2, 2025, 8:45 a.m., effective October 3, 2025]

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

Purpose: The adopted rule was federally initiated. In July 2023, the Federal Occupational Safety and Health Administration (OSHA) updated federal rules to improve tracking of workplace injuries and illnesses. The rule went into effect in January 2024. The division of occupational safety and health must update WAC rules in order to remain as-effective-as OSHA, as required by the Washington state plan.

Adopted amendments:

- Numerated definitions for ease in cross-referencing.
- Removed "you" and added "employee" or "employer" in order to provide clarity as to responsible party.
- Removed redundant terms.
- Updated gender specific terms to gender-neutral terms.
- Establishments with 100 or more employees in certain high-hazard industries must electronically submit information from their Form 300-Log of Work-Related Injuries and Illnesses, and Form 301-Injury and Illness Report to OSHA once a year. These submissions are in addition to submission of Form 300A-Summary of Work Related Injuries and Illnesses.
- Added new Appendix B-1—Designated industries required to file annual electronic submission of OSHA Form 300 and Form 301.
- Updated filing requirements for establishments listed in Appendix B-1 that had 20-249 employees the previous year.
- Renamed Appendix B to Appendix B-2.
- Updated Appendix B-2 to remove no longer used North American Industry Classification System codes and include new codes.
- To improve data quality, establishments are required to include their legal company name when making electronic submissions to OSHA from their injury and illness records.

Citation of Rules Affected by this Order: New WAC 296-27-069; and amending WAC 296-27-001, 296-27-00103, 296-27-00105, 296-27-00107, 296-27-011, 296-27-01107, 296-27-01111, 296-27-01115, 296-27-01119, 296-27-02101, 296-27-02103, 296-27-02105, 296-27-02107, 296-27-02109, 296-27-02111, 296-27-02117, 296-27-031, 296-27-03103, 296-27-03105, 296-27-061, and 296-27-071.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 25-06-082 on March 4, 2025.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 2, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 19, Repealed 0.

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

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

Date Adopted: September 2, 2025.

Joel Sacks
Director

OTS-5904.3

AMENDATORY SECTION (Amending WSR 19-17-068, filed 8/20/19, effective 1/1/20)

WAC 296-27-001 Definitions. (1) Amputation. The traumatic loss of an appendage, such as an upper or lower limb (or part of the limb) or other external body part that has been severed or cut off either completely or partially at the time of the injury, or is surgically removed due to irreparable damage. Amputations may or may not include bone loss.

Note: Amputations include fingertips and amputations of body parts that have since been reattached. Amputations do not include loss of an eye, broken or chipped teeth, scalplings, or avulsions, such as degloving, where the skin and tissue have been torn away from the underlying subcutaneous tissue, tendons, muscle, or bone.

(2) Authorized employee representative. An authorized collective bargaining agent of employees.

(3) Authorized government representative. A representative of the Secretary of Labor, conducting an inspection or investigation under the act, a representative of the Secretary of Health and Human Services (including the National Institute for Occupational Safety and Health (NIOSH)) conducting an investigation under section 20(b) of the act, or a division of occupational safety and health (DOSH) representative of the state department of labor and industries.

(4) Department. The Washington state department of labor and industries.

(5) Employer. A 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 or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations. Provided that any persons, partnership, or business entity not having employees, and who is covered by the Industrial Insurance Act, must be considered both an employer and employee.

(6) Establishment. A single physical location where business is conducted or where services or industrial operations are performed. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas and sanitary services; and similar operations, the establishment is represented by main or branch offices, terminals, stations, etc., that either supervise such activities or are the base from which personnel carry out these activities.

(a) Normally, one business location has only one establishment. Under limited conditions, the employer may consider two or more sepa-

rate businesses that share a single location to be separate establishments. You may divide one location into two or more establishments only when:

- (i) Each of the establishments represents a distinctly separate business;
- (ii) Each business is engaged in a different economic activity;
- (iii) No one industry description in the North American Industrial Classification System applies to the joint activities of the establishments; and
- (iv) Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information. For example, if an employer operates a construction company at the same location as a lumber yard, the employer may consider each business to be a separate establishment.

(b) You may combine two or more physical locations into a single establishment only when:

- (i) You operate the locations as a single business operation under common management;
- (ii) The locations are all located in close proximity to each other; and
- (iii) You keep one set of business records for the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

(c) For employees who telecommute from home, the employee's home is not a business establishment, and a separate OSHA 300 Log is not required. Employees who telecommute must be linked to one of your establishments under WAC 296-27-02101(4).

(7) First aid. For the purpose of this chapter, first aid only includes the following:

- (a) Using a nonprescription medication at nonprescription strength (for medications available in both prescription and nonprescription form, a recommendation by a physician or other licensed health care professional to use a nonprescription medication at prescription strength is considered medical treatment for recordkeeping purposes);
- (b) Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment);
- (c) Cleaning, flushing, or soaking wounds on the surface of the skin;
- (d) Using wound coverings such as bandages, Band-Aids™, gauze pads, etc., or using butterfly bandages or Steri-Strips™ (other wound closing devices such as sutures, staples, etc., are considered medical treatment);
- (e) Using hot or cold therapy;
- (f) Using any nonrigid means of support, such as elastic bandages, wraps, nonrigid back belts, etc., (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for recordkeeping purposes);
- (g) Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, back boards, etc.);

- (h) Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister;
- (i) Using eye patches;
- (j) Removing foreign bodies from the eye using only irrigation or a cotton swab;
- (k) Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs, or other simple means;
- (l) Using finger guards;
- (m) Using massages (physical therapy or chiropractic treatment are considered medical treatment for recordkeeping purposes); or
- (n) Drinking fluids for relief of heat stress.

(8) Injury or illness. An abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. Injuries and illness are recordable only if they are new, work-related cases that meet one or more of this section's recording criteria.

(9) Inpatient hospitalization. To be admitted into a hospital or equivalent facility for medical treatment.

(10) Loss of an eye(s). The physical removal of an eye occurring either at the time of injury or is surgically removed due to irreparable damage. The loss of sight without the removal is not reportable, unless the worker is admitted as an inpatient hospitalization after losing sight as a result of a worker-related incident, then it is reportable within the eight-hour time frame specified in WAC 296-27-031(1).

(11) Medical treatment. The management and care of a patient to (~~combat~~) combat disease or disorder. For the purposes of this section, medical treatment does not include:

- (a) Visits to a physician or other licensed health care professional solely for observation or counseling;
- (b) The conduct of diagnostic procedures, such as X rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes (e.g., eye drops to dilate pupils); or
- (c) First aid (see definition of first aid).

(12) OSHA. Occupational Safety and Health Administration.

(13) Other potentially infectious materials. Includes all of the following:

- (a) The following human body fluids: Semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;
- (b) Any unfixed tissue or organ (other than intact skin) from a human (living or dead);
- (c) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV; and
- (d) Blood and tissues of experimental animals infected with bloodborne pathogens.

(14) Personal representative. Any person that the employee or former employee designates as such in writing, or the legal represen-

tative of a deceased or legally incapacitated employee or former employee.

(15) Physician or other licensed health care professional. A physician or other licensed health care professional whose legally permitted scope of practice (i.e., license, registration, or certification) allows them to independently perform, or be delegated the responsibility to perform, the activities described by this regulation.

(16) Preexisting condition. An injury or illness that resulted solely from a nonwork-related event or exposure.

(17) Routine functions. For recordkeeping purposes, routine functions are those work activities the employee regularly performs at least once per week.

(18) WISHA (WISH Act). The Washington Industrial Safety and Health Act.

(19) Work environment. The establishment and other locations where one or more employees are working or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of their work.

~~((You. An employer (see definition of employer).))~~

AMENDATORY SECTION (Amending WSR 15-11-066, filed 5/19/15, effective 7/1/15)

WAC 296-27-00103 Partial exemption for employers with ~~((ten))~~ 10 or fewer employees. (1) If ~~((your))~~ the company had ~~((ten))~~ 10 or fewer employees at all times during the last calendar year, ~~((you do))~~ the employer does not need to keep injury and illness records unless DOSH, OSHA, or the Bureau of Labor Statistics (BLS) informs ~~((you))~~ the employer in writing that ~~((you))~~ the employer must keep records under this section. However, as required by WAC 296-27-031, all employers covered by WISHA must report any work-related incident that results in a fatality, inpatient hospitalization, amputation, or the loss of an eye.

(a) The partial exemption for size is based on the number of employees in the entire company.

(b) To determine if ~~((you are))~~ the company is exempt because of size, ~~((you))~~ the employer will need to determine ~~((your))~~ the company's peak employment during the last calendar year. If ~~((you))~~ the employer had no more than ~~((ten))~~ 10 employees at any time in the last calendar year, ~~((your))~~ the company qualifies for the partial exemption for size.

(2) If ~~((your))~~ the company had more than ~~((ten))~~ 10 employees at any time during the last calendar year, ~~((you))~~ the employer must keep injury and illness records unless ~~((your))~~ the establishment is classified as a partially exempt industry under WAC 296-27-00105.

AMENDATORY SECTION (Amending WSR 15-11-066, filed 5/19/15, effective 7/1/15)

WAC 296-27-00105 Partial exemption for establishments in certain industries. (1) If ~~((your))~~ the establishment is classified in a specific, low hazard industry group listed in Table 1, Industry Exemption

List for Recordkeeping at the end of this section, (~~you do~~) the employer does not need to keep injury and illness records unless DOSH, OSHA, or the BLS asks (~~you~~) to keep the records under this chapter. However, all employers must report to DOSH any work-related incident that results in a fatality, inpatient hospitalization, amputation, or the loss of an eye of any employee (see WAC 296-27-031).

(2) The partial industry classification exemption is based on the North American Industrial Classification System (NAICS), and it applies to individual business establishments. If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records while others may be exempt.

Note:

To determine your NAICS code, you can do one of the following:

1. Contact your nearest OSHA office or the department.

2. Use the search feature at the U.S. Census Bureau NAICS main web page: <http://www.census.gov/eos/www/naics/>. In the search box for the most recent NAICS, enter a keyword that describes your type of business. A list of primary business activities containing that keyword and the corresponding NAICS codes will appear. Choose the one that most closely corresponds to your primary business activity or refine your search to obtain other choices.

3. Rather than searching through a list of primary business activities, you may also view the most recent complete NAICS structure with codes and titles by clicking on the link for the most recent NAICS on the U.S. Census Bureau NAICS main web page: <http://www.census.gov/eos/www/naics/>. Then click on the two-digit sector code to see all the NAICS codes under that sector. Then choose the six-digit code of your interest to see the corresponding definition, as well as cross-references and index items, when available.

4. If you know your old SIC code, you can also find the appropriate 2002 NAICS code by using the detailed conversion (concordance) between the 1987 SIC and 2002 NAICS available in Excel format for download at the "Concordances" link at the U.S. Census Bureau NAICS main web page: <http://www.census.gov/eos/www/naics/>.

Table 1
Industry Exemption List for Record-
keeping

NAICS Code	Industry
4412	Other Motor Vehicle Dealers
4431	Electronics and Appliance Stores
4461	Health and Appliance Stores
4471	Gasoline Stations
4481	Clothing Stores
4482	Shoe Stores
4483	Jewelry, Luggage, and Leather Goods Stores
4511	Sporting Goods, Hobby, and Musical Instrument Stores
4512	Book, Periodical, and Music Stores
4531	Florists
4532	Office Supplies, Stationery, and Gift Stores
4812	Nonscheduled Air Transportation
4861	Pipeline Transportation of Crude Oil
4862	Pipeline Transportation of Natural Gas
4869	Other Pipeline Transportation
4879	Scenic and Sightseeing Transportation
4885	Freight Transportation Arrangement
5111	Newspaper, Periodical, Book, and Directory Publishers
5112	Software Publishers
5121	Motion Picture and Video Industries
5122	Sound Recording Industries
5151	Radio and Television Broadcasting

NAICS Code	Industry
5172	Wireless Telecommunications Carriers (except Satellite)
5173	Telecommunications Resellers
5179	Other Telecommunications
5181	Internet Service Providers and Web Search Portals
5182	Data Processing, Hosting, and Related Services
5191	Other Information Services
5211	Monetary Authorities—Central Bank
5221	Depository Credit Intermediation
5222	Nondepository Credit Intermediation
5223	Activities Related to Credit Intermediation
5231	Securities and Commodity Contracts Intermediation and Brokerage
5232	Securities and Commodity Exchanges
5239	Other Financial Investment Activities
5241	Insurance Carriers
5242	Agencies, Brokerages, and Other Insurance Related Activities
5251	Insurance and Employee Benefit Funds
5259	Other Investment Pools and Funds
5312	Office of Real Estate Agents and Brokers
5331	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)
5411	Legal Services
5412	Accounting, Tax Preparation, Bookkeeping, and Payroll Services
5413	Architectural, Engineering, and Related Services
5414	Specialized Design Services
5415	Computer Systems Design and Related Services
5416	Management, Scientific, and Technical Consulting Services
5417	Scientific Research and Development Services
5418	Advertising and Related Services
5511	Management of Companies and Enterprises
5611	Office Administrative Services
5614	Business Support Services
5615	Travel Arrangement and Reservation Services
5616	Investigation and Security Services
6111	Elementary and Secondary Schools
6112	Junior Colleges
6113	Colleges, Universities, and Professional Schools

NAICS Code	Industry
6114	Business Schools and Computer and Management Training
6115	Technical and Trade Schools
6116	Other Schools and Instructions
6117	Educational Support Services
6211	Offices of Physicians
6212	Offices of Dentists
6213	Offices of Other Health Practitioners
6214	Outpatient Care Centers
6215	Medical and Diagnostic Laboratories
6244	Child Day Care Services
7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures
7115	Independent Artists, Writers, and Performers
7213	Rooming and Boarding Houses
7221	Full-Service Restaurants
7222	Limited-Service Eating Places
7224	Drinking Places (Alcoholic Beverages)
8112	Electronic and Precision Equipment Repair and Maintenance
8114	Personal and Household Goods Repair and Maintenance
8121	Personal Care Services
8122	Death Care Services
8131	Religious Organizations
8132	Grantmaking and Giving Services
8133	Social Advocacy Organizations
8134	Civic and Social Organizations
8139	Business, Professional, Labor, Political, and Similar Organizations

AMENDATORY SECTION (Amending WSR 15-11-066, filed 5/19/15, effective 7/1/15)

WAC 296-27-00107 Keeping records for more than one agency. If ~~((you create))~~ the employer creates records to comply with another government agency's injury and illness recordkeeping requirements, OSHA will consider those records as meeting federal recordkeeping requirements if OSHA accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information as required by 29 C.F.R., Part 1904. ~~((You))~~ The employer may contact DOSH for help in determining whether ~~((your))~~ the records meet OSHA's requirements.

