

WSR 21-15-009

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed July 8, 2021, 8:27 a.m., effective August 8, 2021]

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

Purpose: The agency is making housekeeping changes only. WAC 182-503-0060(2) contains cross-references to WAC 182-503-0005(2) which have been changed to WAC 182-503-0005(8). The agency has also edited the rule to replace instances of "WAH" with "apple health."

Citation of Rules Affected by this Order: Amending WAC 182-503-0060.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-10-003 on April 22, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 8, 2021.

Wendy Barcus
Rules Coordinator

OTS-2996.1

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

WAC 182-503-0060 Washington apple health (~~((WAH))~~)—Application processing times. (1) We process applications for Washington apple health (~~((WAH))~~) (medicaid) within forty-five calendar days, with the following exceptions:

(a) If you are pregnant, we process your application within fifteen calendar days;

(b) If you are applying for a program that requires a disability decision, we process your application within sixty calendar days; or

(c) The modified adjusted gross income (MAGI)-based (~~((WAH))~~) apple health application process using Washington Healthplanfinder may provide faster or real-time determination of eligibility for medicaid.

(2) For calculating time limits, "day one" is the day we get an application from you that includes at least the information described in WAC 182-503-0005(~~((2))~~) (8). If you give us your paper application during business hours, "day one" is the day you give us your application. If you give us your paper application outside of business hours, "day one" is the next business day. If you experience technical diffi-

culties while attempting to give us your application in Washington Healthplanfinder, "day one" is the day we are able to determine, based on the evidence available, that you first tried to submit an application that included at least the information described in WAC 182-503-0005((+2)) (8).

(3) We determine eligibility as quickly as possible and respond promptly to applications and information received. We do not delay a decision by using the time limits in this section as a waiting period.

(4) If we need more information to decide if you can get ((WAH)) apple health coverage, we will send you a letter within twenty calendar days of your initial application that:

(a) Follows the rules in chapter 182-518 WAC;

(b) States the additional information we need; and

(c) Allows at least ten calendar days to provide it. We will allow you more time if you ask for more time or need an accommodation due to disability or limited-English proficiency.

(5) Good cause for a delay in processing the application exists when we acted as promptly as possible but:

(a) The delay was the result of an emergency beyond our control;

(b) The delay was the result of needing more information or documents that could not be readily obtained;

(c) You did not give us the information within the time frame specified in subsection (1) of this section.

(6) Good cause for a delay in processing the application does NOT exist when:

(a) We caused the delay in processing by:

(i) Failing to ask you for information timely; or

(ii) Failing to act promptly on requested information when you provided it timely; or

(b) We did not document the good cause reason before missing a time frame specified in subsection (1) of this section.

[Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-503-0060, filed 7/29/14, effective 8/29/14.]

WSR 21-15-010

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed July 8, 2021, 8:36 a.m., effective August 8, 2021]

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

Purpose: The agency revised WAC 182-546-0125 to add definitions for aggregate fee schedule amount and ambulance transport provider, remove chemical dependency professional (CDP) definition, amend definitions with CDP to substance use disorder, and move medical attestations definition to be in alphabetical order.

The agency added new WAC 182-546-4700 and 182-546-4725 for the ambulance transport fund in accordance with chapter 74.70 RCW and for the ambulance transport quality assurance fee.

Citation of Rules Affected by this Order: New WAC 182-546-4700 and 182-546-4725; and amending WAC 182-546-0125.

Statutory Authority for Adoption: RCW 74.70, 41.05.021, 41.05.160.

Other Authority: ESSB 6534, chapter 354, Laws of 2020.

Adopted under notice filed as WSR 21-12-055 on May 26, 2021.

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 2, 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 2, Amended 1, Repealed 0.

Date Adopted: July 8, 2021.

Wendy Barcus
Rules Coordinator

OTS-3053.1

AMENDATORY SECTION (Amending WSR 20-17-010, filed 8/6/20, effective 9/6/20)

WAC 182-546-0125 Ambulance transportation—Definitions. The following definitions and those found in chapter 182-500 WAC apply to ambulance transportation services.

"Advanced life support (ALS)" - See RCW 18.73.030.

"Advanced life support (ALS) assessment" - Means an assessment performed by ALS trained personnel as part of an emergency response that was necessary because the client's reported conditions at the time of dispatch was such that only an ALS crew was qualified to perform the assessment. An ALS assessment does not necessarily result in an ambulance transport or determination that the client requires an

ALS level of service or that the transport will be reimbursed at the ALS rate.

"Advanced life support, Level 1 (ALS1)" - Means the transportation by ground ambulance vehicle and the provision of medically necessary supplies and services including the provision of an ALS assessment or at least one ALS intervention.

"Advanced life support, Level 1 (ALS1) emergency" - Means medically necessary ALS1 services, as previously specified, in the context of an emergency response. An emergency response is one that, at the time the ambulance provider is called, it responds immediately.

"Advanced life support, Level 2 (ALS2)" - Means transportation by ground ambulance vehicle and the provision of medically necessary supplies and services including at least three separate administrations of one or more medications by intravenous push/bolus or by continuous infusion (excluding crystalloid fluids) or ground ambulance transport, medically necessary supplies and services, and the provision of at least one of the ALS2 procedures listed below:

- (a) Endotracheal intubation;
- (b) Cardiac pacing;
- (c) Chest decompression;
- (d) Creation of a surgical airway;
- (e) Manual defibrillation/cardioversion;
- (f) Placement of central venous line; or
- (g) Placement of intraosseous line.

"Advanced life support (ALS) intervention" - Means a procedure that is in accordance with state and local laws, required to be done by an emergency medical technician intermediate, emergency medical technician advanced, or paramedic.

"Aggregate fee schedule amount" - See RCW 74.70.020.

"Aid vehicle" - See RCW 18.73.030.

"Air ambulance" - Means a helicopter or airplane designed and used to provide transportation for the ill and injured, and to provide personnel, facilities, and equipment to treat clients before and during transportation. Air ambulance is considered an ALS service.

"Allowable costs" - For the ground emergency medical transportation (GEMT) program only, allowable costs means an expenditure that meets the test of the appropriate Executive Office of the President of the United States, Office of Management and Budget (OMB) Circular.

"Ambulance" - Means a ground vehicle or aircraft designed and used to transport the ill and injured, provide personnel, facilities, and equipment to treat clients before and during transportation, and licensed in accordance with RCW 18.73.140.

"Ambulance transport provider" - See RCW 74.70.020.

"Bariatric patient" - Means a patient whose weight, height, or width exceeds the capacity standards of a normal ambulance gurney.

"Bariatric transport unit" - Means a specially equipped ambulance designed for the transportation of bariatric patients.

"Base rate" - Means the agency's minimum payment amount per covered trip, which includes allowances for emergency medical personnel and their services, the costs of standing orders, reusable supplies and equipment, hardware, stretchers, oxygen and oxygen administration, intravenous supplies and IV administration, disposable supplies, waiting time, and the normal overhead costs of doing business. The base rate excludes mileage.

"Basic life support (BLS)" - Means transportation by ground ambulance vehicle and the provision of medically necessary supplies and services, including BLS ambulance services as defined in chapter 18.73

RCW. The ambulance must be staffed by a person qualified as an emergency medical technician-basic (EMT basic) according to department of health (DOH) regulations. BLS does not require the ability to provide or deliver invasive medical procedures and services.

"Basic life support (BLS) emergency" - BLS services provided in an emergency response.

"Bed-confined" - Means the client is unable to perform all of the following actions:

- (a) Get up from bed without assistance;
- (b) Unable to bear weight or ambulate;
- (c) Sit in a chair or wheelchair.

"Behavioral health disorder" - Means mental disorders and substance use disorders.

"Bordering city hospital" - Means a licensed hospital in a designated bordering city (see WAC 182-501-0175).

"Brokered transportation" - Means nonemergency transportation arranged by a broker under contract with the agency, to or from covered health care services for an eligible client (also, see "Transportation provider" in WAC 182-546-5100).

"By report" - See WAC 182-500-0015.

~~("Chemical dependency professional (CDP)" - See substance use disorder professional (SUDP).)~~

"Children's long-term inpatient program (CLIP)" - Means psychiatric residential treatment provided as a result of judicial commitment or review of the CLIP committee for children five through seventeen years of age.

"Closest and most appropriate" - The agency-contracted facility or level of care in which the expected clinical benefits (e.g., improved symptoms) outweigh the expected negative effect (e.g., adverse reactions) to such an extent that the treatment or transportation is justified. This facility may not necessarily be the closest provider based solely on driving distance.

"Conditional release" - Means a period of time the client is released from inpatient care to outpatient care, provided that the client continues to meet certain conditions according to RCW 71.05.340.

"Cost allocation plan (CAP)" - Means a document that identifies, accumulates, and distributes allowable direct and indirect costs to cost objectives. The document also identifies the allocation methods used for distribution to cost objectives, based on relative benefits received.

"Designated crisis responder (DCR)" - Means a behavioral health professional appointed by the county or other authority authorized in rule to perform duties specified in chapter 71.05 RCW and who has received (~~chemical dependency~~) substance use disorder training as determined by the division of behavioral health and recovery.

"Detention" or "detain" - Means the lawful confinement of a person, under chapter 71.05 RCW.

"Direct costs" - Means all costs identified specifically with a particular final cost objective in order to meet emergency medical transportation requirements. This includes unallocated payroll costs for personnel work shifts, medical equipment and supplies, professional and contracted services, travel, training, and other costs directly related to delivering covered medical transportation services.

"Emergency medical service" - Means medical treatment and care that may be rendered at the scene of any medical emergency or while transporting a client in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.

"Emergency medical transportation" - Means ambulance transportation during which a client receives necessary emergency medical services immediately prior to, or in transit to, an appropriate medical facility.

"Emergency response" - Means a BLS or ALS level of service that has been provided in immediate response to a 911 call or the equivalent.

"Evaluation and treatment facility" - See RCW 71.05.020.

"Federal financial participation (FFP)" - Means the portion of medical assistance expenditures for emergency medical services that are paid or reimbursed by the Centers for Medicare and Medicaid Services (CMS) according to the state plan for medical assistance. Clients under Title 19, U.S. Health Resources and Services Administration (HRSA) are eligible for FFP.

"Gravely disabled" - Means a condition in which a person, as a result of a mental disorder, or as the result of the use of alcohol or other psychoactive chemicals:

(a) Is in danger of serious physical harm as a result of being unable to provide for personal health or safety; or

(b) Shows repeated and escalating loss of cognitive control over personal actions and is not receiving care essential for personal health or safety.

"Ground ambulance" - Means a ground vehicle designed and used to transport the ill and injured and to provide personnel, facilities, and equipment to treat clients before and during transportation.

"Indirect costs" - Means the costs for a common or joint purpose benefiting more than one cost objective and allocated to each objective using an agency-approved indirect rate or an allocation methodology.

"Initial detention" - Means the period, up to seventy-two hours, in which a person is involuntarily placed in an evaluation and treatment facility under RCW 71.05.150 or 71.05.153 (see RCW 71.05.160). This period begins on the date and time the evaluation and treatment facility provisionally accepts the client for admission. See definition for "petition for initial detention."

"Interfacility" - Means transportation services between hospitals.

"Invasive procedure" - Means a medically necessary operative procedure in which skin or mucous membranes and connective tissues are cut or an instrument is introduced through a natural body orifice, e.g., an intubation tube. Invasive procedures include a range of procedures from minimally invasive (biopsy, excision) to extensive (organ transplantation). This does not include use of instruments for examinations or very minor procedures such as drawing blood.

"Involuntary Treatment Act (ITA)" - See chapters 71.05 and 71.34 RCW.

"Less restrictive alternative treatment" - Means a program of individualized treatment in a less restrictive setting than inpatient treatment and that includes the services described in RCW 71.05.585.

"Lift-off fee" - Means either of the two base rates the agency pays to air ambulance providers for transporting a client. The agency establishes separate lift-off fees for helicopters and airplanes.

"Loaded mileage" - Means the distance the client is transported in the ambulance.

"Medical attestation" - Means the medical professional is attesting to the fact that the client has a condition that justifies medical transportation and the level of care that is specified by BLS or ALS

services and supplies. The condition must also be such that other means of transportation (such as taxi, bus, car, or other means) would be harmful to the client. (See WAC 182-500-0070 for additional information - Medically necessary definition.)

"Medical control" - Means the medical authority upon which an ambulance provider relies to coordinate prehospital emergency services, triage, and trauma center assignment/destination for the person being transported. The medical control is designated in the trauma care plan, by the department of health's (DOH) contracted medical program director, of the region in which the ambulance service is provided.

~~(**"Medical attestation"** - Means the medical professional is attesting to the fact that the client has a condition that justifies medical transportation and the level of care that is specified by BLS or ALS services and supplies. The condition must also be such that other means of transportation (such as taxi, bus, car, or other means) would be harmful to the client. (See WAC 182-500-0070 for additional information - Medically necessary definition.))~~

"Nonemergency ambulance transportation" - Means the use of a ground ambulance to carry a client who may be confined to a stretcher but typically does not require the provision of emergency medical services in transit, or the use of an air ambulance to or from an out-of-state health care service when the out-of-state health care service and air ambulance transportation are prior authorized by the agency. Nonemergency ambulance transportation is usually scheduled or prearranged. See definitions for "prone or supine transportation."

"Parent" - For the purpose of family initiated treatment under RCW 71.34.600 through 71.34.670, means a legal guardian, a person that has been given authorization to make health care decisions for the adolescent, a kinship caregiver who is involved in caring for the adolescent, or another relative who is responsible for the health care of the adolescent who may be required to provide a declaration under penalty of perjury stating that they are a relative responsible for the health care of the adolescent under RCW 9A.72.085.

"Petition for initial detention" - A document required by the superior court of Washington for admission of the client by the evaluation and treatment facility. This form is available on the Washington state superior court mental proceedings rules web page.

"Petition for revocation of a conditional release or less restrictive treatment" - Means a document completed by a designated crisis responder (DCR).

"Point of destination" - Means a health care facility generally equipped to provide the necessary medical, nursing, or behavioral health care necessary to treat the client's injury, illness, symptoms, or complaint.

"Point of pickup" - Means the location of the client at the time the client is placed on board the ambulance or transport vehicle.

"Prehospital care" - Means an assessment, stabilization, and emergency medical care of an ill or injured client by an emergency medical technician, paramedic, or other person before the client reaches the hospital.

"Prone or supine transportation" - Means transporting a client confined to a stretcher or gurney, with or without emergency medical services being provided in transit.

"Public institution" - Means a facility that is either an organizational part of a government entity or over which a governmental unit exercises final administrative control, (e.g., city/county jails and state correctional facilities).

"Publicly owned or operated" - Means an entity that is owned or operated by a unit of government. The unit of government is a state, city, county, special purpose district, or other governmental unit in the state that has taxing authority, has direct access to tax revenues, or is an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, Section 4.

"Qualifying expenditure" - Means an expenditure for covered services provided to an eligible beneficiary.

"Secure withdrawal management and stabilization facility" - Means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder.

"Service period" - Means July 1st through June 30th of each Washington state fiscal year.

"Shift" - Means a standard period of time assigned for a complete cycle of work as set by each participating provider.

"Specialty care transport (SCT)" - Means interfacility (hospital-to-hospital or hospital-to-skilled nursing facility) transportation of a critically injured or ill client by a ground ambulance vehicle under the command of ALS-trained personnel with additional training above the level of a paramedic.

"Standing order" - Means an order remaining in effect indefinitely until canceled or modified by an approved medical program director (regional trauma system) or attending physician.

"Substance use disorder professional (SUDP)" - Means a person certified as a substance use disorder professional by the department of health (DOH) under chapter 18.205 RCW.

"Transfer-down" - Means a transfer from a higher level facility to a facility of lower or equivalent level of care, or back to the original point of pickup (e.g., referring hospital or skilled nursing facility).

"Transfer-up" - Means a transfer from one hospital to a hospital of higher level care when the transfer and discharging hospital has inadequate facilities or care, or appropriate personnel to provide the necessary medical services required by the client.

"Trip" - Means a transportation one-way from the point of pickup to the point of destination by an authorized transportation provider.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2015 c 157, 2017 c 273, and 2016 1st sp.s. c 29. WSR 20-17-010, § 182-546-0125, filed 8/6/20, effective 9/6/20.]

OTS-3054.1

NEW SECTION

WAC 182-546-4700 Ambulance transportation—Ambulance transport fund—Purpose. Chapter 74.70 RCW establishes the quality assurance fee for specified providers of emergency ambulance services through July 1, 2024. The fee is added to base funding from all other sources

to support additional medicaid payments. The fee applies to nonpublic and nonfederal providers of emergency ambulance services. This is a dedicated fund established within the state treasury, known as the ambulance transport fund. The ambulance transport fund is used to receive and distribute funds.

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NEW SECTION

WAC 182-546-4725 Ambulance transportation—Ambulance transport fund—Notices, payment, and interest. (1) The agency assesses each ambulance transport provider a quality assurance fee to be paid on a quarterly basis.

(2) The agency sends each ambulance transport provider an assessment notice or invoice specified due dates.

(3) The agency assesses interest and penalties on quality assurance fees not paid on the due date according to RCW 43.20B.695.

(a) Fee payments more than sixty days overdue include an assessed penalty equal to the interest charge and payment due for each month for which payment is not received after sixty days.

(b) Any interest or penalties is deposited in the ambulance transport fund.

(c) The agency may waive a portion or all of the interest or penalties, or both.

(4) If a payment is sixty days past due, the agency sends written notice of delinquent fees. After written notice, the agency will deduct the past due payment, along with interest and penalties, from any reimbursement.

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WSR 21-15-022
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed July 12, 2021, 9:48 a.m., effective August 12, 2021]

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

Purpose: To ensure the department's compliance with the requirements of the child care and development fund, administered by the federal Administration for Children and Families Office of Child Care, which funds family, friend, and neighbor child care subsidies in Washington state. More specifically, require health and safety training and participation in an annual health and safety monitoring visit conducted by department staff for individuals who care for children they are related to by marriage, blood, or court decree, but who are not grandparents, great grandparents, siblings who do not live with the children cared for, aunts, great aunts, uncles, or great uncles. The required health and safety training topics are first aid and CPR; prevention and control of infectious diseases; administration of medication; prevention of, and response to, emergencies due to food and allergic reactions; building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic; the prevention of child abuse and neglect; prevention of shaken baby syndrome, head trauma; emergency preparedness and response planning for natural disasters and human-caused events; handling and storage of hazardous materials and bio contaminant disposal; transporting children; and, if caring for an infant, prevention of sudden infant death syndrome and safe sleep.

Citation of Rules Affected by this Order: Amending WAC 110-16-0005, 110-16-0015, 110-16-0025, 110-16-0030, 110-16-0035, and 110-16-0040.

Statutory Authority for Adoption: RCW 43.216.055, 43.216.065; chapter 43.216 RCW.

Adopted under notice filed as WSR 21-12-007 on May 19, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 6, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 12, 2021.

Brenda Villarreal
Rules Coordinator

OTS-2990.3

AMENDATORY SECTION (Amending WSR 18-20-081, filed 10/1/18, effective 11/1/18)

WAC 110-16-0005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) **"Benefit"** means a regular payment made by a government agency on behalf of a person eligible to receive it.

(2) **"Child"** or **"children,"** except when otherwise specified, means a child or children eligible for WCCC benefits under chapter 110-15 WAC.

(3) **"Days"** means calendar days unless otherwise specified.

(4) **"Department"** or **"DCYF"** means the department of children, youth, and families.

(5) **"In-home/relative provider"** or **"family, friends, and neighbors (FFN) provider"** means an individual who is exempt from child care licensing requirements and is approved for WCCC payments under WAC 110-15-0125. Reference in this chapter to the term "provider" means an in-home/relative or FFN provider, except when otherwise specified.

(6) **"In loco parentis"** means the adult caring for a child eligible for WCCC in the absence of the biological adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and who is responsible for exercising day-to-day care and control of the child.

(7) **"Infant"** is a child birth through eleven months of age.

(8) **"Lockdown"** or **"shelter-in-place"** means to remain inside the home when police or an official emergency response agency notifies a provider that it is unsafe to leave or be outdoors during an emergency situation.

(9) **"Parent"** means, for the purposes of this chapter, the "in loco parentis" or the biological, adoptive, or step-parent, court-ordered guardian, or custodian eligible for WCCC benefits under this chapter.

(10) **"Subsidy payment begin date"** means the first day ((the)) a provider is authorized to start billing for care provided to eligible children.

(11) **"Supervise"** or **"supervision"** means a provider must be able to see or hear the children they are responsible for at all times. Providers must use their knowledge of each child's development and behavior to anticipate what may occur to prevent unsafe or unhealthy events or conduct, or to intervene in such circumstances as soon as possible. Providers must also reposition themselves or the children to be aware of where children are and what they are doing during care. Providers must reassess and adjust their supervision each time child care activities change.

(12) **"Swimming pool"** means a pool that has a water depth greater than two feet.

(13) **"Technical assistance"** means the provision of customized supports to develop or strengthen processes, knowledge application, or implementation of services by providers.

(14) **"Toddler"** means a child twelve months through twenty-nine months of age.

(15) **"Wading pool"** means a pool that has a water depth of less than two feet. A portable wading pool is one that is formed of molded plastic or inflatable parts and can be removed after use.

(16) **"Water activities"** refers to the activities in which children in care swim or play in a body of water that poses a risk of drowning for children.

(17) **"WCCC"** means the working connections child care program, a child care subsidy program available to eligible families to help pay for child care.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq. WSR 18-20-081, § 110-16-0005, filed 10/1/18, effective 11/1/18.]

AMENDATORY SECTION (Amending WSR 19-18-081, filed 9/3/19, effective 10/4/19)

WAC 110-16-0015 Provider responsibilities. (1) ((The)) A provider must:

(a) Agree to provide care, supervision, and daily activities based on the child's developmental needs, including health, safety, physical, nutritional, emotional, cognitive, and social needs;

(b) Report any legal name, address, or telephone number changes to DCYF within ten days;

(c) Comply with the requirements contained in this chapter and the applicable requirements in chapters 110-06 and 110-15 WAC;

(d) Allow parents access to their own children at all times while in care; and

(e) Have access to a telephone with 911 emergency calling services and capability for both incoming and outgoing calls during all times children are in care.

(2) ((The)) A provider must not submit an invoice for more than six children for the same hours of care.

(3) ((The)) A provider must not care for more than six children, including their own children, at any one time.

(4) Care must be provided in the following locations:

(a) A provider((s)) related to the child by marriage, blood relationship, or court decree and who are grandparents, great-grandparents, siblings ((if living in a)) who live in separate residences((+)), aunts, ((or)) uncles, great aunts, or great uncles must choose ((to be approved)) to provide care in either the provider's home or the child's home, with the exception that a provider((s)) residing with a person disqualified under chapter 110-06 WAC must provide care in the child's home.

(b) A provider((s)) related to the child by marriage, blood, or court decree, but not listed in (a) of this subsection, must choose to be approved to provide care in either the provider's home or the child's home, with the exception that a provider((s)) residing with a person disqualified under chapter 110-06 WAC must provide care in the child's home.

(c) A provider((s)) not related to the child, such as a friend((s)) or neighbor((s)) must provide care in the child's home.

(5) ~~A provider((s) must comply with health and safety activities as follows:~~

~~(a) Providers related to the child as described in subsection (4)(b) of this section, must participate in a technical assistance phone call with the department within ninety days of the subsidy payment begin date and annually thereafter;~~

~~(b) Providers not related to the child, as))~~ described in subsection (4) ~~(b) or (c)~~ of this section must:

~~((i) Must))~~ (a) Complete the ((department-approved)) department approved training required ((in)) by WAC 110-16-0025; and

~~((ii) Must))~~ (b) Have an annual technical assistance visit in the ((child's)) home where FFN care is provided.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW, and 42 U.S.C. 9858 et seq. WSR 19-18-081, § 110-16-0015, filed 9/3/19, effective 10/4/19; WSR 18-20-081, § 110-16-0015, filed 10/1/18, effective 11/1/18.]

AMENDATORY SECTION (Amending WSR 18-20-081, filed 10/1/18, effective 11/1/18)

WAC 110-16-0025 Health and safety training. (1) A provider ~~((not related to the child, as))~~ described in WAC 110-16-0015 ~~((3)(e))~~ (4)(b) or (c) must complete the following training within ninety calendar days of the subsidy payment begin date:

(a) Infant, child, and adult first aid and cardiopulmonary resuscitation (CPR):

(i) This training must be taken in person and the provider must demonstrate learned skills to the instructor.

(ii) The instructor must be certified by the American Red Cross, American Heart Association, American Safety and Health Institute, or other nationally recognized certification program.

(b) Prevention of sudden infant death syndrome and safe sleep practices when caring for infants; and

(c) ~~((Department-approved))~~ Department approved health and safety training which includes the following topic areas:

(i) Prevention and control of infectious diseases;

(ii) Administration of medication;

(iii) Prevention of, and response to, emergencies due to food and allergic reactions;

(iv) Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

(v) Prevention of shaken baby syndrome, abuse head trauma, and child maltreatment;

(vi) Emergency preparedness and response planning for natural disasters and human-caused events;

(vii) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

(viii) Appropriate precautions in transporting children;

(ix) Recognition and reporting of child abuse and neglect, including the prevention of child abuse and neglect as defined in RCW 26.44.020 and mandatory reporting requirements under RCW 26.44.030; and

(x) Other topic areas as determined by the department.

(2) A provider ~~((not related to the child, as))~~ described in WAC 110-16-0015 ~~((3)(e))~~ (4)(b) or (c) can meet the health and safety training in subsection (1)(c) of this section if the department verifies that the provider has completed any of the following either prior to or within ninety calendar days of the subsidy payment begin date:

(a) Child care basics, a ~~((department-approved))~~ department approved thirty-hour health and safety training.

(b) Washington state early childhood education initial certificate (twelve credits) that includes early childhood education and development 105 health, safety, and nutrition.

~~(3) A provider ((not related to the child, as described in WAC 110-16-0015 (3)(c), who, on October 1, 2018, has an existing WCCC subsidy authorization with an end date on or before December 30, 2018, does not need to complete the training required under subsections (1) or (2) of this section. If the provider is reauthorized for payment beginning January 1, 2019, or later, the provider must complete the training required under subsections (1) and (2) of this section unless exempt from training under subsection (2)(b) of this section.~~

~~(4) A provider not related to the child, as) described in WAC 110-16-0015 ((3)(c), must annually renew portions of the training required in subsection (1)(c) of this section, as determined by state or federal requirements))~~ (4)(b) or (c) must complete a minimum of two hours of health and safety training annually, using the subsidy payment begin date. The training must include, but is not limited to, one or more of the following:

(a) Prevention and control of infectious diseases;

(b) Emergency preparedness and response planning for natural disasters and human-caused events;

(c) Recognizing and prevention of shaken baby syndrome, head trauma abuse, neglect, and child maltreatment; and

(d) Prevention of sudden infant death syndrome and safe sleep practices, if caring for an infant or toddler.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq. WSR 18-20-081, § 110-16-0025, filed 10/1/18, effective 11/1/18.]

AMENDATORY SECTION (Amending WSR 19-18-081, filed 9/3/19, effective 10/4/19)

WAC 110-16-0030 Health and safety activities. ~~(1) A provider ((s not related to the child as)) described in WAC 110-16-0015 (4)(b) or (c), must ((comply with the following health and safety activity requirements:~~

~~(a) Complete the Parent and FFN Provider Health and Safety Agreement; and~~

~~(b)) participate in an annual, scheduled visit conducted by department staff in the ~~((child's home. If necessary, as determined by the department, follow-up visits may occur on a more frequent basis))~~ home where care is provided.~~

~~(2) ((The Parent and FFN Provider Health and Safety Agreement must:~~

~~(a) Be signed by the provider and parent(s) and verify that the parent(s) and provider discussed and reviewed all of the topics and subject matter items contained in the agreement. The subject matter items include, but are not limited to: Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment; emergency contacts; fire and emergency prevention; knowledge and treatment of children's illnesses and allergies; developmental and special needs;~~

medication administration; safe transportation; child immunizations; and safe evacuation; and

~~(b) Be received by the department within forty five days of completion of the training requirements in WAC 110-16-0025 (2)(a) or verification of the training exemption in WAC 110-16-0025 (2)(b).~~

~~(3))~~ The purpose of the ~~((annual, scheduled visit in the child's home))~~ visit is to:

(a) Provide technical assistance to the provider regarding the health and safety requirements described in this chapter;

(b) Observe the provider's interactions with the child, and discuss health and safety practices;

(c) Provide written information and local resources about child development to include the major domains of cognitive, social, emotional, physical development, and approaches to learning; and

(d) Provide regional contact information for FFN child care services and resources.

~~((4) If the department is not able to successfully complete a scheduled visit with the provider in the child's home after three attempts, the))~~ (3) A provider will be ((deemed not in)) considered out of compliance with the requirements of this chapter if, after three attempts, the department is not able to complete an annual, scheduled visit in the home where care is provided.

~~((5))~~ (4) At the annual, scheduled visit, the provider must show, unless previously provided to the department:

(a) Proof of identity;

(b) Proof of current certification for first aid and cardiopulmonary resuscitation (CPR) in the form of a card, certificate, or instructor letter;

(c) Proof of vaccination against or acquired immunity for vaccine-preventable diseases for all children in care, if the provider's children are on-site at any time with the eligible children. Proof can include:

(i) A current and complete department of health (DOH) certificate of immunization status (CIS) or certificate of exemption (COE) or other ~~((department of health approved))~~ DOH approved form; or

(ii) A current immunization record from the Washington state immunization information system (WA IIS).

(d) Written permission from the parent to:

(i) Allow children to use a swimming pool;

(ii) Administer medication for treatment of illnesses and allergies of the children in care;

(iii) Provide for and accommodate developmental and special needs; and

(iv) Provide transportation for care, activities, and school when applicable.

(e) The written ~~((home evacuation))~~ emergency preparedness and response plan required in WAC 110-16-0035 ~~((4))~~ (8)(c).

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW, and 42 U.S.C. 9858 et seq. WSR 19-18-081, § 110-16-0030, filed 9/3/19, effective 10/4/19; WSR 18-20-081, § 110-16-0030, filed 10/1/18, effective 11/1/18.]

AMENDATORY SECTION (Amending WSR 19-18-081, filed 9/3/19, effective 10/4/19)

WAC 110-16-0035 Health and safety practices. A provider (not related to the child, as) described in WAC 110-16-0015 (4)(b) or (c), must (comply with the following) complete the health and safety ((activity practices)) training ((as)) described in WAC 110-16-0025 and ((required by the department including, but not limited to,)) comply with the following health and safety practices and criteria:

(1) Promote the prevention and control of infectious diseases ((=)) by:

(a) Washing their hands thoroughly with soap and warm running water and ensuring the children in their care wash their hands thoroughly with soap and warm running water:

(i) After toileting or assisting a child with toileting;

(ii) After changing a diaper;

(iii) Before eating, preparing, or handling food; and

(iv) After handling bodily fluids such as blood, vomit, or mucus from sneezing, wiping, or blowing noses.

(b) Ensure all bedding used by children is washed weekly and more often as needed when soiled; and

(c) Change diapers on a surface that is easily cleaned and sanitized and located away from food preparation and meal service areas.

(2) ((The prevention of sudden infant death syndrome and safe)) Create a safe sleeping environment using the following sleep practices, including sudden infant death syndrome ((=)) and sudden unexpected infant death syndrome risk reduction ((=)):

(a) Infants from birth to twelve months of age must be placed on their backs for resting and sleeping, alone in an approved crib, play yard, or porta-crib;

(b) A tightly fitted bottom sheet must cover the crib or mattress with no additional padding placed between the sheet and the mattress;

(c) Soft objects, bumper pads, stuffed toys, blankets, quilts or comforters, pillows, and other objects that could smother an infant must not be placed with, under, or within reach of a resting or sleeping infant;

(d) Blankets must not be draped over cribs or play yards while they are in use; and

(e) Infants' bottles must not be propped or placed in the crib with a resting or sleeping infant.

(3) ((The prevention of)) Prevent shaken baby syndrome, abusive head trauma, and child maltreatment by:

(a) Not shaking, throwing, hitting, or otherwise intentionally inflicting harm, pain, or humiliation upon an infant or child in care; and

(b) Taking steps to prevent the physical discipline of children in their care. Steps may include, but are not limited to, seeking support from another adult or a parenting helpline when feeling stressed, overwhelmed, or unreasonably frustrated due to a child's behavior, for example, during times of inconsolable crying or toileting accidents; and

(4) ((The)) Recognition and reporting of child abuse and neglect, including the prevention of child abuse and neglect as defined in RCW 26.44.020 and mandatory reporting requirements ((under)) of RCW 26.44.030.

(5) **Medication administration.**

(a) A provider must have parents inform them of any known food allergies of children in care, steps to take to avoid the allergens, specific symptoms that indicate the need for treatment, and how to respond to allergic reactions;

(b) A child's parent, or ~~((a))~~ their appointed designee, must provide training to the provider for special medical procedures that the provider may have to administer to the child. This training must be documented ~~((and))~~, signed by the provider and parent, and kept in the home where care is provided;

~~((b) The))~~ (c) A provider must not give medication to any child in care without written and signed consent from ~~((that))~~ the child's parents or health care providers. ~~((The))~~ Medication must be given according to the directions on the medication label using appropriately cleaned and sanitized medication measuring devices;

~~((e) The))~~ (d) A provider must not give or allow others to give any medication to a child in care for the purpose of sedating the child unless the medication has been prescribed for a specific child for that particular purpose by a health care professional; ~~((and~~

~~(d))~~ (e) Medication must be stored and maintained as directed on the packaging or prescription label, including applicable refrigeration requirements; and

(f) Within one hour of treating a child for signs or symptoms of an allergic reaction, a provider must notify the child's parent.

(6) Indoor building and physical premises safety.

(a) ~~((The))~~ A provider must visually scan indoor areas to identify potential child safety hazards, and, if care is provided in the child's home, discuss ~~((removal or reduction of))~~ removing or reducing identified hazards with ~~((the))~~ parent. If it is not possible for ~~((the))~~ a provider to immediately correct or make a hazard ~~((completely))~~ inaccessible to a child, the provider must supervise the child to avoid injury from ~~((such))~~ the identified hazard. Child safety hazards include, but are not limited to:

(i) Tobacco and cannabis products and containers holding tobacco and cannabis products or ashes;

(ii) Firearms, guns, weapons, and ammunition;

(iii) Any equipment, material, or objects that may pose a risk of choking, aspiration, or ingestion. For purposes of this section, equipment, material, or objects with a diameter or overall dimension of one and three-quarter inch or less are considered items that may pose a risk of choking, aspiration, or ingestion;

(iv) Straps, strings, cords, wires, or similar items capable of forming a loop around a child's neck that are not being used for a supervised activity;

(v) Poisons, chemicals, toxins, dangerous substances or any product labeled "Keep out of reach of children," including, but not limited to, fuel, lighter fluid, solvents, fertilizer, ice melt product, pool chemicals, pesticides, or insecticides, cleansers and detergents, air freshener or aerosols, sanitizing products, and disinfectants;

(vi) Personal grooming, cosmetics, and hygiene products including, but not limited to, nail polish remover, lotions, creams, toothpaste, powder, shampoo, conditioners, hair gels or hair sprays, bubble bath, or bath additives;

(vii) Alcohol, including closed and open containers;

(viii) Plastic bags and other suffocation hazards;

(ix) Equipment, materials, or products that may be hot enough to injure a child;

(x) Freezers, refrigerators, washers, dryers, compost bins, and other entrapment dangers;

(xi) Uneven walkways, damaged flooring or carpeting, or other tripping hazards;

(xii) Large objects capable of tipping or falling over, such as televisions, dressers, bookshelves, wall cabinets, sideboards or hutches, and wall units;

(xiii) Indoor temperatures less than sixty-eight degrees Fahrenheit or greater than eighty-two degrees Fahrenheit;

(xiv) Water accessible to children that may be hotter than one hundred twenty degrees Fahrenheit (~~((the provider should always feel hot water before using on or for a child))~~);

(xv) Windows ((and stairs accessible to children)), stairways, steps, or porches from which children could fall; and

(xvi) Electrical outlets, power strips, exposed wires, and electrical/extension cords.

(b) During care hours, providers must (~~((not themselves, and must not allow others who may be))~~) ensure that no one in the presence of the children (~~((to))~~), including themselves:

(i) (~~((Possess))~~) Possesses or use illegal drugs;

(ii) Consumes or use alcohol or cannabis products in any form;

(iii) (~~((Be))~~) Is under the influence of alcohol, cannabis products in any form, illegal drugs, or misused prescription drugs; and

(iv) Smokes or vapes in the home, vehicle, or in close proximity to a child.

(7) **Outdoor building and physical premises safety.** (~~((The))~~) A provider must visually scan outdoor play areas to identify potential child safety hazards, and, if care is provided in the child's home, discuss removal or reduction of identified hazards with the parents. If it is not possible for (~~((the))~~) a provider to immediately correct or make a hazard completely inaccessible to a child, the provider must supervise the child to avoid injury. Outdoor hazards include, but are not limited to:

(a) Outdoor play area or equipment that is not clean, not in good condition, or not maintained or safe for a child of a certain age to use;

(b) Bouncing equipment including, but not limited to, trampolines, rebounders and inflatable equipment. This requirement does not apply to bounce balls designed to be used by individual children;

(c) Toxic plants or plants with poisonous leaves such as foxglove, morning glory, tomato, potato, rhubarb, or poison ivy;

(d) Extreme weather conditions such as:

(i) Heat in excess of one hundred degrees Fahrenheit;

(ii) Cold below twenty degrees Fahrenheit;

(iii) Lightning storm, tornado, hurricane or flooding; and

(iv) Air quality warnings by public health or other authorities.

(e) Bodies of water such as:

(i) Swimming pools when not being used, portable wading pools, hot tubs, spas, and jet tubs;

(ii) Ponds, lakes, storm retention ponds, ditches, fountains, fish ponds, landscape pools, or similar bodies of water; and

(iii) Uncovered wells, septic tanks, below grade storage tanks, farm manure ponds, or other similar hazards.

(f) Streets, alleyways, parking lots, or garages.

(8) **Emergency preparedness and response planning.**

(a) (~~((The))~~) A provider must visually scan indoor and outdoor areas to identify potential fire or burn hazards and, if care is pro-

vided in the child's home, discuss the removal or reduction of identified hazards with the parents. If it is not possible for ~~((the))~~ a provider to immediately correct or make identified hazards completely inaccessible to a child in care, the provider must supervise the ~~((child))~~ children to avoid injury from such identified hazards. Fire or burn hazards include, but are not limited to:

(i) Appliances and any heating device that has a hot surface when in use or still hot after use;

(ii) Open flame devices, candles, matches, and lighters. Open flame devices, candles, matches, and lighters must not be used during care hours; and

(iii) The lack of, or nonworking smoke detectors, fire extinguishers, or other fire prevention equipment.