AMENDATORY SECTION (Amending WSR 15-11-066, filed 5/19/15, effective 7/1/15)

WAC 296-27-011 Recordkeeping forms and recording criteria. This section describes the types of work-related injuries and illnesses that ~~((you))~~ the employer must enter on the OSHA recordkeeping forms. This section also explains the OSHA forms that ~~((you))~~ the employer must use to record work-related fatalities, injuries, and illnesses.

AMENDATORY SECTION (Amending WSR 19-17-068, filed 8/20/19, effective 1/1/20)

WAC 296-27-01107 General recording criteria. (1) The employer must consider an injury or illness to meet the general recording criteria, and therefore to be recordable, if it results in any of the following:

- (a) Death;
- (b) Days away from work;
- (c) Restricted work or transfer to another job;
- (d) Medical treatment beyond first aid;
- (e) Loss of consciousness for any length of time.

(2) The employer must also record any case that involves a **significant injury or illness** ~~((see WAC 296-27-01107(21)))~~ (see subsection (21) of this section) diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work, job transfer, medical treatment beyond first aid, or loss of consciousness.

(3) The employer must record an injury or illness that results in death by entering a check mark on the OSHA 300 Log in the space for cases resulting in death.

(4) When an injury or illness involves one or more days away from work, the employer must record the injury or illness on the OSHA 300 Log with a check mark in the space for cases involving days away and an entry for the number of calendar days away from work in the number of days column. If the employee is out for an extended period, the employer must enter an estimate for the number of days that the employee will be away, and update the day count when the actual number of days is known.

(5) The employer begins counting days away on the day after the injury occurred or the illness began.

(6) To record an injury or illness for which the employee comes to work against the physician's or other licensed health care professional's recommendation, the employer must do the following:

(a) Record these injuries and illnesses on the OSHA 300 Log using the check box for cases with days away from work and enter the number of calendar days away recommended by the physician or other licensed health care professional.

(b) Record the days away whether the injured or ill employee follows the physician or licensed health care professional's recommendation or not.

- Notes:
1. If the employer receives recommendations from two or more physicians or other licensed health care professionals, the employer may make a decision as to which recommendation is the most authoritative and record the case based upon that recommendation.
 2. Encourage ~~((you))~~ the employee to follow the recommendation.

(7) When an employee decides to stay at home after the date a physician or other licensed health care professional recommends that the employee return to work, the employer must end the count of days away from work on the date the physician or other licensed health care professional recommends that the employee return to work.

(8) The employer must count the number of calendar days the employee was unable to work as a result of the injury or illness, regardless of whether or not the employee was scheduled to work on those day(s). Weekend days, holidays, vacation days or other days off are included in the total number of days recorded if the employee would not have been able to work on those days because of a work-related injury or illness.

(9) When a worker is injured or becomes ill on a Friday and reports to work on a Monday, and was not scheduled to work on the weekend, the employer only needs to record this case if they receive information from a physician or other licensed health care professional indicating that the employee should not have worked, or should have performed only restricted work, during the weekend. If so, the employer must record the injury or illness as a case with days away from work or restricted work and enter the day counts as appropriate.

(10) If a worker is injured or becomes ill on the day before scheduled time off such as a holiday, a planned vacation, or a temporary plant closing, the employer only needs to record the case if they receive information from a physician or other licensed health care professional indicating that the employee should not have worked, or should have performed only restricted work, during the scheduled time off. If so, the employer must record the injury or illness as a case with days away from work or restricted work and enter the day counts as appropriate.

(11) The employer is not required to keep track of the number of calendar days away from work if the injury or illness resulted in more than (~~one hundred eighty~~) 180 calendar days away from work or days of job transfer or restriction. In such a case, entering (~~one hundred eighty~~) 180 in the total days away column will be considered adequate.

(12) If the employee leaves (~~your~~) the company for some reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, the employer may stop counting days away from work, days of restriction, or days of job transfer. If the employee leaves (~~your~~) the company because of the injury or illness, the employer must estimate the total number of days away, days of restriction, or days of job transfer and enter the day count on the OSHA 300 Log.

(13) If a case occurs in one calendar year but results in days away during the next calendar year, the employer only records the injury or illness once. The employer must enter the number of calendar days away for the injury or illness on the OSHA 300 Log for the year in which the injury or illness occurred. If the employee is still away from work because of the injury or illness when (~~you prepare~~) the employer prepares the annual summary, estimate the total number of calendar days (~~you expect~~) the employee is expected to be away from work. Then use this number to calculate the total for the annual summary. Update the initial log entry later when the day count is known or reaches the (~~one hundred eighty~~) 180 day cap.

(14) The employer must meet the following requirements for recording restricted work or job transfer.

(a) When an injury or illness involves restricted work or job transfer but does not involve death or days away from work, the employer must record the injury or illness on the OSHA 300 Log by placing a check mark in the space for job transfer or restriction and enter the number of restricted or transferred days in the restricted workdays column.

(b) Restricted work occurs when, as the result of a work-related injury or illness:

(i) The employer keeps the employee from performing one or more of the routine functions of their job, or from working the full workday that they would otherwise have been scheduled to work; or

(ii) A physician or other licensed health care professional recommends that the employee not perform one or more of the routine functions of their job, or not work the full workday that they would otherwise have been scheduled to work.

(c) The employer does not have to record restricted work or job transfers if ~~((you))~~ the employer, the physician, or other licensed health care professional impose the restriction or transfer only for the day on which the injury occurred or the illness began.

(d) A recommended work restriction is recordable only if it affects one or more of the employee's routine job functions. To determine whether this is the case, the employer must evaluate the restriction in light of the routine functions of the injured or ill employee's job. If the restriction from ~~((you))~~ the employer, the physician, or other licensed health care professional keeps the employee from performing one or more of their routine job functions, or from working the full workday the injured or ill employee would otherwise have worked, the employee's work has been restricted and ~~((you))~~ the employer must record the case.

(e) If an employee works only for a partial work shift because of the work-related injury or illness, the employer must record the partial day of work as a day of job transfer or restriction. However, the employer need not record the partial day of work if it is the same day the injury occurred or the illness began.

Note: The case is considered restricted work only if the worker does not perform all of the routine functions (see definition in this chapter) of their job or does not work the full shift that they would otherwise have worked.

(15) If the employer is not clear about the physician or other licensed health care professional's recommendation (i.e., engage only in "light duty" or "take it easy for the week"), the employer may ask the physician or other licensed health care professional:

(a) "Can the employee do all of their routine job functions?"

(b) "Can the employee work all of their normally assigned work shift?"

(i) If the answer to both of these questions is "Yes," then the case does not involve a work restriction and does not have to be recorded.

(ii) If the answer to one or both of these questions is "No," the case involves restricted work and must be recorded as a restricted work case.

(iii) If the employer is unable to obtain this additional information from the physician or other licensed health care professional who recommended the restriction, record the injury or illness as a case involving restricted work.

(16) To record an injury or illness for which a physician or other licensed health care professional recommends a job restriction, but

the employee does all of their routine job functions, the employer must do the following:

(a) Record the injury or illness on the OSHA 300 Log as a restricted work case.

(b) Record this job restriction even if the employee chooses to do all of their routine job functions.

Notes: 1. If ((you receive)) the employer receives recommendations from two or more physicians or other licensed health care professionals, ((you)) the employer may make a decision as to which recommendation is the most authoritative and record the case based upon that recommendation.
2. If a physician or other licensed health care professional recommends a job restriction, ((you)) the employer should ensure that the employee complies with that restriction.

(17) If the employer assigns an injured or ill employee to a job other than their regular job for part of the day, the employer must record the case as a job transfer.

Notes: 1. This does not include the day on which the injury or illness occurred.
2. Transfers to another job are recorded in the same way as restricted work cases on the OSHA 300 Log. Example: If ((you assign)) the employer assigns, or a physician or other licensed health care professional recommends that ((you)) the employer assign(s) an injured or ill worker to their routine job duties for part of the day and to another job for the rest of the day, the injury or illness involves a job transfer. ((You)) The employer must record an injury or illness that involves a job transfer by placing a check in the box for job transfer.

(18) The employer counts days of job transfer or restriction in the same way they count days away from work. The only difference is that, if the employer permanently assigns the injured or ill employee to a job that has been modified or permanently changed in a manner that eliminates the routine functions the employee was restricted from performing, the employer may stop the day count when the modification or change is made permanent. The employer must count at least one day of restricted work or job transfer for such cases.

(19) If a work-related injury or illness results in medical treatment beyond first aid, the employer must record the case on the OSHA 300 Log. If the injury or illness did not involve death, one or more days away from work, one or more days of restricted work, or one or more days of job transfer, the employer enters a check mark in the box for cases where the employee received medical treatment but remained at work and was not transferred or restricted.

Note: The professional status of the person providing treatment has no effect on what is considered first aid or medical treatment as defined in WAC 296-27-051.

(20) The employer must record a case even if the injured or ill employee does not follow the physician or other licensed health care professional's recommendation for medical treatment.

(21) The employer must record "significant" diagnosed injuries or illnesses, such as work-related cases involving cancer, chronic irreversible disease, a fractured or cracked bone, or a punctured eardrum at the time of diagnosis by a physician or other licensed health care professional even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

Note: OSHA believes that most significant injuries and illnesses will result in one of the criteria listed in WAC 296-27-01107(1): Death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness. However, there are some significant injuries, such as a punctured eardrum or a fractured toe or rib, for which neither medical treatment nor work restrictions may be recommended. In addition, there are some significant progressive diseases, such as byssinosis, silicosis, and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of diagnosis but are likely to be recommended as the disease progresses. Cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses, and must be recorded at the initial diagnosis, even if medical treatment or work restrictions are not recommended, or are postponed, in a particular case.

AMENDATORY SECTION (Amending WSR 19-17-068, filed 8/20/19, effective 1/1/20)

WAC 296-27-01111 Recording criteria for medical removal cases.

(1) The employer must record any case that involves the medical removal of an employee on the OSHA 300 Log under the medical surveillance requirements.

(2) The employer must enter each medical removal case as either a case involving days away from work or a case involving restricted work activity. For medical removal cases that resulted from chemical exposure, ~~((you))~~ the employer must check the "poisoning" column.

Notes:

1. Standards that do not include medical removal provisions include bloodborne pathogens and noise.
2. Standards that cover specific chemical substances have medical removal provisions. These standards include, but are not limited to, lead, cadmium, methylene chloride, formaldehyde, and benzene.
3. If ~~((you))~~ the employer voluntarily removes an employee from exposure before the medical removal criteria are met, ~~((you do))~~ the employer does not have to record the case.

AMENDATORY SECTION (Amending WSR 19-17-068, filed 8/20/19, effective 1/1/20)

WAC 296-27-01115 Recording criteria for work-related tuberculosis cases. The employer must record a tuberculosis (TB) case on the OSHA 300 Log by checking the "respiratory condition" column if any employee has been occupationally exposed to anyone with a known case of active TB, and that employee subsequently develops a TB infection that is confirmed by a positive skin test or diagnosis by a physician or other licensed health care professional.