(b) If there is a fire in the home during care hours, ~~((the))~~ a provider's first responsibility is to evacuate the children in care to a safe gathering spot outside the home and then call 911;

(c) ~~((The))~~ Exits from the home where care is provided must be readily accessible and easily opened in case of an emergency;

(d) A provider and parent must have an agreed upon written home emergency preparedness and response plan that includes procedures for evacuation ((plan in the event of fire or an emergency or other disaster. The plan must be updated as needed and include, at a minimum)) relocation, and locking down or sheltering-in-place. The plan must include at least a:

(i) ~~((A))~~ Floor plan ((that)) of the home where care is provided that shows emergency exit pathways, doors, and windows;

(ii) ~~((A))~~ Description ((for how the provider will evacuate all of the)) of how all children in care will be evacuated, especially those who cannot walk;

(iii) ~~((A))~~ Description ((for how the provider will account for all of the)) of how all children in care will be accounted for after they are evacuated from the home;

(iv) ~~((A))~~ Designated, safe gathering spot or alternative short-term location for the children and provider pending arrival of the fire department, emergency response, or ((the)) parents;

(v) ~~((A))~~ Description of what to take when evacuating, such as a first aid kit, medications, water, and food; and

(vi) ~~((A))~~ Description ((for)) of how parents will be contacted after the emergency is over ((and)) to arrange for pick-up of children, if needed.

~~((d))~~ (e) To be properly prepared ((for a home evacuation or lockdown, the)) to respond to emergencies both at and away from the home where care is provided, a provider must ((be able to easily access emergency items including, but not limited to)) have readily available and easily accessible supplies that include:

(i) A first aid kit;

(ii) A working flashlight available for use as an emergency light source and extra batteries if the flashlight is powered by batteries;

(iii) A working telephone; and

(iv) Food, water, ~~((and))~~ a three-day supply of medication required by individual children, and supplies for any infants in care such as formula, diapers, wipes, and bags for used diapers.

~~((e) The))~~ (f) A provider must practice emergency ((and home evacuation drills)) preparedness and response plans with the children as follows:

(i) ~~((Earthquake and home))~~ Evacuation and relocation drills once every six calendar months; and

(ii) A lockdown or shelter-in-place drill annually.

(9) **Child transportation.**

(a) A provider must comply with RCW 46.61.687 and other applicable laws that pertain to child restraints and car seats appropriate for the size and age of each child in care;

(b) When caring for children, a provider must:

(i) Drive only with a valid driver's license;

~~((e))~~ (ii) Have in effect a current motor vehicle insurance policy that provides coverage for the driver, the vehicle, and all other occupants;

~~((d))~~ (iii) Ensure that children are accounted for when entering and exiting a vehicle for transport to and from any destination; and

~~((e))~~ (iv) Never leave ~~((the))~~ children ~~((by themselves))~~ unattended in a vehicle.

(10) **Supervision of children.**

(a) ~~((The))~~ A provider must supervise children during care hours. Supervising children requires ~~((the))~~ a provider to engage in specific actions including, but not limited to:

(i) Scanning the environment, looking and listening for both verbal and nonverbal cues to anticipate problems and planning accordingly;

(ii) Positioning oneself to supervise areas accessible to children; and

(iii) Considering the following when deciding whether increased supervision is needed:

(A) Ages of children;

(B) Individual differences and abilities of children;

(C) Layout of the home where care is provided and play areas; and

(D) Risks associated with the children's activities ~~((children are engaged in))~~.

(b) ~~((The))~~ A provider must provide increased supervision when the children:

(i) Interact with pets or animals;

(ii) Engage in water or sand play;

(iii) Play in an area in close proximity to a body of water;

(iv) Use a route to access an outdoor play area when the area is not next to the home where care is provided;

(v) Engage in activities in the kitchen;

(vi) Ride on public transportation;

(vii) Engage in outdoor play; and

(viii) Participate in field trips.

(c) ~~((The))~~ A provider must ~~((ensure no infant or child is left))~~ not leave infants or children unattended during:

(i) Diapering;

(ii) Bottle feeding; or

(iii) Tummy time.

(d) ~~((The))~~ A provider must not allow any person other than a child's parent or authorized individual to have unsupervised access to a child during care hours. For the purpose of this section, individuals authorized to have unsupervised access include:

(i) A government representative including emergency responders who have specific and verifiable authority for access; and

(ii) A person, such as a family member, family friend, or the child's therapist or health care provider, authorized in writing or over the telephone by a child's parent.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW, and 42 U.S.C. 9858 et seq. WSR 19-18-081, § 110-16-0035, filed 9/3/19, effective 10/4/19; WSR 18-20-081, § 110-16-0035, filed 10/1/18, effective 11/1/18.]

AMENDATORY SECTION (Amending WSR 18-20-081, filed 10/1/18, effective 11/1/18)

WAC 110-16-0040 Compliance. (1) If the department determines a provider has failed to comply with a requirement described in this chapter, the department may do one or more of the following:

(a) Offer and provide technical assistance for the purpose of correcting noncompliance issues that arise from WAC 110-16-0015, 110-16-0025, 110-16-0030, or 110-16-0035;

(b) Require an (~~in-home~~) FFN compliance agreement (~~(ICA)~~) for the purpose of correcting noncompliance issues;

(c) Take steps to initiate termination of the provider's participation in the WCCC subsidy programs; and

(d) Take steps to initiate a determination of child care subsidy payment discrepancies pursuant to WAC 110-15-0266 that may have resulted from noncompliance issues.

(2) An (~~in-home~~) FFN compliance agreement (~~(ICA)~~) must contain the following:

(a) A description of the noncompliance issues and the regulations or statutes violated;

(b) A statement from the provider describing the provider's proposed plan to comply with the regulations or statutes;

(c) The date by which the noncompliance issues must be corrected;

(d) A statement of other corrective action that may be required if compliance does not occur by the specified date;

(e) The signatures of the provider and the department representative agreeing to the terms of the (~~ICA~~) agreement; and

(f) A statement from the department indicating whether the corrective action requirements were satisfactorily met.

(3) The length of time the department may allow for the provider to make the corrections necessary to be in compliance will be determined by the department with consideration given to:

(a) The seriousness of the noncompliance; and

(b) The threat to the health, safety, and well-being of the children in care.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq. WSR 18-20-081, § 110-16-0040, filed 10/1/18, effective 11/1/18.]

WSR 21-15-023
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed July 12, 2021, 9:57 a.m., effective August 12, 2021]

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

Purpose: Updating chapter 110-300 WAC to remove outdated authorities, update form references, change fiscal year to calendar year for accumulation and carry forward of early learning providers' excess continuing education credits, better clarify that certain in-service training is required only for those licensed, hired, or promoted after August 1, 2019, and otherwise better clarify the chapter's intent without changing its effect.

Citation of Rules Affected by this Order: Amending WAC 110-300-0015, 110-300-0016, 110-300-0105, 110-300-0107, 110-300-0145, 110-300-0146, 110-300-0150, 110-300-0165, 110-300-0175, 110-300-0335, 110-300-0360, 110-300-0443, and 110-300-0460.

Statutory Authority for Adoption: RCW 43.216.065.

Adopted under notice filed as WSR 21-09-029 on April 12, 2021.

Changes Other than Editing from Proposed to Adopted Version: In WAC 110-300-0015(4) "program, and early learning staff" was changed to "program staff," "section" was changed to "chapter," and "during the absence" was inserted.

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 13, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

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

Date Adopted: July 12, 2021.

Brenda Villarreal
Rules Coordinator

OTS-2730.7

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0015 Licensee absence. (1) In a family home early learning program, the licensee must have a written plan for when the licensee will be absent but the program remains open for the care of children. If a family home licensee is absent more than ten consecutive operating days, the licensee must submit a written notification to the department and each child's parent or guardian at least two business days prior to the planned absence.

(2) In a center early learning program, the licensee must have a written plan for when the director, assistant director, and program supervisor will be simultaneously absent but the program remains open for the care of children. If the director, assistant director, and program supervisor are simultaneously absent for more than ten consecutive operating days, an early learning provider must submit a written notification to the department and each child's parent or guardian at least two business days prior to the planned absence.

(3) A written notification under this section must include the following information:

(a) The time period of the absence;

(b) Emergency contact information for the absent early learning provider; and

(c) A written plan for program staff to follow that includes:

(i) A staffing plan that meets child-to-staff ratios;

(ii) Identification of a lead teacher to be present and in charge;

(iii) Early learning program staff roles and responsibilities;

(iv) How each child's needs will be met during the absence; and

(v) The responsibility for meeting licensing requirements.

(4) If ~~((a facility licensing compliance agreement (FLCA) is developed as a result of early learning program staff failing to comply with licensing regulations during an absence described in))~~ an early learning provider or program staff member fails to comply with one or more of the requirements of this ((section)) chapter during an absence, ~~((an))~~ the early learning provider must:

(a) Retrain early learning program staff on the foundational quality standards documented on the ~~((FLCA))~~ inspection report; and

(b) Document ~~((that))~~ when the retraining occurred.

[WSR 18-15-001, recodified as § 110-300-0015, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0015, filed 6/30/18, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 19-22-103, filed 11/6/19, effective 12/7/19)

WAC 110-300-0016 Inactive status—Voluntary and temporary closure. (1) If a center or family home licensee plans to temporarily close their early learning program for more than thirty calendar days, and this closure is a departure from the program's regular schedule, an early learning provider must submit a notification to go on inactive status to the department at least two business days prior to the planned closure. Notifications for inactive status must include:

(a) The date the early learning program will cease operating;

(b) The reasons why the licensee is going on inactive status; and

(c) A projected date the early learning program will reopen.

(2) The requirements of this section do not apply to licensed early learning programs that have temporary closures beyond thirty calendar days as part of their regular schedule, such as programs based on the school year or seasonal occupation.

(3) A licensee may not request inactive status during their first initial licensing period (six months) unless for an emergency.

(4) An early learning provider must inform parents and guardians that the program will temporarily close.

(5) An early learning provider is responsible for notifying the department of changes to program status including voluntary closures, new household members or staff, or other program changes. Program status updates must also be completed in the department's electronic system.

(6) Background check rules in chapter 110-06 WAC, including allegations of child abuse or neglect, will remain in effect during inactive status.

(7) After receiving a notice of inactive status, the department will:

- (a) Place the license on inactive status;
- (b) Inform the licensee that the license is inactive; and
- (c) Notify the following programs of the inactive status:
 - (i) The department's child care subsidy programs;
 - (ii) ~~((USDA Child and Adult Care Food Program ()))~~ CACFP ~~(())~~; and
 - (iii) Early achievers, ECEAP, Head Start Grantee, and child care aware of Washington.

(8) A licensee is still responsible for maintaining annual compliance requirements during inactive status pursuant to RCW 43.216.305.

(9) If inactive status exceeds six months within a twelve-month period, the department must close the license ~~((for failing to comply with RCW 43.216.305(2)))~~. The licensee must reapply for licensing pursuant to RCW 43.216.305(3).

(10) The department may pursue enforcement actions after three failed attempts to monitor an early learning program if the:

- (a) ~~((The))~~ Early learning provider has not been available to permit the monitoring visits;
- (b) ~~((The))~~ Monitoring visits were attempted within a three-month time period; and
- (c) ~~((The))~~ Department attempted to contact the provider by phone during the third attempted visit while still on the early learning premises.

(11) When a licensee is ready to reopen after a temporary closure, the licensee must notify the department in writing. ~~((After receiving))~~

(12) Once the department receives a provider's notice of ((the)) intent to reopen, the department will:

- (a) Conduct a health and safety visit of the early learning program within ten business days to determine that the provider is in compliance with this chapter;
- (b) Activate the license and inform the licensee that the license is active; and
- (c) Notify the following programs of the active status:
 - (i) The department's child care subsidy programs;
 - (ii) CACFP; and
 - (iii) Early achievers, ECEAP, Head Start Grantee, and child care aware of Washington.

[Statutory Authority: RCW 43.216.055, 43.216.065, 43.216.250 and chapter 43.216 RCW. WSR 19-22-103, § 110-300-0016, filed 11/6/19, effective 12/7/19. WSR 18-15-001, recodified as § 110-300-0016, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0016, filed 6/30/18, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0105 Preservice requirements. (1) All applicants, coapplicants, family home licensees, center directors, assistant directors, and program supervisors must complete a department provided orientation for the applicable early learning program. Prior to being in charge of the early learning program fifty percent of the time or more, those newly promoted or assuming a role of one of the roles listed here must complete or be registered in orientation training.

(2) Early learning providers and household members in a family home early learning program must complete and pass a department background check, pursuant to chapter 110-06 WAC.

(3) Early learning providers, including volunteers and household members, in a family home early learning program ages fourteen and over, must provide documentation signed within the last twelve months by a licensed health care professional of tuberculosis (TB) testing or treatment consisting of:

(a) A negative TB symptom screen and negative TB risk assessment;

(b) A previous positive FDA-approved TB test and a current negative chest radiograph and documentation of clearance to safely work or reside in an early learning program; or

(c) A positive symptom screening or a positive risk assessment with documentation of a:

(i) ((A)) Current negative FDA-approved TB test;

(ii) ((A)) Previous or current positive FDA-approved TB test; and

(iii) ((A)) Current negative chest radiograph and documentation of clearance to safely work or reside in an early learning program.

(4) Upon notification of TB exposure, early learning providers may be required to be retested for TB as directed by the local health jurisdiction.

[WSR 18-15-001, recodified as § 110-300-0105, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0105, filed 6/30/18, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 19-22-103, filed 11/6/19, effective 12/7/19)

WAC 110-300-0107 In-service training. (1) An early learning provider must complete ten hours of annual in-service training after twelve months of cumulative employment.

(a) A family home licensee((s)), center director((s)), assistant director((s)), program supervisor((s)), lead teacher((s, and)) or assistant teacher((s)) who has not completed the department's enhancing quality of early learning (EQEL) in-service training and was licensed, hired, or promoted on or after August 1, 2019, must complete the ((department enhancing quality of early learning (EQEL) in-service)) training within thirty-six months of ((being hired in a licensed facility)) assuming the role, unless the provider has completed a department approved alternative training. EQEL hours may count towards the ten hours of annual in-service training.

(b) Every thirty-six months, following the completion of EQEL or a department approved alternative training, a family home licen-

see((s)), center director((s)), assistant director((s, and)) or program supervisor((s)), must complete a minimum of ten hours of in-service training "child development" and a minimum of ten hours of in-service training on "leadership practices."

(i) Child development training includes the following Washington state core competencies: Child growth and development, curriculum and learning environment, ongoing measurements of child progress, family and community partnerships, health, safety, nutrition, and interactions.

(ii) Leadership practices training includes the following Washington state core competencies: Program planning and development, professional development, and leadership.

(2) In-service training requirements of this chapter may be met by completing college courses that align with the Washington state core competencies. These courses must be delivered by a postsecondary institution and approved by the department.

(3) Only five in-service training hours that exceed the requirements of subsection (1) of this section may be carried over from one ((fiscal)) calendar year to the next ((fiscal)) calendar year.

[Statutory Authority: RCW 43.216.055, 43.216.065, 43.216.250 and chapter 43.216 RCW. WSR 19-22-103, § 110-300-0107, filed 11/6/19, effective 12/7/19. WSR 18-15-001, recodified as § 110-300-0107, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0107, filed 6/30/18, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0145 Outdoor early learning program space. (1) An early learning provider must visually inspect outdoor program space and equipment daily to ensure outdoor areas and equipment are free of hazards.

(2) Outdoor play space must contain a minimum of seventy-five square feet of licensed usable space per child accessing the play space at any given time. An early learning provider may develop an alternate plan if an early learning program does not have enough outdoor play space to accommodate all enrolled children at once (~~((for example))~~), such as rotating groups of children to play outdoors or using an off-site play area(+)). The department must approve alternate plans to use off-site play spaces.

(3) An early learning program must have shaded areas in outdoor play space provided by trees, buildings, or shade structures.

(4) Outdoor play space must promote a variety of age and developmentally appropriate active play areas for children in care. Activities must encourage and promote both moderate and vigorous physical activity such as running, jumping, skipping, throwing, pedaling, pushing, pulling, kicking, and climbing.

(5) When the licensed outdoor play space is not immediately adjacent to the early learning program site, an early learning provider must use a safe route when moving to and from the licensed outdoor play space.

(6) Licensed outdoor play areas must be enclosed with a fence or barrier that is intended to prevent children from exiting and discour-

ages climbing. If the outdoor play area is enclosed by a barrier that is not a fence, the barrier may be a wall constructed with brick, stone, or a similar material.

(7) Licensed outdoor play areas must be enclosed to deter people without permission from entering the area.

(8) Fences, barriers, and gates must be in good condition, have no gap through which a sphere with a diameter of three and one-half inches can pass, and have a minimum height of forty-eight inches or conform in height to applicable local codes.

(9) The opening between a fence post and gate or fence post and building must have no gap through which a sphere with a diameter of three and one-half inches can pass.

(10) An early learning provider must not install any wooden fence, playground structure, or furniture if it contains chromated copper arsenate (CCA), creosote, or pentachlorophenol. If wooden fences, structures, and furniture are suspected of having CCA, they must be tested. If CCA is present, fences, structures, and furniture must be removed or sealed with an oil-based outdoor sealant annually or more often as needed (~~(within six months of the date this section becomes effective)~~).

(11) (~~(Within six months of the date this section becomes effective or)~~) Prior to licensing, exiting mechanisms on gates from a licensed outdoor play area to unlicensed space must be equipped with a self-closing and self-latching mechanism (shuts automatically when released from an individual's control). A gate that is not an emergency exit must be locked or self-closing and self-latching.

(12) Outdoor play areas must have two exits that must not be partially or entirely blocked (~~(, with at least one exit located away from the building)~~). At least one of the two exits must not lead back into licensed indoor space.

[WSR 18-15-001, recodified as § 110-300-0145, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0145, filed 6/30/18, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0146 Equipment and surfaces in outdoor early learning space. (1) Playground equipment and surfacing used by an early learning provider must comply with applicable CPSC guidelines (~~(, as now and hereafter amended)~~) including, but not limited to, installing, arranging, designing, constructing, and maintaining outdoor play equipment and surfacing.

(a) Climbing play equipment must not be placed on or above concrete, asphalt, packed soil, lumber, or similar hard surfaces;

(b) The ground under swings and play equipment must be covered by a shock absorbing material (grass alone is not an acceptable) such as:

(i) Pea gravel at least nine inches deep;

(ii) Playground wood chips at least nine inches deep;

(iii) Shredded recycled rubber at least six inches deep; or

(iv) Any material that has a certificate of compliance, label, or documentation stating it meets ASTM standards (~~(F1292-13 and F2223-10, as now and hereafter amended)~~) F1292.

(2) Permanently anchored outdoor play equipment must not be placed over septic tank areas or drain fields(~~(r)~~) and must be installed according to the manufacturer's directions.

(3) Handmade playground equipment must be maintained for safety or removed when no longer safe. Prior to construction of new handmade playground equipment, the provider must notify the department and have plans and a materials list available upon request.

(4) Bouncing equipment including, but not limited to, trampolines, rebounders, and inflatable equipment must be inaccessible and locked. This requirement does not apply to bounce balls designed to be used by individual children.

[WSR 18-15-001, recodified as § 110-300-0146, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0146, filed 6/30/18, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0150 Program and activities. (1) An early learning provider must supply children in care with early learning materials that are age and developmentally appropriate. For each age group of children in care, a provider must supply a variety of materials that satisfy individual, developmental, and cultural needs. Early learning materials must be:

- (a) Clean;
- (b) Washable or disposable;
- (c) Accommodating to a range of abilities of children in care;
- (d) Available to children in care appropriate to a child's age and developmental level;
- (e) Nonpoisonous and free of toxins. If an early learning provider is using prepackaged art materials, the material(~~(s)~~) packaging must be labeled "non-toxic" by the manufacturer and meet ASTM standard D-4236 as described in 16 C.F.R. 1500.14 (b) (8) (i) (~~(, as now and hereafter amended)~~);
- (f) In good and safe working condition;
- (g) Accommodating to special needs of children in care; and
- (h) Removed from the early learning program space once an item has been recalled by CPSC.

(2) An early learning provider must ensure a sufficient quantity and variety of materials to engage children in the early learning program (~~(for example)~~), such as arts and crafts supplies, various textured materials, construction materials, manipulative materials, music and sound devices, books, and social living equipment(~~(+)~~). Materials must:

- (a) Encourage both active physical play and quiet play activities;
- (b) Promote imagination and creativity;
- (c) Promote language development and literacy skills;
- (d) Encourage social skill development;
- (e) Promote numeracy (counting and numbers) and spatial ability;
- (~~(e)~~) (f) Encourage discovery and exploration; and
- (~~(f)~~) (g) Promote learning skills.

[WSR 18-15-001, recodified as § 110-300-0150, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0150, filed 6/30/18, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0165 Safety requirements. (1) An early learning provider must keep indoor and outdoor early learning program space, materials, and equipment free from hazards and in safe working condition. Equipment and toys purchased and used must be compliant with CPSC guidelines or ASTM standards (~~(, as now and hereafter amended)~~). Playground equipment and surfaces must meet the requirements of WAC 110-300-0146.

(2) An early learning provider must take steps to prevent hazards to children including, but not limited to:

(a) Making inaccessible to infants and toddlers any equipment, material, or objects that may pose a risk of choking, aspiration, or ingestion. For the purposes of this section, equipment, material, or objects that have a diameter or overall dimension of one and three-quarter inches or less (~~(shall be)~~) are considered items that may pose a risk of choking, aspiration, or ingestion. Small parts from larger equipment, material, or objects that have a diameter or overall dimension of one and three-quarter inches or less, that may become detached from the larger equipment, materials, or object (~~(shall)~~) are also (~~(be)~~) considered items that may pose a risk of choking, aspiration, or ingestion;

(b) Eliminating and not using in the licensed space, pursuant to RCW 43.216.380, any window blinds or other window coverings with pull cords or inner cords capable of forming a loop and posing risk of strangulation to children.

(i) Window blinds and other window coverings that have been manufactured or properly retrofitted in a manner that eliminates the formation of loops posing a risk of strangulation are allowed; and

(ii) A window covering must not be secured to the frame of a window or door used as an emergency exit in a way that would prevent the window or door from opening easily.

(c) Making inaccessible to children straps, strings, cords, wires, or similar items capable of forming a loop around a child's neck that are not used during supervised early learning program activities;

(d) Making inaccessible to children plastic bags and other suffocation hazards;

(e) Ensuring firearms, guns, weapons, and ammunition are not on the premises of a center early learning program. Firearms, guns, weapons, and ammunition on the premises of a family home early learning program must be stored in a locked gun safe or locked room inaccessible to children. If stored in a locked room, each gun must be stored unloaded and with a trigger lock or other disabling device. The locked room must be inaccessible to children at all times;

(f) Preventing children from walking into or through a glass door, window, or other glass barrier, by placing stickers or art work at the children's eye level on the glass; and

(g) Cribs, play pens, bassinets, infant beds, and indoor climbing structures must not be placed next to windows, to prevent harm from shattered glass, unless the window is made of safety glass.

(3) An early learning provider must take measures intended to prevent other hazards to children in care in early learning program space including, but not limited to:

(a) **Cuts, abrasions, and punctures.** Equipment, materials, and other objects on the premises that have splintered edges, sharp edges, points, protruding nails, bolts, or other dangers must be repaired, removed, or made inaccessible to children;

(b) **Burns.** Equipment, materials, or products that may be hot enough to injure a child must be made inaccessible to children;

(c) **Sheering, crushing, or pinching.** Broken or cracked equipment, materials, and objects must be repaired, removed, or made inaccessible to children;

(d) **Entrapment.** (~~Freezers, refrigerators,~~) Washers, dryers, large compost bins, spare or secondary freezers and refrigerators, and other entrapment dangers must be inaccessible to children unless being actively supervised;

(e) **Tripping.** Tripping hazards must be eliminated. Uneven walkways, damaged flooring or carpeting, or other tripping hazards must be removed or repaired;

(f) **Falling objects.** Large objects that pose a risk of falling or tipping must be securely anchored. Large objects include, but are not limited to, televisions, dressers, bookshelves, wall cabinets, sideboards or hutches, and wall units; and

(g) **Equipment in poor condition.** Equipment in poor condition (loose parts, rusty parts, flaking paint, or other dangers) must be repaired, removed, or made inaccessible to children.

(4) To ensure a safe environment for children in care, an early learning provider must comply with the following requirements:

(a) **Indoor temperatures for the premises.** The temperature of indoor early learning licensed space must be between 68 and 82 degrees Fahrenheit. If indoor licensed space is colder than 68 or hotter than 82 degrees Fahrenheit, an early learning provider must use climate control devices that are inaccessible to children to bring the temperature within the required range;

(b) **Window openings.** Windows within the reach of children must only open up to three and one-half inches or have some barrier or preventative measure to discourage children from exiting through the window. The three and one-half inch opening does not apply to exit windows in family home early learning programs;

(c) **Licensed space lighting.** Early learning program space must have natural or artificial light that provides appropriate illumination for early learning program activities and supervision. A provider must comply with all light fixture manufacturers' installation and use requirements. A provider must also ensure compliance with the following requirements:

(i) Light fixtures must have shatter-resistant covers or light bulbs;

(ii) Lights or light fixtures used indoors must be designed for indoor use only;

(iii) Free standing lamps must be attached or secured to prevent tipping; and

(iv) Halogen lamps and bulbs are prohibited.

(d) **Safe noise levels.** Noise levels must be maintained at a level in which a normal conversation may occur;

(e) **Safe water temperature.** All water accessible to enrolled children must not be hotter than 120 degrees Fahrenheit;

(f) **Stairway safety.**

(i) There must not be clutter or obstructions in the stairway;

(ii) All stairways (indoor and outdoor), not including play structures, must meet local building codes pursuant to RCW 43.216.340.

(A) Open stairways with no walls on either side must have handrails with slats (balusters) that prevent a child from falling off either side of the stairway.

(B) Stairways with a wall on only one side must have a handrail with slats (balusters) on the side without the wall that prevents a child from falling off the stairway.

(C) Stairways with a wall on both sides must have a handrail no higher than thirty-eight inches on at least one side of the stairway.

(iii) Stairways must have a pressure gate, safety gate, or door to keep stairs inaccessible to infants and toddlers when not in use. Openings between slats on pressure or safety gates must not be large enough to allow a sphere that is three and one-half inches wide to pass through.

(g) **Platforms and decks.** All platforms and decks used for child care activities must meet local building codes pursuant to RCW 43.216.340. This does not include play equipment. All platforms and decks with a drop zone of more than eighteen inches must have guardrails in sections without steps.

(5) To ensure a safe environment for children in care, an early learning provider must comply with the following electrical requirements:

(a) In areas accessible to children, electrical outlets must have automatic shutters that only allow electrical plugs to be inserted (tamper-resistant) or that are covered by blank plates or other tamper-resistant covers appropriate to the electrical outlet;

(b) Outlets near sinks, tubs, toilets, or other water sources must be inaccessible to children or be tamper-resistant and equipped with a ground fault circuit interrupter (GFCI) outlet type;

(c) Electrical cords must be in good working condition, not torn or frayed, and not have any exposed wires;

(d) Electrical cords must be plugged directly into a wall outlet or a surge protector;

(e) Power strips with surge protectors may be used but must not be accessible to children in care;

(f) Extension cords may only be used for a brief, temporary purpose and must not replace direct wiring; and

(g) Electrical devices accessible to children must not be plugged into an electrical outlet near a water source such as sink, tub, water table, or swimming pool.

[WSR 18-15-001, recodified as § 110-300-0165, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0165, filed 6/30/18, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0175 Water hazards and swimming pools. To prevent injury or drowning and ensure the health and safety of children, an early learning provider must comply with the requirements described in this section.

(1) The following bodies of water must be inaccessible to children in care by using a physical barrier with a locking mechanism in compliance with WAC 246-260-031(4):

(a) Swimming pools when not being used as part of the early learning program(~~(, hot tubs, spas and jet tubs))~~);

(b) Ponds, lakes, storm retention ponds, ditches, fountains, fish ponds, landscape pools, or similar bodies of water; and

(c) Uncovered wells, septic tanks, wastewater, wastewater tanks, below grade storage tanks, farm manure ponds, or other similar hazards.

(2) Hot tubs and similar equipment must be made inaccessible by using a physical barrier with a locking mechanism.

(3) An early learning provider must comply with the following requirements when using a swimming pool as part of the early learning program:

(a) Comply with the supervision requirements of WAC 110-300-0350;

(b) Audible alarms must be on all doors, screens, and gates in licensed areas that lead to a swimming pool. The alarm must be sufficient to warn staff when children enter the outdoor area and could access the swimming pool;

(c) Swimming pools must be maintained according to manufacturer specifications;

(d) Swimming pools must be cleaned and sanitized according to manufacturer instructions, chapter 246-260 WAC, and department of health or local health jurisdiction guidelines;

(e) A swimming pool must not be used if the main drain cover is missing; and

(f) Children in diapers or toilet training must wear swim pants to lower the risk of contaminating the water.

~~((3))~~ (4) Filtered wading pools must be inaccessible to children when not in use. Wading pools that do not have a filtering system are not permitted in the early learning program space.

~~((4))~~ (5) For bodies of water not located in early learning program space, but that are in close proximity, a physical barrier on the property must make such bodies of water inaccessible to children in care.

~~((5))~~ (6) Five gallon buckets or other similar containers must not be used for infant or toddler water play.

~~((6))~~ (7) If an early learning provider uses water tables or similar containers, the tables or containers must be emptied and sanitized daily, or more often if necessary.

[WSR 18-15-001, recodified as § 110-300-0175, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0175, filed 6/30/18, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 19-22-103, filed 11/6/19, effective 12/7/19)

WAC 110-300-0335 Physical restraint. (1) An early learning provider must have written physical restraint protocols pursuant to WAC 110-300-0490, and implement such protocols only when appropriate and after complying with all requirements of WAC 110-300-0330 and 110-300-0331.

(2) Physical restraint must only be used if a child's safety or the safety of others is threatened(~~(r)~~) and must be:

(a) Limited to holding a child as gently as possible to accomplish restraint;

(b) Limited to the minimum amount of time necessary to control the situation; and

(c) Developmentally appropriate(~~(r) and~~

~~(d) Only performed by early learning providers trained in a restraint technique pursuant to WAC 110-300-0106(9))~~).

(3) No person may use bonds, ties, blankets, straps, car seats, high chairs, activity saucers, or heavy weights (including an adult sitting on a child) to physically restrain children.

(4) Licensees, center directors, assistant directors, program supervisors, lead teachers, or trained staff must remove (~~(him or herself)~~) themselves from a situation if they sense a loss of their own self-control and concern for the child when using a restraint technique if another early learning provider is present. (~~(if)~~) An early learning provider must intervene when the provider observes another staff member or volunteer using inappropriate restraint techniques(~~(r the staff must intervene)~~).

(5) If physical restraint is used, staff must:

(a) Report the use of physical restraint, pursuant to WAC 110-300-0475 (2) (f);

(b) Assess any incident of physical restraint to determine if the decision to use physical restraint and its application were appropriate;

(c) Document the incident in the child's file, including the date, time, early learning program staff involved, duration, and what happened before, during, and after the child was restrained;

(d) Develop a written plan with input from the child's primary care or mental health provider, and the parents or guardians, to address underlying issues and reduce need for further physical restraint if:

(i) Physical restraint has been used more than once; and

(ii) A plan is not already a part of the child's individual care plan.

(e) Notify the department when a written plan has been developed.

[Statutory Authority: RCW 43.216.055, 43.216.065, 43.216.250 and chapter 43.216 RCW. WSR 19-22-103, § 110-300-0335, filed 11/6/19, effective 12/7/19. WSR 18-15-001, recodified as § 110-300-0335, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0335, filed 6/30/18, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0360 Program and daily schedule. (1) An early learning provider must have an established program and daily schedule that is familiar to children.

(2) A schedule must be designed to meet enrolled children's developmental, cultural, and special needs. The daily schedule must:

- (a) Be specific for each age group of children, when applicable;
- (b) Offer a variety of activities to meet children's needs, pursuant to WAC 110-300-0150;
- (c) Meet the following daily morning or afternoon active outdoor play time requirements:
 - (i) Twenty minutes for each three hours of programming for infants (as tolerated) and toddlers;
 - (ii) Thirty minutes for each three hours of programming for children preschool age and older; ~~((and))~~
 - (iii) Programs that operate more than six hours a day must provide:
 - (A) Ninety minutes of active play for preschool age and ~~((up to))~~ older; and
 - (B) Sixty minutes of active play for infants and toddlers ~~((thirty))~~; and
 - (iv) Thirty minutes of ~~((which))~~ the active play required by ~~(c) (iii) of this subsection~~ may be moderate to vigorous indoor activities ~~((--))~~;
 - (d) Include scheduled and consistent times for meal service;
 - (e) Include routine transportation times, if applicable;
 - (f) Include rest periods, if applicable; and
 - (g) Include evening and overnight care, if applicable.

[WSR 18-15-001, recodified as § 110-300-0360, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0360, filed 6/30/18, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0443 Enforcement actions, notice, and appeal. (1) Pursuant to RCW 43.216.325, the department is authorized to take enforcement actions when an early learning provider fails to comply with this chapter or chapter 43.216 RCW. Enforcement actions are taken pursuant to RCW 43.216.020, 43.216.065, and 43.216.250. Enforcement actions include civil monetary penalties (fines) and the denial, suspension, revocation, modification, or nonrenewal of a license.

(2) An early learning provider subject to an enforcement action has the right to appeal by requesting an adjudicative proceeding (or "hearing") pursuant to chapter 110-03 WAC, DCYF hearing rules.

(3) The department must issue a notice of violation to an early learning provider when taking enforcement actions. A notice of violation must be sent by certified mail or ~~((personal service))~~ personally served and must include:

- (a) The reason why the department is taking the action;
- (b) The rules the provider failed to comply with;

(c) The provider's right to appeal enforcement actions; and

(d) How the provider may appeal and request a hearing.

(4) Fines (~~(shall)~~) must not exceed two hundred fifty dollars per day per violation for center early learning programs or one hundred fifty dollars per day per violation for family home early learning programs, or as otherwise set by the legislature. Fines may be:

(a) Assessed and collected with interest for each day a violation occurs;

(b) Imposed in addition to other enforcement actions; and

(c) Withdrawn or reduced if an early learning provider comes into compliance during the notification period.

(5) An early learning provider must pay fines within twenty-eight calendar days after receiving a notice of violation unless:

(a) The office of financial recovery establishes a payment plan for the provider; or

(b) The provider requests a hearing, pursuant to chapter 110-03 WAC, DCYF hearing rules and RCW 43.216.335(3).

(6) The department may suspend or revoke a license if an early learning provider fails to pay a fine within twenty-eight calendar days or becomes delinquent in making payments, pursuant to RCW 43.216.327 and 43.216.335. If a provider's license is due for (~~annual compliance~~) renewal, the department may elect not to continue the license for failure to pay a fine.

[WSR 18-15-001, recodified as § 110-300-0443, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0443, filed 6/30/18, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0460 Child records. (1) An early learning provider must keep current individualized enrollment and health records for all enrolled children, including children of staff, updated annually or (~~more~~) as often as enrolled children's health records are updated.

(a) A child's record must be kept in a confidential manner but in an area easily accessible to staff.

(b) A child's parent or guardian must be allowed access to all of (~~his or her~~) their own child's records.

(2) Each child's enrollment record must include the following:

(a) The child's birth date;

(b) An enrolled child's parent or guardian's phone numbers, address, and contact information for reaching the family while the child is in care;

(c) Emergency contact information. If no emergency contact is available, a written and signed emergency contact plan may be accepted;

(d) Names and phone numbers of persons authorized to pick up enrolled children;

(e) A plan for special or individual needs of the child, if applicable, including parent or guardian signature, pursuant to WAC 110-300-0300;

(f) Signed parent or guardian permissions, pursuant to WAC 110-300-0450 as applicable for:

- (i) Field trips;
- (ii) Transportation;
- (iii) Bathing;
- (iv) Water activities including swimming pools or other bodies of water; and
- (v) Photo, video, or surveillance activity.
- (g) The beginning and end enrollment date for children no longer in the early learning program's care;
- (h) ~~((A parent or guardian approved plan for use of))~~ Physical restraint ((and)) documentation ((of parental or guardian notification)) pursuant to WAC 110-300-0335, if applicable;
- (i) Expulsion information, documentation, and steps taken to avoid expulsion, if applicable;
- (j) Termination of services documentation and communication, if applicable; and
- (k) Notification of child developmental screening information given to the child's parent or guardian, if applicable.
- (3) Each child's health record and the information described in subsection (2)(a) through (e) of this section must be available to staff for medical administration or emergencies.
- (4) A health record is required for every child who is enrolled and counted in an early learning program's capacity. A health record must include:
 - (a) An immunization record, pursuant to WAC 110-300-0210(1);
 - (b) The child's health history including any known health conditions and the child's individual care plan, if applicable;
 - (c) A medication authorization and administration log, pursuant to WAC 110-300-0215, if applicable;
 - (d) Documentation of special medical procedure training by parent or guardian, if applicable;
 - (e) Medical and dental care provider names and contact information or what facility ~~((the))~~ parents or guardians would prefer for treatment;
 - (f) Dates of the child's last physical ~~((exam))~~ and dental exams, if available;
 - (g) Consent to seek medical care and treatment of the child in the event of injury or illness, signed by the child's parent or guardian;
 - (h) Signed parent or guardian permission for visiting health professionals who provide direct services to children at the early learning program;
 - (i) An incident or injury report, pursuant to WAC 110-300-0475, that includes:
 - (i) The date and description of the child's incident or injury;
 - (ii) Treatment provided to the child while in care;
 - (iii) The names of the early learning program staff providing the treatment; and
 - (iv) Evidence that a copy of the incident or injury report was given to the child's parent or guardian.
 - (j) Documentation that a provider reported food poisoning or contagious diseases to the local health jurisdiction or the department of health, if applicable.

[WSR 18-15-001, recodified as § 110-300-0460, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0460, filed 6/30/18, effective 8/1/19.]

WSR 21-15-027
PERMANENT RULES
PENINSULA COLLEGE

[Filed July 12, 2021, 2:31 p.m., effective August 12, 2021]

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

Purpose: This rule is no longer needed as it is governed by federal policy.

Citation of Rules Affected by this Order: Repealing all [chapter 132A-280 WAC].