Notes:

1. The employer does not have to record a positive TB skin test result obtained at a preemployment physical because the employee was not occupationally exposed to a known case of active TB in ~~((your))~~ the workplace.
2. The employer may line-out or erase a TB case from the log under the following circumstances:
 - a. The worker contracted TB while living in a household with a person who had been previously diagnosed with active TB;
 - b. The public health department has identified the worker as a contact of an individual with a case of active TB unrelated to the workplace; or
 - c. A medical investigation shows that the employee's infection was caused by exposure to TB away from work, or proves that the case was not related to the workplace TB exposure.

AMENDATORY SECTION (Amending WSR 19-17-068, filed 8/20/19, effective 1/1/20)

WAC 296-27-01119 Forms. (1) The employer must use the following OSHA forms (or equivalent forms), for recording work-related injuries and illnesses:

- (a) OSHA 300, Log of Work-Related Injuries and Illnesses;
- (b) OSHA 300-A, Summary of Work-Related Injuries and Illnesses;

and

- (c) OSHA 301, Injury and Illness Incident Report.

(2) The employer must complete the OSHA forms as follows:

(a) At the top of the OSHA 300 Log, enter ~~((your))~~ the business information and enter a one or two line description for each recordable injury or illness. Summarize this information on the OSHA 300-A form at the end of the year.

(b) Complete an OSHA 301 Incident Report form, or an equivalent form, for each recordable injury or illness entered on the OSHA 300 Log.

(c) Enter each recordable injury or illness on the OSHA 300 Log and 301 Incident Report within seven calendar days of receiving information that a recordable injury or illness has occurred.

Note: (~~You~~) The employer may keep (~~your~~) injury and illness forms on a computer if (~~you~~) the employer can produce equivalent forms when they are needed, as described under WAC 296-27-02111, 296-27-03101(1), and 296-27-03103.

(3) The employer must follow these requirements for **privacy concern cases** when filling out the OSHA 300 Log:

(a) The employer may not enter the employee's name on the OSHA 300 Log. Instead, enter "privacy case" in the space normally used for the employee's name in order to protect the identity of the injured or ill employee when another employee, a former employee, or an authorized employee representative is provided access to the OSHA 300 Log under WAC 296-27-02111.

(b) The employer must keep a separate, confidential list of the case numbers and employee names for their privacy concern cases so they can update the cases and provide the information to the government if asked to do so.

(c) The following injuries or illnesses are the **only** types of privacy concern cases recognized by this section:

(i) An injury or illness to an intimate body part or the reproductive system;

(ii) An injury or illness resulting from a sexual assault;

(iii) Mental illnesses;

(iv) HIV infection, hepatitis, or tuberculosis;

(v) Needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (see definition in WAC 296-27-051 of this chapter); **and**

(vi) Other illnesses if the employee independently and voluntarily requests that their name not be entered on the log.

(4) If the employer has a reasonable basis to believe that information describing the privacy concern case may be personally identifiable even though the employee's name has been omitted, they may use discretion in describing the injury or illness on both the OSHA 300 and 301 forms. The employer must enter enough information to identify the cause of the incident and the general severity of the injury or illness, but they do not need to include details of an intimate or private nature. For example, a sexual assault case could be described as "injury from assault," or an injury to a reproductive organ could be described as "lower abdominal injury."

(5) If the employer decides to voluntarily disclose the forms to persons other than government representatives, employees, former employees or authorized representatives (as required by WAC 296-27-02111 and 296-27-03103), the employer must remove or hide the employees' names and other personally identifying information, except for the following cases. The employer may disclose the forms with personally identifying information only:

(a) To an auditor or consultant hired by the employer to evaluate the safety and health program;

(b) To the extent necessary for processing a claim for workers' compensation or other insurance benefits; or

(c) To a public health authority or law enforcement agency for uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required under Department of Health and Human Services Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. 164.512.

(6) Falsification, failure to keep records or reports.

(a) RCW 49.17.190(2) of the act provides that "whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction be

guilty of a gross misdemeanor and be punished by a fine of not more than ~~((ten thousand dollars))~~ \$10,000, or by imprisonment for not more than six months or by both."

(b) Failure to maintain records or file reports required by this chapter, or in the detail required by the forms and instructions issued under this chapter, may result in the issuance of citations and assessment of penalties as provided for in chapter 296-900 WAC, Administrative rules.

AMENDATORY SECTION (Amending WSR 19-17-068, filed 8/20/19, effective 1/1/20)

WAC 296-27-02101 Multiple business establishments. (1) The employer must keep a separate OSHA 300 Log for each establishment that is expected to be in operation for one year or longer.

(2) The employer must keep injury and illness records for short-term establishments (i.e., establishments that will exist for less than a year). The employer does not have to keep a separate OSHA 300 Log for each such establishment. The employer may keep one OSHA 300 Log that covers all of ~~((your))~~ the short-term establishments. The employer may also include the short-term establishments' recordable injuries and illnesses on an OSHA 300 Log that covers short-term establishments for individual company divisions or geographic regions.

(3) If the employer keeps records for an establishment at their headquarters or other central location, the employer must be able to:

(a) Transmit information about the injuries and illnesses from the establishment to the central location within seven calendar days of receiving information that a recordable injury or illness has occurred; **and**

(b) Produce and send the records from the central location to the establishment within the time frames required by WAC 296-27-02111, 296-27-03101(1), and 296-27-03103 when the employer is required to provide records to a government representative, employees, former employees, or employee representatives.

(4) If the employer has employees that work at different locations or do not work at any of their establishments, they must link each of their employees with one of their establishments for record-keeping purposes. The employer must record the injury and illness on the OSHA 300 Log of the injured or ill employee's establishment, or on an OSHA 300 Log that covers that employee's short-term establishment.

(5) If an employee of one of ~~((your))~~ the employer establishments is injured or becomes ill while visiting or working at another of ~~((your))~~ the employer establishments, or while working away from any of ~~((your))~~ the employer establishments, the employer must record the injury or illness on the OSHA 300 Log of the establishment at which the injury or illness occurred. If the employee is injured or becomes ill and is not at one of ~~((your))~~ the employer establishments, the employer must record the case on the OSHA 300 Log at the establishment at which the employee normally works.

AMENDATORY SECTION (Amending WSR 19-17-068, filed 8/20/19, effective 1/1/20)

WAC 296-27-02103 Covered employees. (1) The employer must record on the OSHA 300 Log the recordable injuries and illnesses of all employees on their payroll, whether they are labor, executive, hourly, salary, part-time, seasonal, or migrant workers. The employer also must record the recordable injuries and illnesses that occur to employees who are not on their payroll if (~~you supervise~~) the employer supervises these employees on a day-to-day basis. If the employer's business is organized as a sole proprietorship or partnership, the owner or partners are not considered employees for recordkeeping purposes.

Note: If a self-employed person is injured or becomes ill while working for (~~you~~) the employer, the employer is not required to report the injury or illness because they are not covered under WISHA or the recordkeeping requirements.

(2) The employer must record injuries and illnesses of employees from a temporary help service, employee-leasing service, or personnel supply service if they supervise these employees on a day-to-day basis.

(3) The employer must record an injury or illness of a contractor's employee who is working in (~~your~~) the establishment if they supervise them on a day-to-day basis. However, if the contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness.

(4) The employer must make sure that each injury and illness is recorded only once:

(a) Either on their OSHA 300 Log (if they provide day-to-day supervision); or

(b) On the other employer's OSHA 300 Log (if that company provides day-to-day supervision).

AMENDATORY SECTION (Amending WSR 19-17-068, filed 8/20/19, effective 1/1/20)

WAC 296-27-02105 Annual summary. (1) At the end of each calendar year, the employer must:

(a) Review the OSHA 300 Log to verify that the entries are complete and accurate, and correct any deficiencies identified;

(b) Use the OSHA 300-A Log or equivalent form of (~~your~~) the recorded injuries and illnesses to create (~~your~~) the employer's annual summary;

(c) Certify the annual summary; and

(d) Post the annual summary.

(2) The employer must complete the annual summary by doing the following:

(a) Total the columns on the OSHA 300 Log (if (~~you~~) the employer had no recordable cases, enter zeros for each column total); and

(b) Enter the calendar year covered, the company's name, establishment name, establishment address, annual average number of employees covered by the OSHA 300 Log, and the total hours worked by all employees covered by the OSHA 300 Log.

(c) Include the employee access and employer penalty statements found on the OSHA 300-A summary form when using an equivalent form as permitted by this chapter. For the definition of "equivalent form" see WAC 296-27-051.

(3) A company executive must certify that they have examined the OSHA 300 Log and that they reasonably believe, based on their knowledge of the process by which the information was recorded, that the annual summary is correct and complete.

(4) The company executive who certifies the log must be one of the following persons:

(a) An owner of the company (only if the company is a sole proprietorship or partnership);

(b) An officer of the corporation;

(c) The highest ranking company official working at the establishment; or

(d) The immediate supervisor of the highest ranking company official working at the establishment.

(5) The employer must post a copy of the annual summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. The employer must ensure that the posted annual summary is not altered, defaced or covered by other material.

(6) The employer must post the summary no later than February 1st of the year following the year covered by the records and keep the posting in place until April 30th.

AMENDATORY SECTION (Amending WSR 19-17-068, filed 8/20/19, effective 1/1/20)

WAC 296-27-02107 Retention and updating. (1) The employer must save the OSHA 300 Log, the privacy case list (if one exists), the OSHA 300-A Annual Summary, and the OSHA 301 Incident Report forms for five years following the end of the calendar year that each of these records cover.

(2) The employer must update (~~you~~) stored OSHA 300 Logs during the five-year retention period to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses. If the description or outcome of a case changes, the employer must remove or line-out the original entry and enter the new information.

Note: During the five-year retention period, the employer is not required to update the OSHA 300-A Annual Summary of Work-Related Injuries or Illnesses, or the OSHA 301 Incident Reports, but (~~you~~) may do so (~~if you wish~~).

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-02109 Change in business ownership. If (~~you~~) the business changes ownership, (~~you are~~) the employer is responsible for recording and reporting work-related injuries and illnesses only for that period of the year during which (~~you~~) the employer owned the establishment. (~~You~~) The employer must transfer these records to the new owner. The new owner must save all records of the establishment kept by the prior owner, as required by WAC 296-27-02107, but need not update or correct the records of the prior owner.

AMENDATORY SECTION (Amending WSR 19-17-068, filed 8/20/19, effective 1/1/20)

WAC 296-27-02111 Employee involvement. (1) (~~Your~~) Employees and their representatives must be involved in the recordkeeping system in several ways. The employer must do the following:

(a) Inform each employee of how they are to report an injury or illness to you.

(b) Provide employees with the information described in subsection (2) of this section.

(c) Provide access to (~~your~~) the employer's injury and illness records for (~~your~~) the employees and their representatives as described in subsection (3) of this section.

(2) The employer must do the following to ensure employees report work-related injuries and illnesses to them:

(a) Establish a reasonable procedure for employees to report work-related injuries and illnesses promptly and accurately. A procedure is not reasonable if it would deter or discourage a reasonable employee from accurately reporting a workplace injury or illness;

(b) Inform each employee of (~~your~~) the procedure for reporting work-related injuries and illnesses;

(c) Inform each employee that:

(i) Employees have the right to report work-related injuries and illnesses; and

(ii) The employer is prohibited from discharging or, in any manner, discriminating against employees for reporting work-related injuries or illnesses.

(d) The employer must not discharge or, in any manner, discriminate against any employee for reporting a work-related injury or illness.

(3) (~~Your~~) Employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the OSHA injury and illness records, with some limitations, as discussed in subsections (4) through (8) of this section.

(4) When an employee, former employee, personal representative, or authorized employee representative asks for copies of (~~your~~) current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, the employer must give the requestor a copy of the relevant OSHA 300 Log(s) by the end of the next business day.

(5) The employer must leave employee names and any other information on the OSHA 300 Log before giving copies to an employee, former employee, or an employee representative. However, to protect the privacy of injured and ill employees, the employer may not record the employee's name on the OSHA 300 Log for certain "privacy concern cases," as specified in WAC 296-27-01119(3).

(6) When an employee, former employee, or personal representative asks for a copy of the OSHA 301 Incident Report describing an injury or illness to that employee or former employee, the employer must give the requestor a copy of the OSHA 301 Incident Report containing that information by the end of the next business day.

(7) When an authorized employee representative asks for copies of the OSHA 301 Incident Reports for an establishment where the agent represents employees under a collective bargaining agreement, the employer must give copies of those forms to the authorized employee representative within seven calendar days. The employer is only required to give the authorized employee representative information from the

OSHA 301 Incident Report section titled "Tell us about the case." The employer must remove all other information from the copy of the OSHA 301 Incident Report or the equivalent substitute form that they give to the authorized employee representative.

(8) The employer may not charge for these copies the first time they are provided. However, if one of the designated persons asks for additional copies, the employer may assess a reasonable charge for retrieving and copying the records. An example of what a "reasonable charge" would be is what a print company would charge for copying the same documents.