Statutory Authority for Adoption: RCW 28B.50.140; chapter 28B.50 RCW.

Adopted under notice filed as WSR 21-09-082 on April 20, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0 [17]; Federal Rules or Standards: New 0, Amended 0, Repealed 0 [17]; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: May 26, 2021.

Kelly L. Griffith
Rules Coordinator

OTS-8582.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132A-280-006	Purpose.
WAC 132A-280-011	Definitions.
WAC 132A-280-016	Direction to college offices retaining student education records.
WAC 132A-280-021	Access to education records.
WAC 132A-280-026	Access to education records—Limitations on access.
WAC 132A-280-031	Right to copy education records.
WAC 132A-280-035	Request for explanation or interpretation of record.

- WAC 132A-280-040 Challenges—To content of education records, release of education records, or denial of access to education records.
- WAC 132A-280-045 Challenges—Informal proceedings.
- WAC 132A-280-050 Challenges—Hearing before grievance review committee.
- WAC 132A-280-055 Release of personally identifiable information or education records.
- WAC 132A-280-060 Release of personally identifiable information or education records—Nature of consent required.
- WAC 132A-280-065 Release of personally identifiable information or education records—Exceptions to consent requirement.
- WAC 132A-280-070 Release of information in emergencies.
- WAC 132A-280-075 Directory information.
- WAC 132A-280-080 Destruction of student records.
- WAC 132A-280-085 Notification of rights under this chapter.

WSR 21-15-033
PERMANENT RULES
PENINSULA COLLEGE

[Filed July 13, 2021, 10:17 a.m., effective August 13, 2021]

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

Purpose: New Federal Register regulations address the grievance process for formal complaints of sexual harassment and were scheduled to take effect on August 14, 2020. An emergency update to the college's student conduct code was filed to be compliant with the federal regulations. WAC 132A-350-020 and 132A-350-015 are being repealed in their entirety.

Citation of Rules Affected by this Order: Repealing 2.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. Section 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681 et seq.

Adopted under notice filed as WSR 21-09-083 on April 21, 2021.

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

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

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

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

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

Date Adopted: May 26, 2021.

Kelly L. Griffith
Rules Coordinator

OTS-3029.1

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132A-350-015	Nondiscrimination and antiharassment policy.
WAC 132A-350-020	Discrimination and harassment complaint procedure.

WSR 21-15-036
PERMANENT RULES
PENINSULA COLLEGE

[Filed July 13, 2021, 3:20 p.m., effective August 13, 2021]

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

Purpose: Title IX regulations (85 F.R. 30757) address the grievance process for formal complaints of sexual harassment. Updates to the college's student conduct code are necessary to be compliant with federal regulations. Chapter 132A-125 WAC will be repealed in its entirety and new chapter 132A-126 WAC is being submitted.

Citation of Rules Affected by this Order: New chapter 132A-126 WAC; and repealing chapter 132A-125 WAC.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. Section 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681 et seq.

Adopted under notice filed as WSR 21-09-081 on April 20, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 29, Amended 0, Repealed 23; 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 29, Amended 0, Repealed 23.

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

Date Adopted: May 26, 2021.

Kelly L. Griffith
Rules Coordinator

OTS-2516.2

Chapter 132A-126 WAC
CODE OF STUDENT RIGHTS AND RESPONSIBILITIES

NEW SECTION

WAC 132A-126-005 Preamble. Peninsula College is a diverse and dynamic learning community. As such, the college maintains a strong commitment to providing a learning environment that is civil and free from disruptive behavior. All members of the college community share in the responsibility to promote a positive learning environment, demonstrate mutual respect and dignity, and avoid adversarial relationships. Thus, students are expected to act as responsible members of this community, maintain a high degree of honesty and integrity, com-

ply with the rules and regulations of the college, and respect the rights, privileges, and property of the college community.

[]

NEW SECTION

WAC 132A-126-010 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president for student services or their designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

[]

NEW SECTION

WAC 132A-126-015 Definitions. The following definitions shall apply for the purposes of this student conduct code:

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

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

(3) "Complainant" is an alleged victim of sexual misconduct.

(4) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

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

(6) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

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

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

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

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

(8) "Instructional day" is a day identified in the academic calendar and quarterly schedule as a classroom instruction day.

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

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

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

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

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

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

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

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

(12) "Sexual misconduct" has the meaning ascribed to this term in WAC 132A-126-030(13).

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

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

[]

NEW SECTION

WAC 132A-126-020 Statement of jurisdiction. (1) The Peninsula College code of student rights and responsibilities shall apply to student conduct that occurs:

(a) On college premises;

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

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

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

(3) Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as

well as during the academic year and during periods between terms of actual enrollment.

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

(5) The student conduct officer has sole discretion, on a case-by-case basis to bring a student conduct proceeding under this code for academic dishonesty. Nothing in this code precludes instructors and/or academic divisions or departments from imposing an academic sanction, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty.

Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic integrity policy, the course syllabus, and any applicable program handbook.

[]

NEW SECTION

WAC 132A-126-025 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

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

(1) **Academic freedom.**

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

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

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

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

(2) **Due process.**

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

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

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

[]

NEW SECTION

WAC 132A-126-030 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit an act(s) of misconduct, which include, but are not limited to, the following:

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

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

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

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

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

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

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

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

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

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

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

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, for purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards,

and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

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

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

(8) **Weapons.** Possession, holding, wearing, transporting, storage, or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132A-126-205 Prohibited conduct under Title IX.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) The length of the relationship;

(II) The type of relationship; and

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

(vii) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

For the purposes of this code, "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

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

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

(15) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[]

NEW SECTION

WAC 132A-126-035 Disciplinary sanctions—Terms—Conditions. The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

(1) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance, depending upon the seriousness of the violation, and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) **Disciplinary suspension.** Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken. Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) Restitution. Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) Professional evaluation. Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(6) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(b) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(7) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

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NEW SECTION

WAC 132A-126-040 Initiation of disciplinary action. (1) All disciplinary actions shall be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within ten days of the initial disciplinary meeting and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132A-126-035.

(c) Refer the matter directly to the student conduct committee for such disciplinary action, as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions occurs.

[]

NEW SECTION

WAC 132A-126-045 Appeal of disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless the respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(9) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(10) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(11) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to a respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

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NEW SECTION

WAC 132A-126-050 Brief adjudicative proceedings authorized.

Brief adjudicative proceedings shall be used for student conduct appeals involving the following disciplinary actions:

(1) Suspensions of ten instructional days or less;

(2) Disciplinary probation;

(3) Written reprimands;

(4) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and

(5) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(a) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(b) Issues a verbal warning to the respondent.

[]

NEW SECTION

WAC 132A-126-055 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

[]

NEW SECTION

WAC 132A-126-060 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the requestor is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

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NEW SECTION

WAC 132A-126-065 Brief adjudicative proceedings—Agency record.

The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

[]

NEW SECTION

WAC 132A-126-070 Student conduct committee proceedings. (1) The

student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee, so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.

[]

NEW SECTION

WAC 132A-126-075 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing at a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request, filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline (or referral to the committee); and

(b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of their choice. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

(10) At the option of the college president, the college may appoint an administrative law judge to serve as a hearing officer responsible for handling procedural matters otherwise assigned to the chair and to conduct the hearing on behalf of the student conduct committee.

[]

NEW SECTION

WAC 132A-126-080 Student conduct committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision; or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

In cases involving allegations of sexual misconduct, no party shall directly question or cross-examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

[]

NEW SECTION

WAC 132A-126-085 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to

propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing, or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

[]

NEW SECTION

WAC 132A-126-090 Appeal from student conduct committee initial decision. (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within twenty days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

[]

NEW SECTION

WAC 132A-126-095 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges, for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) (a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices that may be bound or protected by it.

(6) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

[]

NEW SECTION

WAC 132A-126-100 Sexual misconduct proceedings. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

[]

NEW SECTION

WAC 132A-126-200 Supplemental Title IX student conduct procedures—Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132A-126-005 through 132A-126-095, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 132A-126-205 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(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 eighteen.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

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

(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 132A-126-210 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
 - (b) Occurred during a college educational program or activity;
- and
- (c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" 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 subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132A-126-020 through 132A-126-095.

(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 132A-126-215 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
 - (b) Identify the alleged Title IX violation(s);
 - (c) Set forth the facts underlying the allegation(s);
 - (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
 - (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 the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

[]

NEW SECTION

WAC 132A-126-220 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 132A-126-040. In no event will the hearing date be set less than ten 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 132A-126-225 Rights of parties. (1) The college's student conduct procedures, WAC 132A-126-040 through 132A-126-095, 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 132A-126-230 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) Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(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 counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

[]

NEW SECTION

WAC 132A-126-235 Initial order. (1) In addition to complying with WAC 132A-126-055, 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 grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices 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 of responsibility;
 - (d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
 - (e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;
 - (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
 - (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; 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 132A-126-240 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132A-126-060.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

The president's office shall serve the final decision on the parties simultaneously.

[]

WSR 21-15-042
PERMANENT RULES
BOARD OF INDUSTRIAL
INSURANCE APPEALS

[Filed July 14, 2021, 10:04 a.m., effective August 14, 2021]

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

Purpose: To revise the board's rules of practice and procedure by amending WAC 263-12-015, 263-12-01501, 263-12-020, 263-12-045, 263-12-118, 263-12-170, 263-12-195, 263-12-045, 263-12-052, 263-12-053, 263-12-091, 263-12-097, and 263-12-117. Rules are being modified and added to meet current business needs of the board of industrial insurance appeals (BIIA) including changes necessary to amend the working title of the executive secretary to chief legal officer; reflect that a corporate officer of an employer may represent an employer; allow appointment of pro tem judges; in response to recent legislation, change the name of claim resolution agreement, relax certain requirements, and allow parties to amend agreements; update requirements for filing affidavits of prejudice if an appeal is assigned to a new judge for writing the proposed decision and order; clarify that the recent civil rule changes regarding the use of team interpreters does not apply to proceedings at the BIIA; and remove the requirement for a paper copy of the deposition transcript to be filed along with the electronic copy.

Citation of Rules Affected by this Order: New 1; and amending 12.

Statutory Authority for Adoption: RCW 51.51.2020 [51.52.020].

Other Authority: RCW 51.52.020.

Adopted under notice filed as WSR 21-10-090 on May 3, 2021.

Changes Other than Editing from Proposed to Adopted Version: WAC 263-12-091, changed designation from "Affidavit of prejudice" to "Notice of disqualification."

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 12, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 12, 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: July 13, 2021.

David E. Threedy
[Executive Secretary]

OTS-3031.3

AMENDATORY SECTION (Amending WSR 98-20-109, filed 10/7/98, effective 11/7/98)

WAC 263-12-015 Administration and organization. (1) **Composition of the board.** The board is an independent agency of the state of Washington composed of three members appointed by the governor. One member is a representative of workers, one member is a representative of employers, and the chairperson, who must be an active member of the Washington State Bar, is the representative of the public.

(2) **Location of the board.** The headquarters, and principal office of the board, is located at 2430 Chandler Ct. S.W., P.O. Box 42401, in Olympia, Washington 98504-2401.

(3) **Customary office hours.** The customary office hours of the board shall be from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays.

(4) **Formal board meetings.** The board shall meet in formal session at its headquarters in Olympia, Washington at 9 a.m. on the first Tuesday of each month, and at such other times and places as the board may deem necessary, subject to 24-hour notice as required by law.

(5) **Staff organization.**

(a) The board's headquarters in Olympia is staffed with executive, administrative and clerical personnel.

(b) The board has a staff of industrial appeals judges who travel throughout the state in the performance of their duties and who have their offices in Olympia and in other areas of the state as is deemed necessary for efficient and cost effective handling of agency business.

(c) The office of the (~~executive secretary~~) chief legal officer of the board is located at the headquarters and principal office of the board.

[Statutory Authority: RCW 51.52.020. WSR 98-20-109, § 263-12-015, filed 10/7/98, effective 11/7/98; WSR 95-02-065, § 263-12-015, filed 1/3/95, effective 2/3/95; WSR 91-13-038, § 263-12-015, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-015, filed 1/10/86. Statutory Authority: RCW 51.52.020. WSR 84-02-024 (Order 15), § 263-12-015, filed 12/29/83. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-015, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-015, filed 1/18/82; Order 10, § 263-12-015, filed 4/5/76; Order 7, § 263-12-015, filed 4/4/75; Order 4, § 263-12-015, filed 6/9/72; General Order 2, § 2, filed 6/12/63; General Order 1, § 2, filed 3/23/60; General Order 3, Subsection 4, filed 10/29/65. Formerly WAC 296-12-015.]

AMENDATORY SECTION (Amending WSR 18-24-123, filed 12/5/18, effective 1/5/19)

WAC 263-12-01501 Communications and filing with the board. (1) **Where to file communications with the board.** Except as provided elsewhere in this section all written communications shall be filed with the board at its headquarters in Olympia, Washington. With written permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay

filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(2) **Methods of filing.** Unless otherwise provided by statute or these rules any written communication may be filed with the board by using one of four methods: Personally, by mail, by telephone facsimile, or by electronic filing. Failure of a party to comply with the filing methods selected by the party for use under this section, or as otherwise set forth in these rules or statute for filing written communications may prevent consideration of a document.

(a) **Filing personally.** The filing of a written communication with the board personally is accomplished by delivering the written communication to an employee of the board at the board's headquarters in Olympia during customary office hours.

(b) **Filing by mail.** The filing of a written communication with the board is accomplished by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(c) **Filing by telephone facsimile.**

(i) The filing of a written communication with the board by telephone facsimile is accomplished when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment during the board's customary office hours. All facsimile communications must be filed with the board via fax numbers listed on the board's website.

(ii) The hours of staffing of the board's telephone facsimile equipment are the board's customary office hours. Documents sent by facsimile communication comments outside of the board's customary office hours will be deemed filed on the board's next business day.

(iii) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

(iv) The party attempting to file a written communication by telephone facsimile bears the risk that the written communication will not be received or legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

(v) The board may require a party to file an original of any document previously filed by telephone facsimile.

(d) **Electronic filing.** Electronic filing is accomplished by using the electronic filing link on the board's website. Communication sent by email will not constitute or accomplish filing. Communication filed using the board's website outside of the board's customary office hours will be deemed filed on the board's next business day. A sepa-

rate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

(3) **Electronic filing of a notice of appeal.** A notice of appeal may be filed electronically when using the appropriate form for electronic filing of appeals as provided on the board's website. An electronic notice of appeal is filed when it is received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Appeals received via the board's website outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing party that an electronic notice of appeal has been received. The board may reject a notice of appeal that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(4) **Electronic filing of application for approval of claim resolution structured settlement agreement.** An application for approval of claim resolution structured settlement agreement must be filed electronically using the form for electronic filing of applications for approval of claim resolution structured settlement agreement as provided on the board's website. An electronic application for approval of claim resolution structured settlement agreement is filed when received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Applications received by the board via the board's website outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing party that an electronic application for approval of claim resolution structured settlement agreement has been received. An electronic copy of the signed agreement for claim resolution structured settlement agreement must be submitted as an attachment to the application for approval. The board will reject an application for approval of claim resolution structured settlement agreement that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(5) **Sending written communication.** All correspondence or written communication filed with the board pertaining to a particular case, before the entry of a proposed decision and order, should be sent to the attention of the industrial appeals judge assigned to the case. Interlocutory appeals should be sent to the attention of the chief industrial appeals judge. In all other instances, written communications shall be directed to the (~~executive secretary~~) chief legal officer of the board.

(6) **Form requirements.** Any written communications with the board concerning an appeal should reference the docket number assigned by the board to the appeal, if known. Copies of any written communications filed with the board shall be served on all other parties or their representatives of record, and the original shall demonstrate compliance with the requirement to serve all parties. All written communications with the board shall be on paper 8 1/2" x 11" in size.

[Statutory Authority: RCW 51.52.020. WSR 18-24-123, § 263-12-01501, filed 12/5/18, effective 1/5/19; WSR 17-24-121, § 263-12-01501, filed 12/6/17, effective 1/6/18; WSR 16-24-054, § 263-12-01501, filed 12/2/16, effective 1/2/17; WSR 14-24-105, § 263-12-01501, filed 12/2/14, effective 1/2/15; WSR 11-23-154, § 263-12-01501, filed 11/22/11, effective 12/23/11; WSR 10-14-061, § 263-12-01501, filed

6/30/10, effective 7/31/10; WSR 06-12-003, § 263-12-01501, filed
5/25/06, effective 6/25/06; WSR 04-22-047, § 263-12-01501, filed
10/28/04, effective 11/28/04; WSR 04-16-097, § 263-12-01501, filed
8/3/04, effective 9/3/04; WSR 98-20-109, § 263-12-01501, filed
10/7/98, effective 11/7/98; WSR 91-13-038, § 263-12-01501, filed
6/14/91, effective 7/15/91.]

AMENDATORY SECTION (Amending WSR 16-24-054, filed 12/2/16, effective 1/2/17)

WAC 263-12-020 Appearances of parties before the board. (1) **Who may appear?** Any party to any appeal may appear before the board at any conference or hearing held in such appeal, either on the party's own behalf or by a representative as described in subsections (3) and (4) of this section.

(2) **Who must obtain approval prior to representing a party?** A person who is disbarred, resigns in lieu of discipline, or is presently suspended from the practice of law in any jurisdiction, or has previously been denied admission to the bar in any jurisdiction for reasons other than failure to pass a bar examination, shall not represent a party without the prior approval of the board. A written petition for approval shall be filed sixty calendar days prior to any event for which the person seeks to appear as a representative. The board may deny any petition that fails to demonstrate competence, moral character, or fitness.

(3) **Who may represent a party?**

(a) A worker or beneficiary may be represented by:

(i) An attorney at law with membership in good standing in the Washington state bar association or a paralegal supervised by an attorney at law with membership in good standing in the Washington state bar association.

(ii) An attorney at law with membership in good standing in the highest court of any other state or the District of Columbia.

(iii) A lay representative so long as the person does not charge a fee, is not otherwise compensated for the representation except as provided in (a)(iv) of this subsection, and files a declaration or affidavit with the board certifying compliance with this rule. The industrial appeals judge may alternatively permit this certification to be made under oath and reflected in a transcript or report of proceeding.

(iv) A lay representative employed by the worker's labor union whose duties include handling industrial insurance matters for the union, provided the person files a declaration or affidavit with the board certifying this status. The industrial appeals judge may alternatively permit this certification to be made under oath and reflected in a transcript or report of proceeding.

(v) Any lay representative seeking to represent a worker or beneficiary who has not provided the certification required under (a)(iii) and (iv) of this subsection will be excluded from serving as a worker's or beneficiary's representative.

(b) An employer or retrospective rating group may be represented by:

(i) An attorney at law with membership in good standing in the Washington state bar association or a paralegal supervised by an at-

torney at law with membership in good standing in the Washington state bar association.

(ii) An attorney at law with membership in good standing in the highest court of any other state or the District of Columbia.

(iii) A lay representative who is a corporate officer or an employee of the employer or retrospective rating group.

(iv) A firm that contracts with the employer or retrospective rating group to handle matters pertaining to industrial insurance.

(c) The department of labor and industries may be represented by:

(i) An attorney employed as assistant attorney general or appointed as a special assistant attorney general.

(ii) A paralegal supervised by an assistant attorney general or special assistant attorney general.

(iii) An employee of the department of labor and industries designated by the director, or his or her designee, in a claim resolution structured settlement agreement under RCW 51.04.063.