AMENDATORY SECTION (Amending WSR 19-17-068, filed 8/20/19, effective 1/1/20)

WAC 296-27-02117 Variances from the recordkeeping rule. (1) If the employer wishes to keep records in a different manner from that prescribed in this section, the employer may submit a variance petition to the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210. The employer can obtain a variance only if they can show that their alternative recordkeeping system:

(a) Collects the same information as this section requires;

(b) Meets the purposes of the federal Occupational Safety and Health Act; and

(c) Does not interfere with the administration of the federal Occupational Safety and Health Act.

(2) The employer must include the following items in their variance petition:

(a) The employer's name and address;

(b) A list of the state(s) where the variance would be used;

(c) The address(es) of the business establishment(s) involved;

(d) A description of why the employer is seeking a variance;

(e) A description of the different recordkeeping procedures you propose to use;

(f) A description of how the employer's proposed procedures will collect the same information as would be collected by this section and achieve the purpose of the act; and

(g) A statement that the employer has informed their employees of the petition by giving them or their authorized representative a copy of the petition and by posting a statement summarizing the petition in the same way as notices are posted under 29 C.F.R. 1903.2(a).

(3) The assistant secretary will take the following steps to process your variance petition.

(a) The assistant secretary will offer ((~~your~~)) the employees and their authorized representatives an opportunity to submit written data, views, and arguments about ((~~your~~)) the variance petition.

(b) The assistant secretary may allow the public to comment on ((~~your~~)) the variance petition by publishing the petition in the *Federal Register*. If the petition is published, the notice will establish a public comment period and may include a schedule for a public meeting on the petition.

(c) After reviewing ((~~your~~)) the variance petition and any comments from ((~~your~~)) the employees and the public, the assistant secretary will decide whether or not ((~~your~~)) the proposed recordkeeping procedures will meet the purposes of the act, will not otherwise in-

terfere with the act, and will provide the same information as required by this section. If ~~((your))~~ the employer's procedures meet these criteria, the assistant secretary may grant the variance subject to such conditions as ~~((he or she finds))~~ they find appropriate.

(d) If the assistant secretary grants ~~((your))~~ the variance petition, OSHA will publish a notice in the *Federal Register* to announce the variance. The notice will include the practices the variance allows ~~((you))~~ the employer to use, any conditions that apply, and the reasons for allowing the variance.

(4) The employer must comply with this section's requirements while the assistant secretary is reviewing their variance petition.

(5) The assistant secretary may elect not to review ~~((your))~~ the variance petition if it includes an element for which ~~((you have))~~ the company has been cited and the citation is still under review by a court, an administrative law judge (ALJ), or the OSH Review Commission.

(6) A variance may be revoked for good cause. The variance revocation procedures are the same as those followed to request the exception. In cases of willfulness or where necessary for public safety, the assistant secretary will:

(a) Notify ~~((you))~~ the company in writing of the facts or conduct that may warrant revocation of ~~((your))~~ the variance; and

(b) Provide ~~((you, your))~~ the employer, the employees, and authorized employee representatives with an opportunity to participate in the revocation procedures.

(7) DOSH must recognize any recordkeeping or reporting variance issued by federal OSHA.

AMENDATORY SECTION (Amending WSR 19-17-068, filed 8/20/19, effective 1/1/20)

WAC 296-27-031 Reporting fatalities, inpatient hospitalizations, amputations, and losses of an eye as the result of work-related incidents. (1) The employer must report to DOSH within eight hours of a work-related incident that results in:

(a) A fatality; or

(b) An inpatient hospitalization of any employee.

Notes:

1. Secure the scene of work-related events that result in the death or inpatient hospitalization of any worker, refer to WAC 296-800-320.

2. Do not move equipment involved (i.e., personal protective equipment (PPE), tools, machinery or other equipment), unless it is necessary to remove the victim or prevent further injuries, refer to WAC 296-800-32010.

(2) The employer must report to DOSH within ~~((twenty-four))~~ 24 hours of a work-related incident that results in either an amputation or the loss of an eye that does not require inpatient hospitalization.

Notes:

1. If the amputation or loss of an eye requires inpatient hospitalization, follow the eight-hour reporting requirement in WAC 296-27-031(1).

2. Inpatient hospitalization that involves only observation or diagnostic testing is not a reportable inpatient hospitalization.

(3) If the employer does not learn about a reportable fatality, inpatient hospitalization, amputation, or loss of an eye at the time it takes place, the employer must make the report to DOSH within the following time periods after the fatality, inpatient hospitalization, amputation, or loss of an eye is reported to ~~((you))~~ the employer or any of ~~((your))~~ the employers' agents:

(a) Eight hours for a fatality or an inpatient hospitalization of one or more employees.

(b) ~~((Twenty-four))~~ 24 hours for an amputation or a loss of an eye that does not require inpatient hospitalization.

(4) If the employer does not learn right away that the reportable fatality, inpatient hospitalization, amputation, or loss of an eye was the result of a work-related incident, the employer must make the report to DOSH within the following time periods after ~~((you))~~ the employer or any of ~~((your))~~ the employers' agents learn that the reportable fatality, inpatient hospitalization, amputation, or loss of an eye was the result of a work-related incident:

(a) Eight hours for a fatality or an inpatient hospitalization of one or more employees.

(b) ~~((Twenty-four))~~ 24 hours for an amputation or a loss of an eye that does not require inpatient hospitalization.

(5) The employer must report the fatality, inpatient hospitalization, amputation, or loss of an eye in the required time frame using one of the following methods:

(a) By telephone to the department's toll-free telephone number, 1-800-4BE-SAFE (1-800-423-7233) or in person to the Labor and Industries' Division of Occupational Safety and Health (DOSH) office located nearest to the site of the incident;

(b) By telephone to the OSHA toll-free telephone number, 1-800-321-OSHA (1-800-321-6742); or

(c) To DOSH by any other means.

(6) If the local office is closed, the employer must report a fatality, inpatient hospitalization, amputation, or the loss of an eye incident by:

(a) Calling the department at 1-800-4BE-SAFE (1-800-423-7233); or

(b) Calling OSHA's toll-free telephone number at 1-800-321-6742.

(7) The employer must provide DOSH with the following information for each fatality, inpatient hospitalization, amputation, or loss of an eye:

(a) The establishment name;

(b) The location of the work-related incident;

(c) The time and date of the work-related incident;

(d) The type of reportable event (i.e., fatality, inpatient hospitalization, amputation, or loss of an eye);

(e) The number of employees who suffered a fatality, inpatient hospitalization, amputation, or loss of an eye;

(f) The names of the employees who suffered a fatality, inpatient hospitalization, amputation, or loss of an eye;

(g) ~~((Your))~~ The contact person and their phone number; and

(h) A brief description of the work-related incident.

(8) If a fatality does not occur during or right after the work-related incident, the employer must only report it to DOSH if the fatality occurs within ~~((thirty))~~ 30 days of the work-related incident.

(9) The employer does not have to report an incident that resulted in a fatality, inpatient hospitalization, amputation, or loss of an eye to DOSH if it occurred on a commercial or public transportation system (e.g., airplane, train, subway, or bus). However, the fatality, inpatient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if the employer is required to keep such records.

(10) The employer must report to DOSH when a heart attack occurs in the work environment that results in a fatality or inpatient hospitalization. DOSH will decide whether to investigate the event, depending on the circumstances of the heart attack.

(11) The employer must only report to DOSH each inpatient hospitalization that involves medical care or treatment. Inpatient hospi-

talization involving only observation or diagnostic testing need not be reported.

AMENDATORY SECTION (Amending WSR 19-17-068, filed 8/20/19, effective 1/1/20)

WAC 296-27-03103 Electronic submission of injury and illness records to OSHA.

Note: The information required by this section is reported and tracked by OSHA for their own injury and illness data analysis. DOSH is not notified when employers submit this information to OSHA.

(1) Summary of basic requirements.

(a) Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments that employed ~~((two hundred fifty))~~ 250 or more different employees. If ~~((your))~~ the establishment employed ~~((two hundred fifty))~~ 250 or more different employees during the course of the previous calendar year, and this chapter requires ~~((your))~~ the establishment to keep records, then ~~((you))~~ the employer must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee.

(b) Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments that both; employed ~~((twenty to two hundred forty nine))~~ 20 to 249 different employees, and are in designated industries. If ~~((your))~~ the establishment employed ~~((twenty to two hundred forty nine))~~ 20 to 249 different employees during the course of the previous calendar year, and ~~((your))~~ the establishment is in a designated industry listed in WAC 296-27-071 Appendix B-2, then ~~((you))~~ the employer must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee.

(c) Annual electronic submission of information from OSHA 300 Log of Work-Related Injuries and Illnesses and OSHA Form 301 Injury and Illness Incident Report by establishments with 100 or more employees in designated industries. If your establishment is classified in an industry listed in WAC 296-27-069 Appendix B-1, then you must electronically submit information from the OSHA Forms 300 and 301 to OSHA or OSHA's designee.

(d) Electronic submission of OSHA 300A records upon notification. All establishments not meeting the criteria of (a) or (b) of this subsection((7)) must, upon notification; electronically submit the information from ((your)) the OSHA 300A to OSHA or OSHA's designee.

((d)) (e) Electronic submission of the employer identification number (EIN) and legal name. When electronically reporting injury and illness records, the employer must also provide the EIN or federal tax identification number used by the establishment. The submission must also include a legal company name, either as part of the establishment name or separately as the company name.

(2) Basic requirements.

(a) Categories of employers that must submit OSHA Form 300A information to OSHA.

(i) First, if ~~((your))~~ the establishment had ~~((two hundred fifty))~~ 250 or more total employees over the course of the previous calendar year, and this chapter requires ~~((your))~~ the establishment to keep injury and illness records; then ~~((you))~~ the employer must submit

the required information to OSHA once a year. This information is due before the date listed in subsection (3) of this section.

~~((ii))~~ Second, if ~~((you))~~ the establishment had ~~((twenty))~~ 20 or more, but fewer than ~~((two hundred fifty))~~ 250 total employees over the course of the previous calendar year, and ~~((you))~~ the establishment is in a designated industry listed in WAC 296-27-071 Appendix B-2; then ~~((you))~~ the employer must submit the required information to OSHA once a year. This information is due before the date listed in subsection (3) of this section.

~~((iii))~~ Third, if you ~~((b))~~ Category of employers that must submit OSHA Form 300 Log of Work-Related Injuries and Illnesses and OSHA Form 301 Injury and Illness Incident Report information to OSHA.

~~((i))~~ If the establishment had 100 or more total employees over the course of the previous calendar year, and the employers' industry is in a designated industry listed in WAC 296-27-069 Appendix B-1, then the employer must submit the required information to OSHA once a year. This information is due before the date listed in subsection (3) of this section.

~~((ii))~~ If the establishment is not in either of the ~~((two))~~ three categories above, then ~~((you))~~ the employer must submit information to OSHA only when OSHA notifies ~~((you))~~ the employer to do so for an individual calendar year. OSHA's notification will provide instructions for when this information is due.

~~((b))~~ (c) Categories of employees included under (a) of this subsection requirement.

Employers must count all full-time, part-time, seasonal, and temporary workers towards their running count of individual employees for the year. Each individual employed in the establishment during any part of the previous calendar year counts as one employee.

~~((e))~~ (d) Notification from OSHA for a subsection (1)(c) of this section employer to submit records electronically.

OSHA will only notify subsection (1)(c) of this section employers by mail when they must submit information as part of an individual data collection. OSHA will also announce individual data collections through publication in the Federal Register the OSHA newsletter, and announcements on the OSHA website. If you are an employer who must routinely submit information per subsection (1)(a) and (b) of this section, then OSHA will not notify ~~((you))~~ the company about ~~((you))~~ routine submittal.

~~((d))~~ (e) Due date for the above mentioned information.

Employers required to submit information under subsection (1)(a) or (b) of this section, must submit the information once a year, by the date listed in subsection (3) of this section - Effective reporting date of this section of the year after the calendar year covered by the form or forms. Employers submitting information because OSHA notified them to submit information as part of an individual data collection under subsection (1)(c) of this section, must submit the information as specified in OSHA's notification.

~~((e))~~ (f) Process for employers to submit the above mentioned information.

Employers must submit the information electronically. OSHA will provide a secure website for the electronic submission of information. For individual data collections under subsection (1)~~((e))~~ (d) of this section, OSHA will include the website's location in the notification for the data collection.

~~((f))~~ (g) Partially exempt establishments from the recordkeeping rule itself, under WAC 296-27-00103 and/or 296-27-00105.

Employers that are partially exempt from keeping injury and illness records under WAC 296-27-00103 and/or 296-27-00105 do not have to routinely submit OSHA Form 300A information under subsection (1)(a) and (b) of this section. However, these employers must submit information under subsection (1) ~~((e))~~ (d) of this section if OSHA informs ~~((you))~~ the employer in writing that OSHA is collecting injury and illness information ~~((from you))~~ for any specific year. If ~~((you receive))~~ the company receives such a notification, then ~~((you))~~ the employer must keep the injury and illness records required by this part and submit that information as directed by OSHA.

~~((g))~~ (h) Enterprise or corporate entities electronically submitting OSHA Form 300A records on behalf of its establishment(s).

Enterprise or corporate offices which, have ownership of, or control over, one or more establishments required to submit information under subsection (1) of this section; may collect and electronically submit the information on behalf of the establishment(s).

(3) Effective reporting date.

Employers ~~((must begin submitting the above mentioned information to OSHA by the following date and schedule.~~

~~Beginning in calendar year 2020, establishments which are required to submit under subsection (1)(a) and (b) of this section must routinely submit the required information by March 2nd, for the previous calendar year. For example employers will electronically report calendar year 2019 information to OSHA after; OSHA begins accepting calendar year 2019 information, and before March 2, 2020.))~~ that are required to submit under subsection (1)(a), (b), or (c) of this section must submit all of the required information by March 2nd of the year after the calendar year covered by the form(s). For example, the employer must submit by March 2, 2025, for the forms covering 2024.

AMENDATORY SECTION (Amending WSR 15-11-066, filed 5/19/15, effective 7/1/15)

WAC 296-27-03105 Requests from the Bureau of Labor Statistics (BLS) for data. (1) If ~~((you receive))~~ the employer receives a Survey of Occupational Injuries and Illnesses form from the BLS, or a BLS designee, ~~((you))~~ the employer must promptly complete the form and return it following the instructions contained on the survey form.

(2) Each year, the BLS sends injury and illness survey forms to randomly selected employers and uses the information to create the nation's occupational injury and illness statistics. In any year, some employers will receive a BLS survey form and others will not. ~~((You do))~~ The employer does not have to send injury and illness data to the BLS unless ~~((you))~~ they receive a survey form.

(3) If ~~((you receive))~~ the employer receives a Survey of Occupational Injuries and Illnesses form from the BLS, or a BLS designee, ~~((you))~~ the employer must promptly complete the form and return it, following the instructions contained on the survey form.

(4) If ~~((you are))~~ the employer is exempt from keeping injury and illness records under WAC 296-27-00103 through 296-27-00107, the BLS may inform ~~((you))~~ the employer in writing that it will be collecting injury and illness information from ~~((you))~~ the employer in the coming year. If ~~((you receive))~~ the employer receives such a letter, ~~((you))~~ the employer must keep the injury and illness records required by WAC

296-27-01103 through 296-27-01115 and make a survey report for the year covered by the survey.

(5) Washington state employers must respond to the BLS survey form if they receive one.

AMENDATORY SECTION (Amending WSR 15-11-066, filed 5/19/15, effective 7/1/15)

WAC 296-27-061 Nonmandatory Appendix A—Age adjustment calculations for comparing audiograms for recording hearing loss. IMPORTANT: These computations may only be used for comparison of audiograms to record hearing loss on the OSHA 300 Log. This appendix is nonmandatory.

(1) In determining whether a recordable threshold shift has occurred, allowance may be made for the contribution of aging to the change in hearing level by adjusting the most recent audiogram. If ~~((you choose))~~ the employer chooses to adjust the audiogram, ~~((you))~~ the employer must follow the procedure described below. This procedure and the age correction tables were developed by the National Institute for Occupational Safety and Health in the criteria document entitled "Criteria for a Recommended Standard...Occupational Exposure to Noise," ((HSM)-11001).

(2) For each audiometric test frequency:

(a) Determine from Tables A-1 or A-2 the age correction values for the employee by:

(i) Finding the age at which the most recent audiogram was taken and recording the corresponding values of age corrections at 1000 Hz through 6000 Hz;

(ii) Finding the age at which the baseline audiogram was taken and recording the corresponding values of age corrections at 1000 Hz through 6000 Hz.

(b) Subtract the values found in step (a)(ii) from the value found in step (a)(i).

(c) The differences calculated in step (b) represent that portion of the change in hearing that may be due to aging.

EXAMPLE: Employee is a 32-year-old male. The audiometric history for his right ear is shown in decibels below.

Audiometric Test Frequency (Hz)					
Employee's age	1000	2000	3000	4000	6000
26	10	5	5	10	5
*27	0	0	0	5	5
28	0	0	0	10	5
29	5	0	5	15	5
30	0	5	10	20	10
31	5	10	20	15	15
*32	5	10	10	25	20

The audiogram at age 27 is considered the baseline since it shows the best hearing threshold levels. Asterisks have been used to identify the baseline and most recent audiogram. A threshold shift of 20 dB exists at 4000 Hz between the audiograms taken at ages 27 and 32.

(The threshold shift is computed by subtracting the hearing threshold at age 27, which was 5, from the hearing threshold at age 32, which is 25.) A retest audiogram has confirmed this shift. The contribution of aging to this change in hearing may be estimated in the following manner:

Go to Table A-1 and find the age correction values (in dB) for 4000 Hz at age 27 and age 32.

	Frequency (Hz)				
	1000	2000	3000	4000	6000
Age 32	6	5	7	10	14
Age 27	5	4	6	7	11
Difference	1	1	1	3	3

The difference represents the amount of hearing loss that may be attributed to aging in the time period between the baseline audiogram and the most recent audiogram. In this example, the difference at 4000 Hz is 3 dB. This value is subtracted from the hearing level at 4000 Hz, which in the most recent audiogram is 25, yielding 22 after adjustment. Then the hearing threshold in the baseline audiogram at 4000 Hz (5) is subtracted from the adjusted annual audiogram hearing threshold at 4000 Hz (22). Thus the age-corrected threshold shift would be 17 dB (as opposed to a threshold shift of 20 dB without age correction).

TABLE A-1 - AGE CORRECTION VALUES IN DECIBELS FOR MALES

Age	Audiometric Test Frequency (Hz)				
	1000	2000	3000	4000	6000
20 or younger	5	3	4	5	8
21	5	3	4	5	8
22	5	3	4	5	8
23	5	3	4	6	9
24	5	3	5	6	9
25	5	3	5	7	10
26	5	4	5	7	10
27	5	4	6	7	11
28	6	4	6	8	11
29	6	4	6	8	12
30	6	4	6	9	12
31	6	4	7	9	13
32	6	5	7	10	14
33	6	5	7	10	14
34	6	5	8	11	15
35	7	5	8	11	15
36	7	5	9	12	16
37	7	6	9	12	17
38	7	6	9	13	17
39	7	6	10	14	18
40	7	6	10	14	19
41	7	6	10	14	20

Audiometric Test Frequency (Hz)					
Age	1000	2000	3000	4000	6000
42	8	7	11	16	20
43	8	7	12	16	21
44	8	7	12	17	22
45	8	7	13	18	23
46	8	8	13	19	24
47	8	8	14	19	24
48	9	8	14	20	25
49	9	9	15	21	26
50	9	9	16	22	27
51	9	9	16	23	28
52	9	10	17	24	29
53	9	10	18	25	30
54	10	10	18	26	31
55	10	11	19	27	32
56	10	11	20	28	34
57	10	11	21	29	35
58	10	12	22	31	36
59	11	12	22	32	37
60 or older	11	13	23	33	38

TABLE A-2 - AGE CORRECTION VALUES IN DECIBELS FOR FEMALES

Audiometric Test Frequency (Hz)					
Age	1000	2000	3000	4000	6000
20 or younger	7	4	3	3	6
21	7	4	4	3	6
22	7	4	4	4	6
23	7	5	4	4	7
24	7	5	4	4	7
25	8	5	4	4	7
26	8	5	5	4	8
27	8	5	5	5	8
28	8	5	5	5	8
29	8	5	5	5	9
30	8	6	5	5	9
31	8	6	6	5	9
32	9	6	6	6	10
33	9	6	6	6	10
34	9	6	6	6	10
35	9	6	7	7	11
36	9	7	7	7	11
37	9	7	7	7	12
38	10	7	7	7	12
39	10	7	8	8	12

Audiometric Test Frequency (Hz)					
Age	1000	2000	3000	4000	6000
40	10	7	8	8	13
41	10	8	8	8	13
42	10	8	9	9	13
43	11	8	9	9	14
44	11	8	9	9	14
45	11	8	10	10	15
46	11	9	10	10	15
47	11	9	10	11	16
48	12	9	11	11	16
49	12	9	11	11	16
50	12	10	11	12	17
51	12	10	12	12	17
52	12	10	12	13	18
53	13	10	13	13	18
54	13	11	13	14	19
55	13	11	14	14	19
56	13	11	14	15	20
57	13	11	15	15	20
58	14	12	15	16	21
59	14	12	16	16	21
60 or older	14	12	16	17	22

NEW SECTION

WAC 296-27-069 Appendix B-1—Annual electronic submission of OSHA Form 300 and OSHA Form 301.

Designated Industries

NAICS	INDUSTRY
1111	Oilseed and Grain Farming.
1112	Vegetable and Melon Farming.
1113	Fruit and Tree Nut Farming.
1114	Greenhouse, Nursery, and Floriculture Production.
1119	Other Crop Farming.
1121	Cattle Ranching and Farming.
1122	Hog and Pig Farming.
1123	Poultry and Egg Production.
1129	Other Animal Production.
1133	Logging.
1141	Fishing.
1142	Hunting and Trapping.
1151	Support Activities for Crop Production.
1152	Support Activities for Animal Production.

NAICS	INDUSTRY
1153	Support Activities for Forestry.
2213	Water, Sewage and Other Systems.
2381	Foundation, Structure, and Building Exterior Contractors.
3111	Animal Food Manufacturing.
3113	Sugar and Confectionery Product Manufacturing.
3114	Fruit and Vegetable Preserving and Specialty Food Manufacturing.
3115	Dairy Product Manufacturing.
3116	Animal Slaughtering and Processing.
3117	Seafood Product Preparation and Packaging.
3118	Bakeries and Tortilla Manufacturing.
3119	Other Food Manufacturing.
3121	Beverage Manufacturing.
3161	Leather and Hide Tanning and Finishing.
3162	Footwear Manufacturing.
3211	Sawmills and Wood Preservation.
3212	Veneer, Plywood, and Engineered Wood Product Manufacturing.
3219	Other Wood Product Manufacturing.
3261	Plastics Product Manufacturing.
3262	Rubber Product Manufacturing.
3271	Clay Product and Refractory Manufacturing.
3272	Glass and Glass Product Manufacturing.
3273	Cement and Concrete Product Manufacturing.
3279	Other Nonmetallic Mineral Product Manufacturing.
3312	Steel Product Manufacturing from Purchased Steel.
3314	Nonferrous Metal (except Aluminum) Production and Processing.
3315	Foundries.
3321	Forging and Stamping.
3323	Architectural and Structural Metals Manufacturing.
3324	Boiler, Tank, and Shipping Container Manufacturing.
3325	Hardware Manufacturing.
3326	Spring and Wire Product Manufacturing.
3327	Machine Shops; Turned Product; and Screw, Nut, and Bolt Manufacturing.
3328	Coating, Engraving, Heat Treating, and Allied Activities.
3331	Agriculture, Construction, and Mining Machinery Manufacturing.
3335	Metalworking Machinery Manufacturing.
3361	Motor Vehicle Manufacturing.
3362	Motor Vehicle Body and Trailer Manufacturing.

NAICS	INDUSTRY
3363	Motor Vehicle Parts Manufacturing.
3366	Ship and Boat Building.
3371	Household and Institutional Furniture and Kitchen Cabinet Manufacturing.
3372	Office Furniture (including Fixtures) Manufacturing.
3379	Other Furniture Related Product Manufacturing.
4231	Motor Vehicle and Motor Vehicle Parts and Supplies Merchant Wholesalers.
4233	Lumber and Other Construction Materials Merchant Wholesalers.
4235	Metal and Mineral (except Petroleum) Merchant Wholesalers.
4239	Miscellaneous Durable Goods Merchant Wholesalers.
4244	Grocery and Related Product Merchant Wholesalers.
4248	Beer, Wine, and Distilled Alcoholic Beverage Merchant Wholesalers.
4413	Automotive Parts, Accessories, and Tire Stores.
4422	Home Furnishings Stores.
4441	Building Material and Supplies Dealers.
4442	Lawn and Garden Equipment and Supplies Stores.
4451	Grocery Stores.
4522	Department Stores.
4523	General Merchandise Stores, including Warehouse Clubs and Supercenters.
4533	Used Merchandise Stores.
4543	Direct Selling Establishments.
4811	Scheduled Air Transportation.
4841	General Freight Trucking.
4842	Specialized Freight Trucking.
4851	Urban Transit Systems.
4852	Interurban and Rural Bus Transportation.
4853	Taxi and Limousine Service.
4854	School and Employee Bus Transportation.
4859	Other Transit and Ground Passenger Transportation.
4871	Scenic and Sightseeing Transportation, Land.
4881	Support Activities for Air Transportation.
4883	Support Activities for Water Transportation.
4889	Other Support Activities for Transportation.
4911	Postal Service.
4921	Couriers and Express Delivery Services.
4931	Warehousing and Storage.
5322	Consumer Goods Rental.
5621	Waste Collection.