(d) A licensed legal intern may represent any party consistent with Washington state admission to practice rule 9(e).

(4) Appeals under the Washington Industrial Safety and Health Act.

(a) In an appeal by an employee or employee representative under the Washington Industrial Safety and Health Act, the cited employer may enter an appearance as prescribed in subsection (7) of this section and will be deemed a party to the appeal.

(b) In an appeal by an employer, under the Washington Industrial Safety and Health Act, an employee or employee representative may enter an appearance as prescribed in subsection (7) of this section and will be deemed a party to the appeal.

(c) A lay representative appearing on behalf of an employee or an employee representative in an appeal under the Washington Industrial Safety and Health Act is not subject to the compensation restrictions of subsection (3) of this section.

(5) May a self-represented party be accompanied by another person? Where the party appears representing himself or herself, he or she may be accompanied, both at conference and at hearing, by a lay person of his or her choosing who shall be permitted to accompany the party into the conference or hearing room and with whom he or she can confer during such procedures. If the lay person is also a witness to the proceeding, the industrial appeals judge may exclude the lay person from the proceeding as provided by Evidence Rule 615.

(6) Assistance by the industrial appeals judge. Although the industrial appeals judge may not advocate for either party, all parties who appear either at conferences or hearings are entitled to the assistance of the industrial appeals judge presiding over the proceeding. Such assistance shall be given in a fair and impartial manner consistent with the industrial appeals judge's responsibilities to the end that all parties are informed of the procedure to be followed and the issues involved in the proceedings. Any party who appears representing himself or herself shall be advised by the industrial appeals judge of the burden of proof required to establish a right to the relief being sought.

(7) How to make an appearance.

(a) Appearance by employer representative. Within fourteen days of receipt of an order granting appeal, any representative of an employer or retrospective rating group must file a written notice of appearance that includes the name, address, and telephone number of the individual who will appear.

(b) Appearances by a worker or beneficiary representative shall be made either by:

(i) Filing a written notice of appearance with the board containing the name of the party to be represented, and the name and address of the representative; or by

(ii) Appearing at the time and place of a conference or hearing on the appeal, and notifying the industrial appeals judge of the party to be represented, and the name and address of the representative.

(8) Notice to other parties.

(a) The appearing party shall furnish copies of every written notice of appearance to all other parties or their representatives of record at the time the original notice is filed with the board.

(b) The board will serve all of its notices and orders on each representative and each party represented. Service upon the representative shall constitute service upon the party. Where more than one individual associated with a firm, or organization, including the office of the attorney general, has made an appearance, service under this subsection shall be satisfied by serving the individual who filed the notice of appeal, or who last filed a written notice of appearance or, if no notice of appeal or written notice of appearance has been filed on behalf of the party, the individual who last appeared at any proceeding concerning the appeal.

(9) Withdrawal or substitution of representatives. An attorney or other representative withdrawing from a case shall immediately notify the board and all parties of record in writing. The notice of withdrawal shall comply with the rules applicable to notices of withdrawal filed with the superior court in civil cases. Withdrawal is subject to approval by the industrial appeals judge or the (~~executive secretary~~) chief legal officer. Any substitution of an attorney or representative shall be accomplished by written notification to the board and to all parties of record together with the written consent of the prior attorney or representative. If such consent cannot be obtained, a written statement of the reason therefor shall be supplied.

(10) Conduct. All persons appearing as counsel or representatives in proceedings before the board or before its industrial appeals judges shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

(a) Industrial appeals judge. If any such person does not conform to such standard, the industrial appeals judge presiding over the appeal, at his or her discretion and depending on all the circumstances, may take any of the following actions:

(i) Admonish or reprimand such person.

(ii) Exclude such person from further participation or adjourn the proceeding.

(iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100.

(iv) Report the matter to the board.

(b) The board. In its discretion, either upon referral by an industrial appeals judge as stated above or on its own motion, after information comes to light that establishes to the board a question regarding a person's ethical conduct and fitness to practice before the board, and after notice and hearing, the board may take appropriate disciplinary action including, but not limited to:

(i) A letter of reprimand.

(ii) Refusal to permit such person to appear in a representative capacity in any proceeding before the board or its industrial appeals judges.

(iii) Certification of the record to the superior court for contempt proceedings as provided in RCW 51.52.100. If the circumstances require, the board may take action as described above prior to notice and hearing if the conduct or fitness of the person appearing before the board requires immediate action in order to preserve the orderly disposition of the appeal(s).

(c) Proceedings. If any person in proceedings before the board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the industrial appeals judge may, at his or her discretion and depending on all the circumstances:

(i) Admonish or reprimand such person.

(ii) Exclude such person from further participation or adjourn the proceeding.

(iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100.

(iv) Report the matter to the board for action consistent with (b) of this subsection.

[Statutory Authority: RCW 51.52.020. WSR 16-24-054, § 263-12-020, filed 12/2/16, effective 1/2/17; WSR 14-24-105, § 263-12-020, filed 12/2/14, effective 1/2/15; WSR 10-14-061, § 263-12-020, filed 6/30/10, effective 7/31/10; WSR 04-16-009, § 263-12-020, filed 7/22/04, effective 8/22/04; WSR 00-23-021, § 263-12-020, filed 11/7/00, effective 12/8/00; WSR 98-20-109, § 263-12-020, filed 10/7/98, effective 11/7/98; WSR 91-13-038, § 263-12-020, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-020, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-020, filed 1/18/82; Order 7, § 263-12-020, filed 4/4/75; Order 6, § 263-12-020, filed 9/29/72; Order 4, § 263-12-020, filed 6/9/72; General Order 2, § 3.1, filed 6/12/63; General Order 1, filed 3/23/60; General Order 3, § 3.1(b), Subsection (2), filed 10/29/65.]

AMENDATORY SECTION (Amending WSR 06-12-003, filed 5/25/06, effective 6/25/06)

WAC 263-12-045 Industrial appeals judges. (1) **Definition.** Whenever used in these rules, the term "industrial appeals judge" shall include any member of the board, the (~~executive secretary, as well as~~) chief legal officer, and any duly authorized industrial appeals judge assigned to conduct a conference or hearing.

(2) **Duties and powers.** It shall be the duty of the industrial appeals judge to conduct conferences or hearings in cases assigned to him or her in an impartial and orderly manner. The industrial appeals judge shall have the authority, subject to the other provisions of these rules:

(a) To administer oaths and affirmations;

(b) To issue subpoenas on request of any party or on his or her motion. Subpoenas may be issued to compel:

- (i) The attendance and testimony of witnesses at hearing and/or deposition, or
- (ii) The production of books, papers, documents, and other evidence for discovery requests or proceedings before the board;
- (c) To rule on all objections and motions including those pertaining to matters of discovery or procedure;
- (d) To rule on all offers of proof and receive relevant evidence;
- (e) To interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the appeal;
- (f) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as he or she deems necessary to fairly and equitably decide the appeal, including the obtaining of physical, mental, or vocational examinations or evaluations of workers;
- (g) To take appropriate disciplinary action with respect to representatives of parties appearing before the board;
- (h) To issue orders joining other parties, on motion of any party, or on his or her own motion when it appears that such other parties may have an interest in or may be affected by the proceedings;
- (i) To consolidate appeals for hearing when such consolidation will expedite disposition of the appeals and avoid duplication of testimony and when the rights of the parties will not be prejudiced thereby;
- (j) To schedule the presentation of evidence and the filing of pleadings, including the filing of perpetuation depositions;
- (k) To close the record on the completion of the taking of all evidence and the filing of pleadings and perpetuation depositions. In the event that the parties do not confirm witnesses or present their evidence within the timelines prescribed by the judge, the judge may consider appropriate sanctions, including closing the record and issuing a proposed decision and order;
- (l) To take any other action necessary and authorized by these rules and the law.
- (3) **Interlocutory review.** A party may request interlocutory review pursuant to WAC 263-12-115(6) of any exercise of authority by the industrial appeals judge under this rule.
- (4) **Substitution of industrial appeals judge.** At any time the board or a chief industrial appeals judge or designee may substitute one industrial appeals judge for another in any given appeal.
- (5) **Pro tem industrial appeals judge.** If the board or the chief industrial appeals judge determines that there may be a conflict of interest for an industrial appeals judge to hear a particular appeal or when it is necessary to ensure an appearance of fairness or respond to workload variations, the board may appoint a pro tem industrial appeals judge to preside over the appeal and, if necessary, issue a proposed decision and order.

[Statutory Authority: RCW 51.52.020. WSR 06-12-003, § 263-12-045, filed 5/25/06, effective 6/25/06; WSR 03-02-038, § 263-12-045, filed 12/24/02, effective 1/24/03; WSR 00-23-021, § 263-12-045, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-045, filed 6/14/91, effective 7/15/91; WSR 84-02-024 (Order 15), § 263-12-045, filed 12/29/83. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-045, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-045, filed 1/18/82; Order 8, § 263-12-045, filed 5/2/75; Order 7, § 263-12-045,

filed 4/4/75; Order 4, § 263-12-045, filed 6/9/72; Rules 4.1 - 4.3, filed 6/12/63.]

AMENDATORY SECTION (Amending WSR 14-24-105, filed 12/2/14, effective 1/2/15)

WAC 263-12-052 Contents of claim resolution ((structured)) settlement agreement. A claim resolution ((structured)) settlement agreement shall be submitted electronically with a signed copy of the agreement. If the worker is not represented by an attorney, the agreement shall ((contain)) address all of the following information. If the worker is represented by an attorney, the agreement does not need to ((include)) address the information requested in subsections (6) through (9) of this section:

- (1) The names and mailing addresses of the parties to the agreement;
- (2) The date of birth of the worker;
- (3) The date the claim was received by the department or the self-insured employer, and the claim number;
- (4) The date of the order allowing the claim and the date the order became final. If the date of the order is unknown, a statement that the claim has been filed longer than one hundred eighty days prior and allowance of the claim became final;
- (5) The payment schedule and amounts to be paid through the claim resolution ((structured)) settlement agreement;
- (6) The nature and extent of the injuries and disabilities of the worker and the conditions accepted and segregated in the claim;
- (7) The life expectancy of the worker;
- (8) Other benefits the worker is receiving or is entitled to receive and the effect that a claim resolution ((structured)) settlement agreement may have on those benefits;
- (9) The marital or domestic partnership status of the worker;
- (10) The number of dependents, if any, the worker has;
- (11) ((A statement that:)) (a) The worker knows that he/she has the right to:
 - (i) Continue to receive all the benefits for which they are eligible under this title;
 - (ii) Participate in vocational training if eligible; or
 - (iii) Resolve their claim with a ((structured)) settlement;
 (b) All parties have signed the agreement. If a state fund employer has not signed the agreement, a statement that:
 - (i) The cost of the settlement will no longer be included in the calculation of the employer's experience factor used to determine premiums; or
 - (ii) The employer cannot be located; or
 - (iii) The employer is no longer in business; or
 - (iv) The employer failed to respond or declined to participate after timely notice of the claim resolution settlement process provided by the department;
 (c) The parties are seeking approval by the board of the agreement;
- (d) The agreement binds parties with regard to all aspects of the claim except medical benefits;
- (e) The periodic payment schedule is equal to at least twenty-five percent but not more than one hundred fifty percent of the aver-

age monthly wage in the state pursuant to RCW 51.08.018, except for the initial payment which may be up to six times the average monthly wage in the state pursuant to RCW 51.08.018;

(f) The agreement does not set aside or reverse an allowance order;

(g) The agreement does not subject any employer who is not a signatory to the agreement to any responsibility or burden under any claim;

(h) The agreement does not subject any department funds covered under the title to any responsibility or burden without prior approval from the director or his/her designee;

(i) The unrepresented worker or beneficiary of a self-insured employer was informed that he/she may request that the office of the ombudsman for self-insured injured workers provide assistance or be present during the negotiations;

(j) The claim will remain open for treatment or that the claim will be closed;

(k) The worker will either be required to or not be required to demonstrate aggravation (~~(of accepted conditions)~~) as contemplated by RCW 51.32.160 if the worker applies to reopen the claim;

(l) The parties understand and agree to the terms of the agreement;

(m) The parties have entered into the agreement knowingly and willingly, without harassment or coercion;

(n) The parties have represented the facts and the law to each other to the best of their knowledge;

(o) The parties believe that the agreement is reasonable under the circumstances;

(p) The parties know that they may revoke consent to the agreement by providing written notice to the other parties and the board within thirty days after the agreement is approved by the board;

(q) The designation of the party that will apply for approval with the board;

(r) Restrictions on the assignment, if any, of rights and benefits under the claim resolution (~~(structured)~~) settlement agreement.

(12) If the agreement impacts any claim with a currently active appeal, the proceedings in the appeal will be stayed without further order. Unless the agreement specifies otherwise and the agreement is approved, the appeal will be dismissed after the expiration of the revocation period specified in RCW 51.04.063(6).

[Statutory Authority: RCW 51.52.020. WSR 14-24-105, § 263-12-052, filed 12/2/14, effective 1/2/15; WSR 11-23-154, § 263-12-052, filed 11/22/11, effective 12/23/11.]

NEW SECTION

WAC 263-12-05301 Amendments of claim resolution settlement agreement. Amendments to claim resolution settlement agreements are permitted without the requirement to refile the agreement when requested prior to approval or rejection by the board of the claim resolution settlement agreement and signed consent to the amendment is obtained from all original signatories. In such cases the board's approval or rejection will specify the amendments made to the original agreement.

[]

AMENDATORY SECTION (Amending WSR 91-13-038, filed 6/14/91, effective 7/15/91)

WAC 263-12-091 (~~(Affidavits of prejudice.)~~) Notice of disqualification. (~~(Affidavits of prejudice)~~) Notice of disqualification against an industrial appeals judge ((assigned to conduct hearings)) in an appeal ((are subject to the provisions of RCW 4.12.050)) will disqualify a judge from hearing or deciding a matter, except ((that)) only one notice may be filed by a party in an appeal and such ((affidavit)) notice must be filed:

(1) Within thirty days of receipt of the notice of assignment of the appeal to the industrial appeals judge or prior to the assigned industrial appeals judge holding any proceeding in the appeal, whichever occurs sooner; or

(2) Within five business days of notification that the appeal has been assigned to a new industrial appeals judge for the purpose of writing a proposed decision and order.

[Statutory Authority: RCW 51.52.020. WSR 91-13-038, § 263-12-091, filed 6/14/91, effective 7/15/91.]

AMENDATORY SECTION (Amending WSR 06-12-003, filed 5/25/06, effective 6/25/06)

WAC 263-12-097 Interpreters. (1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in a hearing before the board of industrial insurance appeals, the industrial appeals judge may appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of chapters 2.42 and 2.43 RCW and General Rule provisions GR 11, GR 11.1, and GR 11.2.

(2) The provisions of General Rule 11.3 regarding telephonic interpretation and General Rule 11.4 regarding team interpretation shall not apply to the board's use of interpreters.

(3) The industrial appeals judge shall make a preliminary determination that an interpreter is able to accurately interpret all communication to and from the impaired or non-English-speaking person and that the interpreter is impartial. The interpreter's ability to accurately interpret all communications shall be based upon either (a) certification by the office of the administrator of the courts, or (b) the interpreter's education, certifications, experience, and the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding. The parties or their representatives may question the interpreter as to his or her qualifications or impartiality.

(4) The board of industrial insurance appeals will pay interpreter fees and expenses when the industrial appeals judge has determined the need for interpretive services as set forth in subsection (1).

When a party or person for which interpretive services were requested fails to appear at the proceeding, the requesting party or the party's representative may be required to bear the expense of providing the interpreter.

[Statutory Authority: RCW 51.52.020. WSR 06-12-003, § 263-12-097, filed 5/25/06, effective 6/25/06; WSR 00-23-022, § 263-12-097, filed 11/7/00, effective 12/8/00.]

AMENDATORY SECTION (Amending WSR 17-24-121, filed 12/6/17, effective 1/6/18)

WAC 263-12-117 Perpetuation depositions. (1) **Evidence by deposition.** The industrial appeals judge may permit or require the perpetuation of testimony by deposition, subject to the applicable provisions of WAC 263-12-115. Such ruling may only be given after the industrial appeals judge gives due consideration to:

- (a) The complexity of the issues raised by the appeal;
- (b) The desirability of having the witness's testimony presented at a hearing;
- (c) The costs incurred by the parties in complying with the ruling; and
- (d) The fairness to the parties in complying with the ruling.

(2) **Telephone depositions:** When testimony is taken by perpetuation deposition, it may be taken by telephone if all parties agree. For good cause the industrial appeals judge may permit the parties to take the testimony of a witness by telephone deposition over the objection of a party after weighing the following nonexclusive factors:

- The need of a party to observe a witness's demeanor.
- Difficulty in handling documents and exhibits.
- The number of parties participating in the deposition.
- Whether any of the testimony will need to be translated.
- Ability of the witness to travel.
- Availability of quality telecommunications equipment and service.

If a perpetuation deposition is taken by telephone, the court reporter transcribing the deposition is authorized to swear in the deponent, regardless of the deponent's location within or outside the state of Washington.

(3) The industrial appeals judge may require that depositions be taken and published within prescribed time limits. The time limits may be extended by the industrial appeals judge for good cause. Each party shall bear its own costs except when the industrial appeals judge allocates costs to parties or their representatives. If a party takes a deposition under this section, but elects not to file the deposition as evidence in the appeal, the party shall provide written notice to the assigned industrial appeals judge and all other parties prior to the deposition filing deadline.

(4) The party filing a deposition must submit the stenographically reported and transcribed deposition, certification, and exhibits in (~~both a written format and~~) an electronic format in accordance with procedures established by the board. The following requirements apply to the submission of depositions:

- (a) Video depositions will not be considered as part of the record on appeal;

(b) The electronic deposition must be submitted in searchable pdf format;

(c) Exhibits to the deposition must be filed electronically as a single attachment separate from the deposition transcript and certification;

~~(d) ((A legible paper copy of all exhibits must accompany the paper deposition transcript;~~

~~(e))~~ Any media exhibit (audio or video) must meet the requirements set forth in WAC 263-12-116; and

~~((f))~~ (e) If the deposition is not transcribed in a reproducible format or properly submitted it may be excluded from the record.

(5) **Procedure at deposition.** Unless the parties stipulate or the industrial appeals judge determines otherwise all depositions permitted to be taken for the perpetuation of testimony shall be taken subject to the following conditions:

(a) That all motions and objections, whether to form or otherwise, shall be raised at the time of the deposition and if not raised at such time shall be deemed waived.

(b) That all exhibits shall be marked and identified at the time of the deposition and, if offered into evidence, appended to the deposition.

(c) That the deposition be published without necessity of further conference or hearing at the time it is received by the industrial appeals judge.

(d) That all motions, including offers to admit exhibits and objections raised at the time of the deposition, shall be ruled upon by the industrial appeals judge in the proposed decision and order.

(e) That the deposition may be appended to the record as part of the transcript, and not as an exhibit, without the necessity of being retyped into the record.

[Statutory Authority: RCW 51.52.020. WSR 17-24-121, § 263-12-117, filed 12/6/17, effective 1/6/18; WSR 16-24-054, § 263-12-117, filed 12/2/16, effective 1/2/17; WSR 14-24-105, § 263-12-117, filed 12/2/14, effective 1/2/15; WSR 10-14-061, § 263-12-117, filed 6/30/10, effective 7/31/10; WSR 04-16-009, § 263-12-117, filed 7/22/04, effective 8/22/04; WSR 03-02-038, § 263-12-117, filed 12/24/02, effective 1/24/03.]