NAICS	INDUSTRY
5622	Waste Treatment and Disposal.
6219	Other Ambulatory Health Care Services.
6221	General Medical and Surgical Hospitals.
6222	Psychiatric and Substance Abuse Hospitals.
6223	Specialty (except Psychiatric and Substance Abuse) Hospitals.
6231	Nursing Care Facilities (Skilled Nursing Facilities).
6232	Residential Intellectual and Developmental Disability, Mental Health, and Substance Abuse Facilities.
6233	Continuing Care Retirement Communities and Assisted Living Facilities for the Elderly.
6239	Other Residential Care Facilities.
6243	Vocational Rehabilitation Services.
7111	Performing Arts Companies.
7112	Spectator Sports.
7131	Amusement Parks and Arcades.
7211	Traveler Accommodation.
7212	RV (Recreational Vehicle) Parks and Recreational Camps.
7223	Special Food Services.

AMENDATORY SECTION (Amending WSR 19-17-068, filed 8/20/19, effective 1/1/20)

WAC 296-27-071 Appendix B-2—Annual electronic submission of OSHA Form 300A.

**((Table 3))
Designated Industries**

NAICS	INDUSTRY
11	Agriculture, forestry, fishing and hunting
22	Utilities
23	Construction
31-33	Manufacturing
42	Wholesale trade
4413	Automotive parts accessories, and tire stores
4421	Furniture stores
4422	Home furnishings stores
4441	Building material and supplies dealers
4442	Lawn and garden equipment and supplies stores
4451	Grocery stores
4452	Specialty food stores
((4521)) 4522	Department stores
((4529))	Other general merchandise stores))

NAICS	INDUSTRY
4523	<u>General merchandise stores, including warehouse clubs and supercenters</u>
4533	Used merchandise stores
4542	Vending machine operators
4543	Direct selling establishments
4811	Scheduled air transportation
4841	General freight trucking
4842	Specialized freight trucking
4851	Urban transit systems
4852	Interurban and rural bus transportation
4853	Taxi and limousine service
4854	School and employee bus transportation
4855	Charter bus industry
4859	Other transit and ground passenger transportation
4871	Scenic and sightseeing transportation, land
4881	Support activities for air transportation
4882	Support activities for rail transportation
4883	Support activities for water transportation
4884	Support activities for road transportation
4889	Other support activities for transportation
4911	Postal service
4921	Couriers and express delivery services
4922	Local messengers and local delivery
4931	Warehousing and storage
5152	Cable and other subscription programming
5311	Lessors of real estate
5321	Automotive equipment rental and leasing
5322	Consumer goods rental
5323	General rental centers
5617	Services to buildings and dwellings
5621	Waste collection
5622	Waste treatment and disposal
5629	Remediation and other waste management services
6219	Other ambulatory health care services
6221	General medical and surgical hospitals
6222	Psychiatric and substance abuse hospitals
6223	Specialty (except psychiatric and substance abuse) hospitals
6231	Nursing care facilities
6232	Residential mental retardation, mental health and substance abuse facilities
6233	Community care facilities for the elderly
6239	Other residential care facilities
6242	Community food and housing, and emergency and other relief services
6243	Vocational rehabilitation services

NAICS	INDUSTRY
7111	Performing arts companies
7112	Spectator sports
7121	Museums, historical sites, and similar institutions
7131	Amusement parks and arcades
7132	Gambling industries
7211	Traveler accommodation
7212	RV (recreational vehicle) parks and recreational camps
((7213	Rooming and boarding houses))
7223	Special food services
8113	Commercial and industrial machinery and equipment (except automotive and electronic) repair and maintenance
8123	Dry-cleaning and laundry services

WSR 25-18-095

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed September 2, 2025, 11:30 a.m., effective September 30, 2025]

Effective Date of Rule: September 30, 2025.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 82.04.281 requires the department of revenue to publish a standard deduction by rule by September 30, 2020, and by September 30th of every fifth year thereafter, based on the national average thereof as reported by the United States Census Bureau's economic census.

Purpose: This rule provides tax reporting instructions for persons in the radio and television broadcasting industry. It is being amended to update the standard deduction for gross receipts from national, network, and regional advertising.

Citation of Rules Affected by this Order: Amending WAC 458-20-241 Radio and television broadcasting.

Statutory Authority for Adoption: RCW 82.32.300 and 82.04.281.

Adopted under notice filed as WSR 25-14-103 on July 1, 2025.

A final cost-benefit analysis is available by contacting Patrick Matutina, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1304, fax 360-534-1606, email patrickm2M@dor.wa.gov, website dor.wa.gov.

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

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

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

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

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

Date Adopted: September 2, 2025.

Perry Stern
Rules Coordinator

RDS-6351.1

AMENDATORY SECTION (Amending WSR 21-12-085, filed 6/1/21, effective 7/2/21)

WAC 458-20-241 Radio and television broadcasting. (1) Introduction.

(a) This section provides tax reporting instructions for persons in the radio and television broadcasting industry. It explains the application of business and occupation (B&O) tax, retail sales tax, and use tax to the industry and provides an explanation of the various deductions available.

(b) For a discussion of the tax liabilities of subscriber television services, see WAC 458-20-227.

(c) For a discussion of the taxability of digital products, see WAC 458-20-15503.

(2) **Definitions.** For the purpose of this rule:

(a) "Broadcast" or "broadcasting" includes both radio and television commercial broadcasting stations unless it clearly appears from the context to refer only to radio or television.

(b) "Local advertising" means all broadcast advertising other than national, network, or regional advertising as herein defined.

(c) "National advertising" means broadcast advertising paid for by sponsors that supply goods or services on a national or international basis.

(d) "Network advertising" means broadcast advertising originated by national or regional broadcast networks from outside the state of Washington, the broadcast advertising being supplied by national or regional network broadcasting companies.

(e) "Regional advertising" means broadcast advertising paid for by sponsors that supply goods or services on a regional basis over two or more states.

(3) **Business and occupation tax classifications.** Persons in the radio and television broadcasting industry must report business and occupation (B&O) tax based on the B&O classification of their income, as follows:

(a) **Radio and television broadcasting.** Gross income from the sale of radio or television advertising is taxable under the radio and television broadcasting classification, subject to the deduction authorized under RCW 82.04.280 (1)(f)(i) or (ii). (See subsection (4)(b) of this section for more information on the deduction);

(b) **Service and other activities.** Gross income from personal or professional services not taxed under a different classification, such as gross income from producing and making custom commercials or special programs, fees for providing writers, directors, artists, and technicians, and granting a license to use facilities (as distinct from the leasing or renting of tangible personal property, see WAC 458-20-211) is taxable under the service and other classification;

(c) **Royalties.** Gross income from charges to other broadcasters for granting the right to use intangible property (e.g., the right to use broadcast material) is taxable under the royalties classification;

(d) **Retailing or wholesaling.** Gross income from sales of tangible personal property to consumers, including gross proceeds from sales of films and tape produced for general distribution and from sales of copies of commercials, programs, films, etc., is taxable under the retailing classification even though the original was not subject to retail sales tax. Gross income from sales of tangible personal property to persons other than consumers is taxable under the wholesaling classification. Gross income from the sale of custom-made programs, commercials, films, etc., is taxable under the service and other activities classification; and

(e) **Manufacturing.** The value of special programs, such as public affairs, religious, travelogues, and other general programming, which are distributed via tangible media to other broadcasters under a lease or contract granting a mere license to use, is taxable under the manufacturing classification. (For a discussion of the taxability of digital products transferred electronically, see WAC 458-20-15503.) Manufacturing B&O tax does not apply to a recording made for the broadcaster's own use, including news, delayed programs, commercials and

promotions, special and syndicated programming, and "entire day" programming.

(4) **Deductions from gross income from advertising.**

(a) **Agency fees.** It is a general trade practice in the broadcasting industry to make allowances to advertising agencies in the form of the deduction or exclusion of a certain percentage of the gross charge made for advertising ordered by the agency for the advertiser. This allowance is deductible as a discount in the computation of the broadcaster's tax liability in the event that the allowance is shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount.

(b) **Gross receipts from national, network, and regional advertising.** The broadcasting station may deduct actual gross receipts from national, network, and regional advertising, as included in the gross amount reported under radio and television broadcasting, either by using the "standard deduction" or by itemization of the individual broadcasting station's actual receipts.

(i) The "standard deduction" for gross receipts from national, network, and regional advertising as provided by RCW 82.04.280, is a percentage based on the national average of national, network, and regional advertising as reported by the United States Census Bureau's economic census. The standard deduction percentage must be published by the department by rule by September 30, 2020, and by September 30th of every fifth year thereafter. (~~The standard deduction percentage as of September 30, 2020, is sixty-two percent.~~)

<u>Publication date</u>	<u>Standard deduction</u>
<u>September 30, 2020</u>	<u>62%</u>
<u>September 30, 2025</u>	<u>69.5%</u>

(ii) As an alternative to using the standard deduction in (b) (i) of this subsection, a broadcasting station may opt to deduct gross receipts from national, network, and regional advertising by itemizing the actual receipts therefrom.

(c) **Allocation of local advertising revenues.** Revenues from local advertising may be allocated to remove from the tax base the gross income from advertising that is intended to reach potential customers of the advertiser who are located outside the state of Washington.

(i) **Presumption.** It will be presumed that the entire gross income of radio and television stations located within the state of Washington from local advertising is subject to tax unless the taxpayer submits proof to the department that some portion of such income is exempt according to the principles set forth herein and until a specific allocation formula has been approved by the department.

(ii) **Method of allocation.**

(A) When the total daytime listening area of a radio or television station extends beyond the boundaries of the state of Washington, the allowable deduction is that portion of revenue represented by the out-of-state audience computed as a ratio to the broadcasting station's total audience as measured by the .5 millivolt/meter signal strength contour for AM radio, the one millivolt/meter or (~~sixty~~) 60 dBu signal strength contour for FM radio, the (~~twenty-eight~~) 28 dBu signal strength contour for television channels two through six, the (~~thirty-six~~) 36 dBu signal strength contour for television channels seven through (~~thirteen~~) 13, and the (~~forty-one~~) 41 dBu signal strength contour for television channels (~~fourteen through sixty-nine~~) 14 through 69 with delivery by wire, satellite, or any other

means, if any. The out-of-state audience may therefore be determined by delivery "over the air" and by community antenna television systems. However, community antenna television audiences may not be claimed by a station in the same area in which it claims an audience served over the air, thus eliminating a claim for double exemption.

(B) The most current United States and Canadian census figures must be used to determine the in-state and out-of-state audience.

(C) In the event that community antenna television subscribers are claimed as part of the out-of-state audience, the name of the systems, the location, and the number of subscribers must be provided to the department upon request. The number of subscribers will be multiplied by a factor of 2.5, representing the average size household.

(D) Upon request by the department, the broadcasting station must submit documentation substantiating the computation of the out-of-state exclusion to the department, as directed.

(5) **Retail sales tax.**

(a) Purchases by broadcasters of equipment, supplies and materials for the broadcaster's own use and not for resale are subject to the retail sales tax. This includes purchases of raw or unprocessed film, magnetic tape, DVDs, and other transcription material.

(b) If the tapes, films, etc., upon which the sales tax has been paid are later sold by the broadcaster in the regular course of business, the provisions of WAC 458-20-102 concerning purchases for dual purposes will apply.

(c) The broadcaster must collect retail sales tax on sales to consumers of packaged films, programs, etc., produced for general distribution, including training and industrial films, and also on sales of copies of films, commercials, programs, etc., even though the original was not subjected to retail sales tax.

(6) **Use tax.**

(a) Acquisition or exercise of the right to broadcast material under a right or license granted by lease or contract is not the use of tangible personal property by the broadcaster and the use tax is not applicable.

(b) Broadcasters of radio and television programs are subject to use tax on the value of articles manufactured or produced by them for their own use (excluding custom produced commercials or special programs which include, but is not necessarily limited to, recordings of news, delayed programs, commercials and promotions, special and syndicated programming, and "entire day" programming) and on the use of tangible personal property purchased or acquired under conditions whereby the retail sales tax has not been paid. The broadcaster is liable for use tax on the value (cost of production) of programming when the broadcaster sells merely the right to broadcast such material under a right or license granted by lease or contract.

WSR 25-18-099
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed September 2, 2025, 4:00 p.m., effective October 3, 2025]

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

Purpose: Clarifying that a registered domestic partnership is treated the same as a spousal relationship for purposes of selecting a retirement benefit option.

Citation of Rules Affected by this Order: Amending WAC 415-103-215, 415-103-225, 415-104-215, 415-106-600, 415-108-326, 415-110-610, and 415-112-505.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 25-14-090 on June 30, 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 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 7, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 2, 2025.

Kathryn Leathers
Director

RDS-6331.2

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-103-215 What are the WSPRS Plan 1 retirement benefit options? This section only applies to members commissioned before January 1, 2003. For purposes of this section, a registered domestic partnership is treated the same as a spousal relationship.

(1) When retiring for service, a married member can choose either Option A (historic retirement option) under RCW 43.43.260 and 43.43.270 or Option B under RCW 43.43.278. Both options include a survivor option that entitles the eligible surviving spouse and any eligible children to receive a monthly benefit after the retiree dies.

(2) **Option A (historic retirement option and survivor benefit).** The department pays the retiree a monthly retirement benefit in accordance with RCW 43.43.260 (Benefits). The department pays survivor benefits in accordance with RCW 43.43.270 (Retirement allowances).

(a) **Surviving spouse.** When the retiree dies, the department pays the retiree's surviving spouse a monthly retirement benefit equal to the gross monthly benefit then payable to the retiree, or a benefit

equal to (~~fifty~~) 50 percent of the average final salary (AFS) used to determine the retiree's benefit, whichever is less.

(b) **Surviving children when there is a surviving spouse.** If the retiree has a surviving spouse and surviving unmarried children under the age of (~~eighteen~~) 18 years, each child shall be entitled to a benefit equal to five percent of the retiree's average final salary (AFS) at retirement. The combined benefits to the surviving spouse and all children cannot exceed (~~sixty~~) 60 percent of the retiree's AFS.

(3) **Option B (actuarially equivalent retirement option and survivor benefit).** The department pays the retiree a monthly retirement benefit that is actuarially reduced from the benefit calculated under Option A. The department pays survivor benefits in accordance with RCW 43.43.278 using an actuarial reduction. See WAC 415-02-380 for more information on how your benefit is affected by choosing an optional survivor option.

(a) **Surviving spouse.** When the retiree dies, the department pays the retiree's surviving spouse a monthly retirement benefit equal to the gross monthly benefit then payable to the retiree.

(b) **Surviving children when there is a surviving spouse.** If the retiree has a surviving spouse and surviving unmarried children under the age of (~~eighteen~~) 18 years, each surviving unmarried child under the age of (~~eighteen~~) 18 years shall be entitled to a benefit equal to five percent of the retiree's average final salary (AFS) at retirement.

(4) **Benefits included in Option A and Option B.**

(a) **Cost-of-living adjustment.** The retiree's annual adjustment every July is based upon the provisions in RCW 43.43.260(5). The annual adjustment applies to the eligible surviving spouse and any eligible children, who receive a monthly benefit after the retiree dies.

(b) **Surviving spouse eligibility.** To be eligible for a benefit, the surviving spouse of a retiree must either:

(i) Have been married to the retiree prior to his or her retirement and continuously thereafter until the retiree's death; or

(ii) Have been married to the retiree for at least two years prior to the retiree's death.

(c) **Remarriage of surviving spouse.** If a surviving spouse who is receiving benefits under this subsection marries another member of WSPRS and that retiree dies before the spouse, the spouse will receive only the higher of the two survivors' benefits for which he or she qualifies. The surviving spouse cannot receive more than one survivor benefit at a time under this subsection.

(d) **Surviving children when there is no surviving spouse.** If there is no surviving spouse or the surviving spouse dies, the unmarried child or children under the age of (~~eighteen~~) 18 years shall be entitled to a benefit equal to (~~thirty~~) 30 percent of the retiree's AFS for one child and an additional (~~ten~~) 10 percent of AFS for each additional child. The combined benefits to the surviving children cannot exceed (~~sixty~~) 60 percent of the retiree's AFS. Benefit payments under this subsection will be divided equally among the children.

(e) **End of benefits.** All benefits end when the surviving spouse dies or the youngest unmarried child reaches age (~~eighteen~~) 18, whichever occurs last.

(f) **Distribution of remaining contributions.** Any remaining balance of the retiree's accumulated contributions will be paid to:

(i) The person(s), trust, organization, or retiree's estate specified by the retiree on the appropriate department designated

form, duly executed and properly on file with the department on or before the retiree's death; or

(ii) To the retiree's legal representative, if no person or entity designated in (f)(i) of this subsection is living or in existence at the time of the retiree's death.

(5) **Pop-up provision.**

(a) This subsection only applies to members retiring on or after July 1, 2000, who select Option B.

(b) If the retiree and spouse divorce, or if the spouse dies before the retiree, the retiree may request to have their benefit increased as described in WAC 415-02-380 (6)(a)(i).

AMENDATORY SECTION (Amending WSR 22-01-061, filed 12/8/21, effective 1/8/22)

WAC 415-103-225 What are my WSPRS Plan 2 retirement benefit options? This section applies to WSPRS Plan 2 members. Upon retirement for service under RCW 43.43.250, you must choose to have your monthly retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section include a survivor option. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." Upon your death your survivor beneficiary will be entitled to receive a monthly benefit for the duration of his or her life. Your monthly retirement benefit will be actuarially reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit is affected by choosing a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your life. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667 percent) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required. For purposes of this section, a registered domestic partnership is treated the same as a spousal relationship.

(a) If you are married and select a nonsurvivor benefit option, you must submit your spouse's consent, verified by notarization or other means acceptable to the department. If you do not provide veri-

fied spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 43.43.271(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, verified spousal consent is required. If you do not provide spousal consent, verified by notarization or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 43.43.271(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following four exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 43.43.271.

RDS-6390.2

AMENDATORY SECTION (Amending WSR 25-09-023, filed 4/7/25, effective 4/9/25)

WAC 415-104-215 What are my LEOFF Plan 2 retirement benefit options? If you retire for service under RCW 41.26.430 or nonduty disability under RCW 41.26.470, or if you choose to receive a monthly benefit for duty disability under RCW 41.26.470, you must choose to have your monthly retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout

your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required. For purposes of this section, a registered domestic partnership is treated the same as a spousal relationship.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by notarization or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, verified spousal consent is required. If you do not provide spousal consent, verified by notarization or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least 30 days before your retirement date, spousal consent is not required.

(4) **Do I have a benefit enhancements choice between the tiered multiplier and lump-sum benefit?**

(a) If you were a LEOFF Plan 2 member on or before February 1, 2021, and are retiring with more than 15 years of service credit, you have a choice between the tiered multiplier and the lump-sum benefit. If you are retiring with 15 years or less service credit, you do not have a choice and will receive the lump-sum benefit.

(b) If you elect the lump-sum benefit and it is \$20,000 or more, you are eligible to purchase an annuity with all or a portion of the lump-sum benefit. The minimum annuity purchase price is \$20,000.

(c) If you became a LEOFF Plan 2 member after February 1, 2021, and are retiring with more than 15 years of service credit, you will receive the tiered multiplier benefit enhancement. Members retiring with 15 years of service credit or less will receive the standard retirement benefit calculation and not an enhanced benefit.

(5) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(6) **What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(7) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following five exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(e) **Retirement type changes.** If your retirement status changes due to the acceptance of a new retirement application from service retirement to a nonduty, duty or catastrophic retirement, or duty to catastrophic retirement, you may select a different survivor benefit option. Your benefit will be recalculated to reflect your new survivor option in accordance with WAC 415-104-483.

(8) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(9) For more information, see RCW 41.26.460.

RDS-6332.2

AMENDATORY SECTION (Amending WSR 24-08-071, filed 4/2/24, effective 4/3/24)

WAC 415-106-600 What are my retirement benefit options? Upon retirement for service under RCW 41.37.210 or retirement for disability under RCW 41.37.230, you must choose to have your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required. For purposes of this section, a registered domestic partnership is treated the same as a spousal relationship.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by a notarized signa-

ture or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following five exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.37.050(3).

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(e) **Retirement type changes.** If your retirement status changes due to the acceptance of a new retirement application from service retirement to a disability or catastrophic retirement, or disability to catastrophic retirement, you may select a different survivor benefit option. Your benefit will be recalculated to reflect your new survivor option in accordance with WAC 415-106-530.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate. See RCW 41.37.170.

RDS-6333.2

AMENDATORY SECTION (Amending WSR 22-01-061, filed 12/8/21, effective 1/8/22)

WAC 415-108-326 What are my retirement benefit options? Upon retirement for service under RCW 41.40.180, 41.40.630, or 41.40.820, or for disability under RCW 41.40.210, 41.40.230, 41.40.670, or 41.40.825, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section. If you are a Plan 1 member, you may also select an optional supplemental cost of living adjustment (COLA).

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See

WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.**¹ The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required. For purposes of this section, a registered domestic partnership is treated the same as a spousal relationship.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by a notarized signature or other means acceptable to the department. If you do not provide spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What is the supplemental COLA option for Plan 1 members?** If you are a Plan 1 member, in addition to choosing a retirement benefit option described in subsection (2) of this section, you may choose to receive a supplemental annual COLA. If you select this option, your monthly retirement benefit will be actuarially reduced to offset the cost of this benefit.

(6) **What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(7) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following four exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.40.037.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(8) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 1 and 2 members:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(9) For more information, see RCW 41.40.188 (Plan 1), RCW 41.40.660 (Plan 2) and RCW 41.40.845 (Plan 3).

¹ Available to members retiring on or after January 1, 1996.

RDS-6334.2

AMENDATORY SECTION (Amending WSR 22-01-061, filed 12/8/21, effective 1/8/22)

WAC 415-110-610 What are my retirement benefit options? Upon retirement for service under RCW 41.35.420 or 41.35.680, or for disability under RCW 41.35.440 or 41.35.690, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required. For purposes of this section, a registered domestic partnership is treated the same as a spousal relationship.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.35.220.

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.35.220.

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following four exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.35.060.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-01-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 2 members:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(8) For more information, see RCW 41.35.220.

RDS-6335.2

AMENDATORY SECTION (Amending WSR 22-01-061, filed 12/8/21, effective 1/8/22)

WAC 415-112-505 What are my TRS Plan 2 or Plan 3 retirement benefit options? Upon retirement for service under RCW 41.32.765 or 41.32.875, or disability under RCW 41.32.790 or 41.32.880, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b), (c), and (d) of this section will pay a monthly benefit to your survivor after your death.

The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit for service retirement (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death, and any remaining balance of accumulated contributions will be paid according to subsection (7) of this section.

(b) **Option two: Joint and 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.**¹ The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required. For purposes of this section, a registered domestic partnership is treated the same as a spousal relationship.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.785(2) and 41.32.851(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.785(2) and 41.32.851(2).

(d) If your survivor beneficiary has been designated by a dissolution order under RCW 41.50.790, which was filed with the department at least 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary.

The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following four exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement. See RCW 41.32.044.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department;

(iv) You provide proof of your current spouse's birth date; and

(v) You exercise this option one time only.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 2:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living, then to your surviving spouse.

(C) If not paid according to (a) (i) (A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living, then to your survivor beneficiary's spouse.

(C) If not paid according to (a) (ii) (A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(8) For more information, see RCW 41.32.785 and 41.32.790 (Plan 2) and RCW 41.32.851 (Plan 3).

¹ Available to members retiring on or after January 1, 1996.

WSR 25-18-101

PERMANENT RULES

DEPARTMENT OF COMMERCE

(Public Works Board)

[Filed September 3, 2025, 7:37 a.m., effective October 4, 2025]

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

Purpose: This rule interprets when an application for emergency funding meets the requirements of RCW 43.155.160(14).

Citation of Rules Affected by this Order: Amending WAC 399-80-010(14).

Statutory Authority for Adoption: RCW 43.155.040(5).

Adopted under notice filed as WSR 25-09-162 on April 23, 2025.

Changes Other than Editing from Proposed to Adopted Version: The public works board (PWB) made the following substantive changes from the proposed to the adopted rules:

(1) Subsection [(14)](h):

- In the definition of "Damage," changed "service provider" to "eligible applicant" and added "and passings per mile" to the list of examples for how PWB would assess cost relative to size of applicant.

- In the definition of "Unforeseen Event," added "unplanned."

(2) Subsection [(14)](j):

- Changed "The board will not reimburse any funds spent on the approved emergency project before a funding agreement has been formally executed" to "The board will not process requests for reimbursement of eligible costs incurred to remedy the emergency as allowed by WAC 399-80-010 (14)(k) until a funding agreement has been formally executed."

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

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

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

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

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

Date Adopted: September 3, 2025.

Amanda Hathaway
Rules Coordinator

RDS-6267.2

AMENDATORY SECTION (Amending WSR 23-05-098, filed 2/15/23, effective 3/18/23)

WAC 399-80-010 Broadband service expansion grant and loan program. (1) The board, in collaboration with the office, shall establish a competitive grant and loan program to award funding to eligible applicants in order to promote the expansion of access to broadband service in unserved areas of the state.

(2) (a) Grants and loans may be awarded under this section to assist in funding acquisition, installation, and construction of middle mile and last mile infrastructure that supports broadband services and to assist in funding strategic planning for deploying broadband service in unserved areas.

(b) The board may choose to fund all or part of an application for funding, provided that the application meets the requirements of subsection (1) of this section.

(3) Eligible applicants for grants and loans awarded under this section include:

- (a) Local governments;
- (b) Tribes;
- (c) Nonprofit organizations;
- (d) Cooperative associations;
- (e) Multiparty entities comprised of public entity members;
- (f) Limited liability corporations organized for the purpose of expanding broadband access; and
- (g) Incorporated businesses or partnerships.