AMENDATORY SECTION (Amending WSR 16-24-054, filed 12/2/16, effective 1/2/17)

WAC 263-12-118 Motions. (1) **Definition.** A party's written or oral request for the board to take action on a pending appeal is a "motion." Motions must be in writing unless made during a hearing before an industrial appeals judge. The board recognizes that there are two basic categories of motions:

(a) **Nondispositive motions.** Nondispositive motions include procedural motions, such as motions for a continuance, an extension of time, or to reopen the record; and discovery motions, such as motions *in limine* or motions to compel or request sanctions.

(b) **Dispositive motions.** Dispositive motions ask for a decision on one or more of the issues in an appeal or to dismiss the appeal. Examples of dispositive motions are motions to dismiss or motions for summary judgment. See WAC 263-12-11801.

(2) **Motions made to the ((~~executive secretary~~)) chief legal officer.** The procedural rules in subsections (3) through (6) of this section do not apply to motions made to the ((~~executive secretary~~)) chief legal officer for consideration by the three-member board:

(a) Motions for stay of the order on appeal under RCW 51.52.050 (2)(b). (See WAC 263-12-11802.)

(b) Motions to reconsider or vacate final board orders. (See WAC 263-12-156.)

(c) Motions to set reasonable attorneys' fees under RCW 51.52.120. (See WAC 263-12-165.)

(d) Requests for a stay of abatement pending appeal under RCW 49.17.140 (4)(a) in appeals filed under the Washington Industrial Safety and Health Act. (See WAC 263-12-059.)

(3) **Written motions.** A written motion must identify the action requested on the first page in bold print. See WAC 263-12-01501 for other information about communication and filing.

(4) **Oral motions.** Any party may bring an oral motion during a hearing, unless prohibited from doing so at the industrial appeals judge's discretion. The industrial appeals judge may provide an opportunity for other parties to respond to any oral motion. The industrial appeals judge may require that an oral motion also be submitted in writing and may provide an opportunity for written response.

(5) **Responses to nondispositive motions.** Any party who opposes a written nondispositive motion may file a written response within five business days after the motion is served, or may make an oral or written response at such other time as the industrial appeals judge may set.

(6) **Argument.**

(a) **Nondispositive motions.** All nondispositive motions will be ruled on without oral argument, unless it is requested by the parties and approved by the industrial appeals judge, or at the discretion of the industrial appeals judge. Any party may request oral argument by placing "ORAL ARGUMENT REQUESTED" prominently on the first page of the motion or responsive pleading. The time and date for oral argument shall be scheduled in advance by contacting the judicial assistant for the assigned industrial appeals judge. Written notice shall be mailed not less than seven calendar days prior to the date set for oral argument, unless waived by the parties.

(b) **Dispositive motions.** See WAC 263-12-11801.

[Statutory Authority: RCW 51.52.020. WSR 16-24-054, § 263-12-118, filed 12/2/16, effective 1/2/17; WSR 14-24-105, § 263-12-118, filed 12/2/14, effective 1/2/15.]

AMENDATORY SECTION (Amending WSR 91-13-038, filed 6/14/91, effective 7/15/91)

WAC 263-12-170 Appeals to superior court—Certification of record. Upon receipt of a copy of notice of appeal to superior court from a board order, served upon the board by the appealing party pursuant to RCW 51.52.110, 7.68.110, 51.48.131, 34.05.542 or 49.17.150, the ((~~executive secretary~~)) chief legal officer or his or her designee shall certify the record made before the board to the court pursuant to the provisions of RCW 51.52.110, 7.68.110, 51.48.131, 34.05.566 or

49.17.150. Copies of such record (except nonreproducible exhibits) shall be furnished to all parties to the proceedings before the board.

[Statutory Authority: RCW 51.52.020. WSR 91-13-038, § 263-12-170, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.52.104, 51.52.020 and chapters 51.48 and 42.17 RCW. WSR 86-03-021 (Order 20), § 263-12-170, filed 1/10/86. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-170, filed 12/2/82; Order 7, § 263-12-170, filed 4/4/75; Order 4, § 263-12-170, filed 6/9/72; General Order 2, Rules 10.1 and 10.2, filed 6/12/63; General Order 1, Rules 7.1 and 7.2, filed 3/23/60; Subsections (1) and (2), General Order 3, Rule 10.2, filed 10/29/65. Formerly WAC 296-12-170.]

AMENDATORY SECTION (Amending WSR 18-24-123, filed 12/5/18, effective 1/5/19)

WAC 263-12-195 Significant decisions. (1) The board's publication "*Significant Decisions*," prepared pursuant to RCW 51.52.160, contains the decisions or orders of the board which it considers to have an analysis or decision of substantial importance to the board in carrying out its duties. Together with the indices of decision maintained pursuant to WAC 263-12-016(4), "*Significant Decisions*" shall serve as the index required by RCW 42.56.070 (5) (a) and (b).

(2) The board selects the decisions or orders to be included in "*Significant Decisions*" based on recommendations from staff and the public. Generally, a decision or order is considered "significant" only if it provides a legal analysis or interpretation not found in existing case law, or applies settled law to unusual facts. Decisions or orders may be included which demonstrate the application of a settled legal principle to varying fact situations or which reflect the further development of, or continued adherence to, a legal principle previously recognized by the board. Nominations of decisions or orders for inclusion in "*Significant Decisions*" should be submitted in writing to the (~~executive secretary~~) chief legal officer.

(3) "*Significant Decisions*" consists of decisions and orders identified as significant and headnotes summarizing the proposition or propositions for which the board considers the decisions or orders "significant." Indices are also provided to identify each decision or order by name and by subject.

(4) "*Significant Decisions*" and indices may be accessed at the board's website, www.biia.wa.gov.

[Statutory Authority: RCW 51.52.020. WSR 18-24-123, § 263-12-195, filed 12/5/18, effective 1/5/19; WSR 17-24-121, § 263-12-195, filed 12/6/17, effective 1/6/18; WSR 91-13-038, § 263-12-195, filed 6/14/91, effective 7/15/91.]

WSR 21-15-045
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed July 14, 2021, 12:01 p.m., effective August 14, 2021]

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

Purpose: The rule changes apply lean management principles, as required by section 5015, chapter 413, Laws of 2019, to the process related to applying for state assistance for school plant facilities, also known as the "D-Forms" process. Amending the rules by applying lean management principles and other performance management strategies is intended to reduce undue administrative burdens on school districts participating in this school facilities process.

Citation of Rules Affected by this Order: Repealing WAC 392-344-105; and amending WAC 392-342-200, 392-344-045, 392-344-085, 392-344-165, and 392-344-200.

Statutory Authority for Adoption: RCW 28A.525.020.

Adopted under notice filed as WSR 21-12-093 on June 1, 2021.

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 5, Repealed 1.

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 5, Repealed 1.

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: July 14, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-3009.1

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-342-200 Applications and forms. Applications and forms applicable to the provisions of this chapter for school facilities shall be as follows:

(1) Applications for preliminary funding status pursuant to WAC 392-342-050 shall be designated as ((SPI Form D-5)) OSPI D-5 Application.

(2) Grants of preliminary funding status pursuant to WAC 392-342-050 shall be given to districts through ((SPI Form D-6)) OSPI D-6 Form.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-342-200, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as § 392-342-200, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 85-24-047 (Order 24-85), § 180-26-200, filed 11/27/85.]

OTS-3010.1

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

WAC 392-344-045 Notice to proceed with design. After completion of the educational specifications review process as set forth in WAC 392-344-040 and after ~~((approval))~~ review of the site, the superintendent of public instruction shall transmit to the school district a notice to proceed with the design of the school facility.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-045, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-045, filed 10/17/83.]

AMENDATORY SECTION (Amending WSR 17-17-165, filed 8/23/17, effective 9/23/17)

WAC 392-344-085 Construction and other documents—Submittal. School district projects with secured funding assistance as of July 2018. (1) For the purpose of determining that the provisions set forth in chapters 392-341 through 392-344 and 392-347 WAC have been complied with prior to the opening of bids of any project to be financed with state funding assistance, the school district shall have on file with the superintendent of public instruction the following:

- (a) One digital copy of ~~((the construction documents forwarded by others))~~ selected bid documents to include general conditions and bid forms, site plans, floor plans with room names and numbers, and other bid documents when requested by OSPI for specific projects;
- (b) Cost estimate of construction on a form approved by the superintendent of public instruction, completed and signed by the architect-engineer;
- (c) Signed copy or photocopy of letters of approval by other governmental agencies in accordance with WAC 392-344-090;
- (d) Area analysis on a form approved by the superintendent of public instruction in accordance with chapter 392-343 WAC;
- (e) Complete listing of construction special inspections and/or testing to be performed by independent sources that are included in the project pursuant to WAC 392-343-100;
- (f) School district board acceptance of a value engineering report and its implementation.

The report shall include the following:

- (i) A brief description of the original design;
- (ii) A brief description of the value engineering methodology used;
- (iii) The areas analyzed;
- (iv) The design alternatives proposed;
- (v) The cost changes proposed;
- (vi) The alternates accepted; and
- (vii) A brief statement explaining why each alternate not accepted was rejected;
- (g) Certification by the school district that a constructability review report was completed.
The report shall include:
 - (i) A brief description of the constructability review methodology used;
 - (ii) The area analyzed;
 - (iii) The recommendations accepted; and
 - (iv) A brief statement explaining why each recommendation not accepted was rejected;
- (h) Completed building condition assessment (BCA) as required by WAC 392-343-535 for every school facility in the district.
- (i) Completed health and safety assessment as required by WAC 392-343-535, ~~((en))~~ of existing buildings for which state funding assistance is being requested.
- (2) If the above documents reflect an increase in square foot size from the application approved by the superintendent of public instruction as per WAC 392-344-025 which will result in an increase in state funding assistance, a new application must be submitted to the superintendent of public instruction.

[Statutory Authority: RCW 28A.525.020. WSR 17-17-165, § 392-344-085, filed 8/23/17, effective 9/23/17; WSR 10-09-008, § 392-344-085, filed 4/8/10, effective 5/9/10; WSR 08-20-008, § 392-344-085, filed 9/18/08, effective 10/19/08; WSR 06-16-032, amended and recodified as § 392-344-085, filed 7/25/06, effective 8/25/06; WSR 00-18-060, § 180-29-085, filed 9/1/00, effective 10/2/00; WSR 99-24-126, § 180-29-085, filed 12/1/99, effective 1/1/00; WSR 98-19-141, § 180-29-085, filed 9/23/98, effective 10/24/98. Statutory Authority: RCW 28A.525.020 and 1992 c 233 § 24(8). WSR 92-16-058, § 180-29-085, filed 8/3/92, effective 9/3/92. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-085, filed 10/17/83.]

AMENDATORY SECTION (Amending WSR 10-19-025, filed 9/9/10, effective 10/10/10)

WAC 392-344-165 Documents required for release of retainage by school district. Release of retainage on contracts shall be subject to receipt by the superintendent of public instruction of the following documents:

- (1) These documents shall be required no later than thirty days after official acceptance:
 - (a) ~~((Properly executed state invoice voucher as per the requirements of WAC 392-344-145;~~
 - ~~(b))~~ Architect/engineer certificate(s) of completion;
 - ~~((e))~~ (b) School district board of directors' resolution of final acceptance signed by the authorized agent of the school district;

~~((d))~~ (c) School district board of directors' resolution accepting the building commissioning report;

~~((e))~~ (d) Certification by the authorized agent of the school district that the requirements of RCW 39.04.320 apprenticeship utilization have been met;

(e) Final project costs as defined by the superintendent of public instruction.

(2) These documents shall be required no later than sixty days after official acceptance:

(a) Certification by the authorized agent of the school district that the district has on file all affidavits of wages paid in compliance with RCW 39.12.040;

(b) After expiration of forty-five days following acceptance of the project by the school district, a signed statement by the authorized agent of the school district that no lien(s) is on file with the school district or a certified list of each lien is on file with the school district. A copy of each lien shall be forwarded to the superintendent of public instruction;

(c) Either a permanent or temporary occupancy permit by building official of the jurisdiction. Also required are release documents as defined in chapter 60.28 RCW, RCW 50.24.130, and 51.12.050.

[Statutory Authority: RCW 28A.525.020. WSR 10-19-025, § 392-344-165, filed 9/9/10, effective 10/10/10; WSR 08-20-008, § 392-344-165, filed 9/18/08, effective 10/19/08; WSR 06-16-032, amended and recodified as § 392-344-165, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.525.020 and chapters 39.35 and 60.28 RCW. WSR 92-24-027, § 180-29-165, filed 11/24/92, effective 12/25/92. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-165, filed 10/17/83.]

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

WAC 392-344-200 Applications and forms. In addition to applications and forms prescribed in WAC 392-341-200 and 392-342-200, commencing January 1, 1986, applications and forms applicable to the provisions of this chapter for school facility projects shall be as follows:

(1) Applications for secured funding status pursuant to WAC 392-344-107 shall be designated as ~~((SPI Form))~~ OSPI Application D-7.

(2) Grants of secured funding status pursuant to WAC 392-344-107 shall be given to districts through ~~((SPI Form D-8))~~ OSPI D-8 Form.

(3) Grants of authority for school districts to proceed without secured funding status pursuant to WAC 392-344-107 shall be given to districts through ~~((SPI Form D-8-1))~~ OSPI D-8-1 Form.

(4) Applications for authority to enter into contracts pursuant to WAC 392-344-110 shall be designated as ~~((SPI Form D-9))~~ OSPI D-9 Application.

(5) Grants of authority to enter into contracts pursuant to WAC 392-344-115 shall be given to districts through ~~((SPI Form D-10))~~ OSPI D-10 Form.

(6) Grants of authority for school districts to enter into contracts without secured funding status pursuant to WAC 392-344-115

shall be given to districts through ((SPI Form D-10-1)) OSPI D-10-1 Form.

(7) Applications for SPI to release retainage pursuant to WAC 392-344-165 shall be designated as ((SPI Form D-11)) OSPI D-11 Application.

(8) Grants of release of final retainage pursuant to WAC 392-344-165 shall be given through ((SPI Form D-12)) OSPI D-12 Form.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-200, filed 7/25/06, effective 8/25/06; WSR 98-19-141, § 180-29-200, filed 9/23/98, effective 10/24/98. Statutory Authority: RCW 28A.47.830. WSR 85-24-047 (Order 24-85), § 180-29-200, filed 11/27/85.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-344-105 Bids—Advertisement.

WSR 21-15-046
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed July 14, 2021, 12:06 p.m., effective August 14, 2021]

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

Purpose: This rule amends WAC 392-550-040 to reflect (1) office of superintendent of public instruction's emergency adjustments to the effective date of WAC 392-550-040; and (2) a change in statutory language as a result of HB [ESHB] 1113.

Citation of Rules Affected by this Order: Amending WAC 392-550-040.

Statutory Authority for Adoption: RCW 28A.232.010, 28A.232.030.

Adopted under notice filed as WSR 21-11-110 on May 19, 2021.

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: July 14, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-2791.3

AMENDATORY SECTION (Amending WSR 20-15-062, filed 7/10/20, effective 8/10/20)

WAC 392-550-040 Truancy. (1) This section provides the process for determining truancy, required interventions, and a threshold for filing a truancy petition for students enrolled in alternative learning experience courses. Beginning (~~(January 1, 2021)~~) with the 2021-22 school year, this process should be used in place of the thresholds provided in RCW 28A.225.030. All other requirements of compulsory attendance outlined in chapter 28A.225 RCW apply.

(2) If a child required to attend school under RCW 28A.225.010 fails to meet the contact requirements of an alternative learning experience under this chapter without valid justification, the school district or charter school in which the child is enrolled must perform the following procedures:

(a)(i) The school district or charter school must inform the child's parent by a notice through direct personal contact whenever

the child has failed to make weekly contact without valid justification.

(ii) The notice must inform the parent of the potential consequences of additional missed weekly contacts.

(iii) The school district or charter school must ensure that this notification is in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(b) (i) After the second consecutive week of missed contact without valid justification or third cumulative week of missed contact without valid justification, the school district or charter school must schedule a conference with the parent and child to discuss the missed contact, administer a screener, and develop a data-based intervention plan to reduce the child's missed contacts.

(ii) The purpose of the conference is to understand the underlying reasons for the missed contact and to develop an intervention plan to address them.

(iii) In middle school and high school, the conference must include the application of the Washington assessment of the risks and needs of students (WARNS), or other screener that identifies barriers to attendance, by a school district's designee under RCW 28A.225.026.

(iv) The conference may take place in-person, by phone, or through interactive video communication.

(v) The conference must take place within one calendar week.

(vi) If the child's parent does not attend the scheduled conference, the conference may be conducted with the student and school official. The parent must be notified of the steps to be taken to eliminate the child's missed weekly contacts.

(3) (a) (i) If the actions performed under subsection (2) of this section are not successful in substantially reducing an enrolled student's missed weekly contacts without valid justification, the school district or charter school must file a petition and supporting affidavit for a civil action with the juvenile court alleging a violation of RCW 28A.225.010 by the parent, the child, or the parent and the child.

(ii) The petition must be filed no later than the fifth consecutive or sixth cumulative missed weekly contact without valid justification. The petition may be filed earlier and it may include the student's previous history of unexcused absences.

(b) A petition filed under this section must include the supporting documentation as provided in RCW 28A.225.030(1).

(c) For nonresident students, the petition must be filed in the county juvenile court that is most accessible for the student and parent. When determining the appropriate county court in which to file a truancy petition for nonresident students, the following must be considered:

(i) Proximity to the student or parents' primary place of residence;

(ii) The guidance from the juvenile court closest to the student or parents' primary place of residence; and

(iii) Preference stated by the student or parent, if communication with the parent(s) has been established.

(4) The petition must follow the requirements of RCW 28A.225.035.

(5) (a) Pursuant to RCW 28A.225.035, the petition must be stayed and the child and the child's parents must be referred to a community (~~truancy~~) engagement board or other coordinated means of intervention.

(b) The school district or charter school offering alternative learning experience course(s), or program designee, is responsible for coordinating with the juvenile court to determine whether a community (~~truancy~~) engagement board is the best intervention for the child or if another coordinated means of intervention will be more likely to support the student to return to school.

[Statutory Authority: Chapter 28A.232 RCW and RCW 28A.232.030. WSR 20-15-062, § 392-550-040, filed 7/10/20, effective 8/10/20.]

WSR 21-15-047
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed July 14, 2021, 12:07 p.m., effective August 14, 2021]

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

Purpose: The purpose of the rule amendments to chapter 392-380 WAC is to clarify the procedural and substantive due process requirements governing the exclusion of children from schools pursuant to RCW 28A.210.120 and 28A.210.320.

Citation of Rules Affected by this Order: Amending WAC 392-380-020, 392-380-045, 392-380-050, and 392-380-080.

Statutory Authority for Adoption: RCW 28A.210.160 and 28A.210.320(3).

Adopted under notice filed as WSR 21-08-081 on April 27 [7], 2021.

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 4, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: July 14, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-2569.1

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Student" shall mean the same as defined for "child" in RCW 28A.210.070(~~(6)~~).

(2) "Chief administrator" shall mean the same as defined in RCW 28A.210.070(~~(1)~~).

(3) "Full immunization" shall mean the same as defined in RCW 28A.210.070(~~(2)~~).