(4) (a) The board shall develop administrative procedures governing the preapplication and award process. The board shall act as fiscal agent for the program and is responsible for receiving and reviewing applications and awarding funds under this section.

(b) At least 60 days prior to the first day preapplications may be submitted each fiscal year, the board must publish on its website the specific criteria and any quantitative weighting scheme or scoring system that the board will use to evaluate or rank applications and award funding.

(c) The board may maintain separate accounting in the statewide broadband account created in RCW 43.155.165 as the board deems necessary to carry out the purposes of this section.

(d) The board must provide a method for the allocation of loans, grants, provision of technical assistance, and interest rates under this section.

(5) An applicant for a grant or loan under this section must provide the following information on the preapplication:

- (a) The location and description of the project;
- (b) Evidence regarding the unserved nature of the community in which the project is to be located;
- (c) Evidence that proposed infrastructure will be capable of scaling to greater download and upload speeds;
- (d) The number of households passed that will gain access to broadband service as a result of the project or whose broadband service will be upgraded as a result of the project;
- (e) Evidence that before submission of the application, the applicant contacted, in writing, all entities providing broadband service near the proposed project area to ask each broadband service provider's plan to upgrade broadband service in the project area to speeds that meet or exceed the state's definition for broadband serv-

ice as defined in RCW 43.330.530, within the time frame specified in the proposed grant or loan activities;

(f) If applicable, the broadband service providers' written responses to the inquiry made under (e) of this subsection;

(g) The proposed geographic broadband service area and the proposed broadband speeds in the form and manner prescribed by the board;

(h) Evidence of community support for the project; and

(i) Any additional information requested by the board.

(6) An applicant for a grant or loan under this section must provide the following information on the application:

(a) The final location and description of the project;

(b) Evidence that the proposed infrastructure will be capable of scaling to greater download and upload speeds;

(c) The number of households passed that will gain access to broadband service as a result of the project or whose broadband service will be upgraded as a result of the project;

(d) The estimated cost of retail services to end users facilitated by a project;

(e) The proposed actual download and upload speeds experienced by end users;

(f) Evidence of significant community institutions that will benefit from the proposed project;

(g) Anticipated economic, educational, health care, or public safety benefits created by the project;

(h) If available, a description of the applicant's user adoption assistance program and efforts to promote the use of newly available broadband services created by the project;

(i) The estimated total cost of the project;

(j) Other sources of funding for the project that will supplement any grant or loan award;

(k) A demonstration of the project's long-term sustainability, including the applicant's financial soundness, organizational capacity, and technical expertise;

(l) A strategic plan to maintain long-term operation of the infrastructure;

(m) If applicable, documentation describing the outcome of the broadband service providers' written responses to the inquiry made prior to or during the preapplication phase; and

(n) Any additional information requested by the board.

(7) (a) The board shall publish on its website for at least 30 days the proposed geographic broadband service area and the proposed broadband speeds for each proposed broadband project submitted in the preapplication period.

(b) The board shall, within three business days following the close of the preapplication cycle, publish on its website preapplications as described in subsection (5) of this section.

(c) The board shall set an objection period of at least 30 days.

(d) The board shall publish objection information received during the objection period that includes: (i) The objecting provider; (ii) the reason for objection; (iii) a description of how the current or proposed infrastructure meets or exceeds speeds contained in the definition of broadband service in RCW 43.330.530; (iv) existing or planned service plans or tiers and associated speeds; and (v) information about the objector's project status including percentage completed.

(8) (a) Any existing broadband service provider near the proposed project area may, submit in writing to the board, an objection to a

proposed broadband project. An objection must contain information demonstrating that:

(i) The project would result in overbuild, meaning that the objecting provider currently provides, or has begun construction to provide, broadband service to end users in the proposed project area at speeds equal to or greater than the speeds contained in the definition of broadband in RCW 43.330.530(2); or

(ii) The objecting provider commits to complete construction of broadband infrastructure and provide broadband service to end users in the proposed project area at speeds equal to or greater than the speeds contained in the definition of broadband in RCW 43.330.530(2), no later than 24 months after the date awards are made under this section for the grant and loan cycle under which the preapplication was submitted.

(b) Objections submitted to the board under this subsection must be certified by affidavit.

(c) The board shall provide a period, as specified, for applicants to submit responses to posted objections.

(d) The board may evaluate the information submitted under this section by the objecting provider and applicant and must consider it in making a determination on the proposed broadband project objected to. The board may request clarification or additional information. The board may choose to not fund a project if the board determines that the objecting provider's commitment to provide broadband service that meets the requirements of (a) of this subsection in the proposed project area is credible. In assessing the commitment, the board may consider whether the objecting provider has or will provide a bond, letter of credit, or other indicia of financial commitment guaranteeing the project's completion.

(e) If the board denies funding to an applicant as a result of a broadband service provider's objection made under this section, and the broadband service provider does not fulfill its commitment to provide broadband service in the project area, then for the following two grant and loan cycles, the board is prohibited from denying funding to an applicant on the basis of a challenge by the same broadband service provider, unless the board determines that the broadband service provider's failure to fulfill the provider's commitment was the result of factors beyond the broadband service provider's control. The board is not prohibited from denying funding to an applicant for reasons other than an objection by the same broadband service provider.

(f) An applicant or broadband service provider that objected to the application may request a debriefing conference regarding the board's decision on the application. Requests for debriefing must be coordinated by the office and must be submitted in writing in accordance with procedures specified by the office.

(g) An objecting provider may mark any proprietary business and financial information as confidential that the objecting provider is willing to defend in court as exempt under chapter 42.56 RCW.

(9) (a) In evaluating applications and awarding funds, the board shall give priority to applications that are constructed in areas identified as unserved.

(b) In evaluating applications and awarding funds, the board may give priority to applications that:

(i) Provide assistance to public-private partnerships deploying broadband infrastructure from areas currently served with broadband service to areas currently lacking access to broadband services;

(ii) Demonstrate project readiness to proceed;

(iii) Construct infrastructure that is open access, meaning that during the useful life of the infrastructure, service providers may use network services and facilities at rates, terms, and conditions that are not discriminatory or preferential between providers, and employing accountable interconnection arrangements published and available publicly;

(iv) Are submitted by tribal governments whose reservations are in rural and remote areas where reliable and efficient broadband services are unavailable to many or most residents;

(v) Bring broadband service to tribal lands, particularly to rural and remote tribal lands or areas servicing rural and remote tribal entities;

(vi) Are submitted by tribal governments in rural and remote areas that have spent significant amounts of tribal funds to address the problem but cannot provide necessary broadband services without either additional state support, additional federal support, or both;

(vii) Serve economically distressed areas of the state as the term "distressed area" is defined in RCW 43.168.020;

(viii) Offer new or substantially upgraded broadband service to important community anchor institutions including, but not limited to, libraries, educational institutions, public safety facilities, and health care facilities;

(ix) Facilitate the use of telemedicine and electronic health records, especially in deliverance of behavioral health services and services to veterans;

(x) Provide technical support and train residents, businesses, and institutions in the community served by the project to utilize broadband service;

(xi) Include a component to actively promote the adoption of newly available broadband services in the community;

(xii) Provide evidence of strong support for the project from citizens, government, businesses, and community institutions;

(xiii) Provide access to broadband service to a greater number of unserved households and businesses, including farms;

(xiv) Utilize equipment and technology demonstrating greater longevity of service;

(xv) Seek the lowest amount of state investment per new location served and leverage greater amounts of funding for the project from other private and public sources;

(xvi) Include evidence of a customer service plan;

(xvii) Consider leveraging existing broadband infrastructure and other unique solutions;

(xviii) Benefit public safety and fire preparedness; or

(xix) Demonstrate other priorities as the board, in collaboration with the office, may prescribe by rule.

(c) The board shall endeavor to award funds under this section to qualified applicants in all regions of the state.

(d) The board shall consider affordability and quality of service to end users in making a determination on any application.

(e) The board, in collaboration with the office, may develop additional rules for eligibility, project preapplications, project applications, the associated objection process, and funding priority, as provided under this subsection and subsections (3), (5), (6), (7), and (8) of this section.

(f) The board, in collaboration with the office, may adopt rules for a voluntary nonbinding mediation between incumbent providers and applicants to the grant and loan program created in this section.

(10) To ensure a grant or loan to a private entity under this section primarily serves the public interest and benefits the public, any such grant or loan must be conditioned on a guarantee that the asset or infrastructure to be developed will be maintained for public use for a period of at least 15 years.

(11)(a) No funds awarded under this section may fund more than 50 percent of the total cost of the project, except as provided in (b) of this subsection.

(b) The board may choose to fund up to 90 percent of the total cost of a project in financially distressed areas as the term "distressed area" is defined in RCW 43.168.020, and in areas identified as Indian country as the term "Indian country" is defined in WAC 458-20-192.

(c) Funds awarded to a single project under this section must not exceed \$2,000,000, except that the board may choose to fund projects qualifying for the exception in (b) of this subsection up to, but not to exceed, \$5,000,000.

(12) The board shall have such rights of recovery in the event of default in payment or other breach of financing agreement as may be provided in the agreement or otherwise by law.

(13) The community economic revitalization board shall facilitate the timely transmission of information and documents from its broadband program to the board in order to effectuate an orderly transition.

(14)(a) Emergency public works broadband projects include construction, repair, reconstruction, replacement, rehabilitation, or improvement to critical broadband infrastructure that has been made necessary by a natural disaster or damaged by unforeseen events. To ensure limited resources are provided as efficiently as possible, the board shall grant priority to emergency public works projects that replace existing infrastructure of the provider whose facilities were damaged by the natural disaster event or unforeseen event and shall not provide funds to a new provider to overbuild the existing provider unless the existing provider declines to continue operating broadband service to the area affected by the event. The loans or grants may be used to help fund all or part of an emergency public works broadband infrastructure project less any reimbursement from any of the following sources: (i) Federal disaster or emergency funds, including funds from the federal emergency management agency; (ii) state disaster or emergency funds; (iii) insurance settlements; and (iv) litigation. Applicants must reimburse the department any moneys received from the above listed sources for four years after formal project closeout within 60 days of receipt. Applicants eligible to receive moneys must use their best efforts to seek reimbursement in a timely manner.

(b) Eligible applicants for grants and loans awarded under this subsection are the same as those described in subsection (3) of this section.

(c) The board has discretion to waive certain program requirements in subsections (4) through (8) of this section if the applicant seeking emergency funding is the existing provider proposing to replace existing infrastructure impacted by the emergency.

(d) The board allocates funds to the emergency program biennially and the program is open until funds are expended.

(e) Eligible applicants must apply using the application and process provided by the board.

(f) Board deliberations—Emergency loan applications. The board will consider and approve or disapprove all eligible applications for emergency financial assistance at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(g) The applicant must be able to demonstrate substantial fiscal need for the funding to pay for the emergency repair.

(h) Definitions for this subsection (14) are as follows:

"Natural disaster" means a major, nonroutine natural or weather event. Proclamations of emergency or major disasters by federal, state, and local governments are considered key indicators of natural disasters eligible for emergency broadband funding. An emergency or major disaster declaration is not necessarily required to make a project eligible for emergency funding.

"Damage" means extraordinary physical impacts to, and the associated costs to repair, an asset that impairs or impedes the ability to provide broadband service to a community. When assessing whether the damage is extraordinary, the board will consider the cost to repair to the eligible applicant relative to its size, which may include, but is not limited to, total system revenues, number of passings and passings per mile affected by the service interruption, and total estimated population served. Damage does not include revenue loss or physical decay due to age, poor maintenance, or wear from normal or abnormal use.

"Unforeseen event" means a nonroutine, unplanned, distinct force out of the direct control of the applicant, such as, but not limited to, earthquakes, ice storms, or arson, and is above and beyond what is typically planned for in operations and maintenance plans. Unforeseen events do not include reasonably predictable impacts from climate change, nonextreme temperature conditions, lightning, rodents, falling trees, and cyberattacks.

(i) Loans must not exceed 15 years, or the useful life of the improvements, whichever is shorter.

(j) The board will not process requests for reimbursement of eligible costs incurred to remedy the emergency as allowed by (k) of this subsection until a funding agreement has been formally executed.

(k) If there is an emergency or disaster declaration by a local, state, or federal government entity that includes the proposed project area, the board may approve reimbursement of eligible costs of correcting the damage incurred after an emergency or disaster was proclaimed to have begun. Any unreimbursed eligible costs for the project may be used toward local match requirements, if any.

(l) A recipient of emergency funding must agree to a scope of work within 90 days of award.

(m) Work must begin within 90 days after the emergency funding agreement is executed. The recipient of emergency funding must complete the scope of work within the time specified in the agreement unless the board approves a written request for extension.

(n) All emergency broadband projects must comply with competitive bid requirements to the extent feasible and practicable and are subject to all cultural and historic review requirements.

(15) The definitions in RCW 43.330.530 apply throughout this section unless the context clearly requires otherwise.

(16) A "proposed broadband project" in subsections (7) and (8) of this section means a project that has been submitted as a preapplication to the board.