(4) "Schedule of immunization" shall mean the beginning or continuing of a course of immunization, including the conditions for school attendance when a child is not fully immunized, as prescribed by the state board of health (WAC (~~(246-100-166(5))~~) 246-105-060(2)).

(5) "Certificate of exemption" shall mean the filing of a statement exempting the child from immunizations with the chief administrator of the school, on a form prescribed by the department of health, which complies with RCW 28A.210.090.

(6) "Life-threatening condition" shall mean a health condition that will put the child in danger of death during the school day if a medication or treatment order and a nursing plan are not in place.

(7) "Medication or treatment order" shall mean the authority a registered nurse obtains under RCW 18.79.260(2). The order shall be signed by a licensed health care practitioner listed under RCW 18.79.260(2).

(8) "Nursing plan" shall mean a plan of care developed for the student consistent with the standards of nursing conduct or practice set out in department of health regulations, WAC 246-840-700 et seq. The nursing plan implements the medication or treatment order.

(9) "Exclusion" shall mean the case or instance when the student is denied initial or continued attendance:

(a) Due to failure to:

(i) Submit a schedule of immunization((7)) or a certificate of exemption as prescribed in WAC 246-105-050; or

(ii) Maintain the conditions for conditional status attendance prescribed in WAC 246-105-060; or

(b) In the case of a life-threatening health condition, due to failure to submit a medication or treatment order and any medication or equipment identified in the order, unless the school district is required to provide the medication or equipment as a related service under federal law.

(10) "School day" shall mean the same as in RCW 28A.150.030 and shall be inclusive of school or district sponsored field trip experiences and extracurricular activities and summer school.

(11) "Parent" shall ~~((mean parent, legal guardian, or other adult in loco parentis))~~ have the same meaning as in WAC 392-172A-01125.

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-020, filed 5/25/07, effective 6/25/07.]

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-045 School attendance conditioned upon presentation of proofs. (1) The initial attendance of every student at every public school in the state is conditioned upon proof of immunization as set forth in RCW 28A.210.080.

(2) The chief administrator of each public school shall prohibit the further presence at school of each student already in attendance and who has failed to provide proof of immunization in accordance with RCW 28A.210.080(1). Such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by ((a)) the student's parent((, guardian or other adult in loco parentis)).

(3) The initial attendance of every student at every public school who has a life-threatening health condition is conditioned upon:

(a) Presentation by the parent of a medication or treatment order addressing any life-threatening health condition the child has that may require medical services to be performed at the school; and

(b) Formulation of a nursing plan to implement the order.

The parent shall also provide any medication or equipment identified in the medication or treatment order necessary to carry out the order, unless the school district is required to provide the medication or equipment as a related service under federal law.

(4) The chief administrator of each public school shall prohibit the further attendance of each student already in attendance for whom a medication or treatment order has not been provided if the child has a life-threatening health condition that may require medical services to be performed at the school. Any such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by a parent. The school shall continue to prohibit the child's presence until the school:

(a) Receives a medication or treatment order and any medication or equipment identified in the order necessary to carry out the order, unless the school district is required to provide such medication or equipment as a related service under federal law; and

(b) Has a nursing plan in place.

A new medication or treatment order must be submitted whenever there are changes in the medication or treatment needs of the child. The nursing plan shall be amended accordingly.

(5) Upon receipt of a medication or treatment order, the school shall develop a nursing plan.

(6) The requirements of this chapter shall be applied consistent with the requirements of section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-045, filed 5/25/07, effective 6/25/07.]

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-050 Written notice prior to exclusions from school.

~~((1) Schools must provide written notice to parents prior to excluding students from school for failure to comply with WAC 392-380-045.~~

~~(2) The written notice for public school students shall:~~

~~(a) Be delivered in person or by certified mail and provided to parents in their native language if feasible.~~

~~(b) Inform the appropriate parents of the applicable laws and implementing rules. In addition to notification of the applicable laws and regulations, a copy of the laws and regulations shall be included with the notice.~~

~~(c) In cases of exclusion due to lack of proof of immunization, provide information regarding immunization services that are available from or through the local health department and other public agencies.~~

~~(d) Order the student excluded from school and state that such order is effective immediately upon receipt of the notice.~~

~~(e) Describe the rights of the parents and student to a hearing, describe the hearing process, and explain that the exclusion continues until either the necessary proof of immunization, or medication or~~

~~treatment plan is received, or until a hearing officer determines that the student is no longer excluded from school.)~~) (1) **Written notice.** Before excluding a student from school for failure to comply with WAC 392-380-045, a school must provide written notice of the exclusion to the student's parents in person, by mail, or by email. The written notice must include:

(a) The school's decision to exclude the student from school, effective immediately upon the parents' receipt of the notice.

(b) The duration and conditions of the exclusion, including that the exclusion will continue until the school receives necessary proof of immunization in accordance with RCW 28A.210.080, a medication or treatment plan in accordance with RCW 28A.210.320, or until a chief administrator determines that the student is no longer excluded from school.

(c) Notice of the applicable laws, including a copy of the applicable laws.

(d) In cases of exclusion due to lack of proof of immunization in accordance with RCW 28A.210.080(1), information regarding immunization services that are available through the local health department and other public agencies.

(e) The student's and parents' right to a hearing to challenge the decision under WAC 392-380-080, including where and to whom the hearing must be requested and a description of the hearing process.

(2) **Language assistance.** The school must ensure the written notice is provided in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964 or parents with communication disabilities under Title II of the Americans with Disabilities Act.

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-050, filed 5/25/07, effective 6/25/07.]

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-080 Prehearing and hearing process. ~~((1) If a request for hearing is received by the school district, it shall schedule a hearing. The hearing must be scheduled within three school days of receiving the request. The hearing may be continued to a later date if the parent requests a longer period.~~

~~(2) The school district shall establish a hearing process consistent with the procedures set forth for disciplinary cases under chapter 392-400 WAC.)~~ (1) **Requesting a hearing.** A student or the parent may request a hearing to the chief administrator orally or in writing.

(2) **Notice.** Within one school day after receiving the hearing request, unless otherwise agreed to by the parents, the chief administrator must provide the parents written notice in person, by mail, or by email of the time, date, and location of the hearing.

(3) **Hearing.** The school must hold a hearing within three school days from the date the school's chief administrator received the hearing request, unless otherwise agreed to by the parents. At the hearing, the chief administrator must provide the parents an opportunity to explain how their student is in compliance with school attendance requirements under WAC 392-380-045.

(4) **Hearing decision.** The chief administrator must deliver a written hearing decision to the parents in person, by certified mail, or by email within two school business days after the hearing. The written decision must include:

(a) The decision to affirm or reverse the exclusion;

(b) If the decision to exclude the student is affirmed, the duration and conditions of the exclusion, including that the exclusion will continue until the school receives necessary proof of immunization in accordance with WAC 392-380-045(1) or a medication or treatment plan in accordance with WAC 392-380-045(3); and

(c) In cases of exclusion due to lack of proof of immunization in accordance with RCW 28A.219.080(1), information regarding immunization services that are available through the local health department and other public agencies.

(5) **Language assistance.** The school must ensure the notice, hearing proceedings, and written hearing decision are in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964 or parents with communication disabilities under Title II of the Americans with Disabilities Act.

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-080, filed 5/25/07, effective 6/25/07.]

WSR 21-15-059
 PERMANENT RULES
 DEPARTMENT OF
 SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed July 15, 2021, 2:40 p.m., effective August 15, 2021]

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

Purpose: Amendments to chapter 388-826 WAC align with recent amendments to chapter 74.13 RCW, and align with new chapter 71A.28 RCW, Out-of-home services. These amendments are necessary to update the program from the voluntary placement services model to the way the program will now operate under chapter 71A.28 RCW as out-of-home services.

Citation of Rules Affected by this Order: New WAC 388-826-0018, 388-826-0019, 388-826-0042, 388-826-0043, 388-826-0044, 388-826-0073, 388-826-0074, 388-826-0231, 388-826-0232, 388-826-0233, 388-826-0234, 388-826-0235, 388-826-0236 and 388-826-0237; repealing WAC 388-826-0011 and 388-826-0050; and amending WAC 388-826-0001, 388-826-0005, 388-826-0010, 388-826-0016, 388-826-0040, 388-826-0041, 388-826-0070, 388-826-0071, 388-826-0072, 388-826-0075, 388-826-0077, 388-826-0078, 388-826-0079, 388-826-0095, 388-826-0096, 388-826-0097, 388-826-0098, 388-826-0130, 388-826-0133, 388-826-0138, 388-826-0145, 388-826-0150, 388-826-0160, 388-826-0170, 388-826-0175, 388-826-0200, 388-826-0205, 388-826-0230, and 388-826-0240.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: Chapters 71A.28, 74.13 RCW.

Adopted under notice filed as WSR 21-09-055 on April 16, 2021.

Changes Other than Editing from Proposed to Adopted Version: **Under WAC 388-826-0005, developmental disabilities administration (DDA) changed the definition of "custody" to replace "as allocated between two divorcing parents" with "as allocated by a court to one of two parents under a parenting plan." This change broadens the definition to include parents who were not married.**

Under WAC 388-826-0019, DDA changed the text as shown below:

(1) Out-of-home services ~~must~~ may be terminated if:

~~(1) The client is receiving services in a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities, or other institution for thirty consecutive days or longer.~~

(2) Out-of-home services must be terminated if:

(2a) The client's parent or legal guardian terminates services;

or

(2b) The client is over eighteen and terminates services.

DDA made this change because out-of-home services also follow waiver rules under chapter 388-845 WAC. Under WAC 388-845-0060, DDA may terminate a client's waiver enrollment if the client resides in one of the settings above for at least one full calendar month. Changing "must" to "may" in WAC 388-826-0019 aligns with the permissiveness in WAC 388-845-0060.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 14, Amended 29, Repealed 2.

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 14, Amended 29, Repealed 2.

Date Adopted: July 15, 2021.

Donald Clintsman
Acting Secretary

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 [21-16](#) issue of the Register.

WSR 21-15-084
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 16, 2021, 10:04 p.m., effective August 16, 2021]

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

Purpose: These WAC amendments implement the provisions of HB [2SHB] 1028, eliminating the edTPA as a state level requirement for teacher certification and program completion. Nonsubstantive updating and clarification changes are also included. These rule changes are required by legislation in HB [2SHB] 1028 and supported by our board.

Citation of Rules Affected by this Order: Repealing WAC 181-78A-340; and amending WAC 181-78A-231, 181-78A-232, and 181-80-010.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 21-12-072 on July 14 [May 28], 2021.

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 4, 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: July 14, 2021.

Maren Johnson
Rules Coordinator

OTS-3048.1

AMENDATORY SECTION (Amending WSR 21-08-023, filed 3/29/21, effective 4/29/21)

WAC 181-78A-231 Teacher, principal, career and technical education administrator, superintendent, and program administrator—Specific program approval domain standard—Candidates and cohorts. Candidates and cohorts. Providers of educator preparation programs recruit, select, support, and prepare diverse cohorts of candidates with potential to be outstanding educators.

(1) Providers conduct strategic and ongoing outreach to identify, recruit, admit, support, and transition promising educator candidates.

(a) Create, foster, and utilize effective partnerships to promote careers in teaching and educational leadership.

(b) Implement a targeted, data-informed outreach strategy that includes robust individualized enrollment support.

(c) Establish and monitor attributes and dispositions beyond academic ability that candidates must demonstrate at admissions and during the program.

(d) Providers of teacher preparation programs develop and utilize candidate recruitment strategies that address state, district, and workforce shortage areas.

(e) Providers of career and technical education business and industry route programs establish and expand meaningful and effective recruitment and admissions partnerships with local school districts.

(2) Providers of educator preparation programs use strategies to recruit, admit, and prepare a greater number of candidates from underrepresented groups including, but not limited to, candidates of color in effort to prepare an educator workforce that mirrors the characteristics of the student population in Washington state public schools.

(a) Demonstrate strategic outreach that is highly accessible and responsive to local communities of color.

(b) Gather and use data to assess strategic outreach to improve responsiveness and effectiveness.

(c) Identify needs and provide supports for enrollment and success in educator preparation programs for local communities of color and candidates representing linguistic and ability diversity.

(3) Providers set, publish, and uphold program admission standards to ensure that all educator candidates and cohorts are academically capable and technically prepared to succeed in educator preparation programs.

(a) Articulate clear criteria and requirements for program entry requirements to applicants.

(b) ~~((Articulate clear expectations for program completion to applicants and candidates.))~~ Publish, and provide to applicants prior to admission, a list of program completion requirements under RCW 28A.410.270(5).

(c) Inform, advise, and support applicants on assessment requirements, timelines, occupational experience requirements, and ~~((passing thresholds for board approved content and pedagogy assessments))~~ other certification requirements.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-023, § 181-78A-231, filed 3/29/21, effective 4/29/21. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-144, § 181-78A-231, filed 7/24/19, effective 8/24/19.]

AMENDATORY SECTION (Amending WSR 21-08-023, filed 3/29/21, effective 4/29/21)

WAC 181-78A-232 Teacher, principal, career and technical education administrator, superintendent, and program administrator—Specific program approval domain standard—Candidate knowledge, skills, and cultural responsiveness. Knowledge, skills, and cultural responsiveness. Providers prepare candidates who demonstrate the knowledge, skills and cultural responsiveness required for the particular certificate and areas of endorsement, which reflect the state's approved standards.

(1) Providers demonstrate effective, culturally responsive pedagogy using multiple instructional methods, formats, and assessments.

(a) Qualified faculty use multiple instructional strategies, pedagogies, and assessments to address candidates' academic language ability levels and cultural and linguistic backgrounds.

(b) Providers create opportunities for faculty members and program personnel to pursue, apply, and practice ongoing professional learning to improve their knowledge, skill, effectiveness, and cultural responsiveness.

(c) Faculty within the program and the unit collaborate among one another, with content specialists, P-12 schools, members of the broader professional community, and diverse members of local communities for continuous program improvement.

(d) Faculty members and program leaders systematically and comprehensively evaluate faculty's effectiveness in teaching and learning.

(2) Providers ensure that completers demonstrate the necessary subject matter knowledge for success as educators in schools.

(a) Candidates demonstrate knowledge and competence relative to the standards related to the role adopted by the board. Providers ensure that candidates in teacher preparation programs demonstrate the most recently published inTASC Standards, candidates in principal programs demonstrate the most recently published NELP - Building Level Standards, and candidates in superintendent programs demonstrate the most recently published NELP - District Level Standards, candidates in program administrator programs demonstrate the most recently published NELP Building or District Level Standards, and candidates in career and technical education educator preparation programs demonstrate and document the career and technical education standards approved by the professional educator standards board.

(b) Teacher candidates must take a board approved basic skills assessment prior to program admission. A provider of a teacher preparation program must assure that all candidates entering the program have successfully met the basic skills requirement under chapter 181-01 WAC at the time of admission. The provider must collect and hold evidence of candidates meeting this requirement.

(c) Teacher candidates must take a content knowledge assessment prior to beginning student teaching. The provider must collect and hold evidence of candidates meeting this requirement. Teacher candidates apply content knowledge as reflected in board approved endorsement competencies. Endorsement assessments are not required for teacher candidates in career and technical education business and industry route programs.

(d) Providers ensure that educator candidates complete ((a ~~course~~) coursework on issues of abuse ((~~as required by~~) and emotional or behavioral distress in students under RCW 28A.410.035 and WAC ((~~181-79A-030~~) 181-79A-200).

(e) Under RCW 28A.410.040, a teacher candidate whose only baccalaureate degree is in early childhood education, elementary education, or special education must have completed thirty quarter credits, or the equivalent in semester credits or continuing education credit hours, in one academic field in an endorsement area under WAC 181-82A-202.

(f) Candidates for an initial certificate in a career and technical education residency teacher preparation program must complete a minimum of forty-five quarter credits, or the equivalent in semester credits or continuing education credit hours, in the specific career and technical education area for which certification is sought.

(3) Providers ensure that candidates demonstrate pedagogical knowledge and skill relative to the professional standards adopted by the board for the role for which candidates are being prepared.

(a) Candidates demonstrate knowledge and competence relative to the standards related to the role, which were adopted by the board. Providers ensure that candidates in teacher preparation programs demonstrate most recently published inTASC Standards, candidates in principal programs demonstrate most recently published NELP - Building Level Standards, candidates in superintendent programs demonstrate most recently published NELP - District Level Standards, candidates in program administrator programs demonstrate the most recently published NELP Building or District Level Standards, and candidates in career and technical education educator preparation programs demonstrate and document the career and technical education standards approved by the professional educator standards board.

(b) Faculty and mentors provide regular and ongoing feedback to candidates regarding field based performance that is actionable and leads to improvement in candidates' practice.

(c) Providers demonstrate through structured observation, discussion, surveys, and/or artifacts that program completers effectively apply the professional knowledge, skills, and dispositions that the preparation program was designed to achieve.

(d) Providers (~~ensure that teacher candidates achieve passing scores on~~) may use the edTPA teacher performance assessment (~~, also known as the pedagogy assessment, approved by the board. Teacher preparation program providers shall require that each candidate engage in a performance assessment process approved by the board. The teacher performance assessment is not required for teacher candidates in career and technical education business and industry route programs. Candidates who participated in the teacher performance assessment field trials or took the pedagogy assessment prior to January 1, 2014, may be recommended for certification by the preparation program without a passing score~~) as a formative tool as long as notification to candidates is included in all program descriptions under chapter 28A.410 RCW.

(e) Providers of career and technical educator preparation programs provide candidates all necessary guidance to document, demonstrate, and submit for approval the required hours of occupational experience.

(f) In order to ensure that teacher and principal candidates can recognize signs of emotional or behavioral distress in students and appropriately refer students for assistance and support, teacher and principal preparation program providers must incorporate the social emotional standards and benchmarks, and must provide guidance to candidates on related competencies described in RCW 28A.410.270.

(4) Providers ensure that candidates are well prepared to exhibit the knowledge and skills of culturally responsive educators.

(a) Providers offer all candidates meaningful, reflective opportunities to interact with racially and culturally diverse colleagues, faculty, P-12 practitioners, and P-12 students and families.

(b) Providers prepare candidates to adapt their practices based on students' prior experiences, cultural knowledge, and frames of reference to make learning encounters more relevant and effective.

(c) Providers ensure course work explicitly focuses on cultural responsiveness and integrates components of culturally responsive education within and throughout all courses.

(d) Faculty explicitly model equity pedagogy in course work and practica in ways that enable candidates to integrate their own cultural and linguistic backgrounds into classroom activities.

(5) Teacher candidates engage with the since time immemorial curriculum focused on history, culture, and government of American Indian peoples as prescribed in RCW 28B.10.710.

(a) There shall be a one quarter or semester course, or the equivalent in continuing education credit hours, in either Washington state history and government, or Pacific Northwest history and government in the curriculum of all teacher preparation programs.

(b) No person shall be completed from any of said programs without completing said course of study, unless otherwise determined by the Washington professional educator standards board.

(c) Any course in Washington state or Pacific Northwest history and government used to fulfill the requirement of this section shall include information on the culture, history, and government of the American Indian peoples who were the first human inhabitants of the state and the region.

(d) Teacher preparation program providers shall ensure that programs meet the requirements of this section by integrating the curriculum developed and made available free of charge by the office of the superintendent of public instruction into existing programs or courses and may modify that curriculum in order to incorporate elements that have a regionally specific focus.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-023, § 181-78A-232, filed 3/29/21, effective 4/29/21; WSR 19-24-103, § 181-78A-232, filed 12/4/19, effective 1/4/20. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-144, § 181-78A-232, filed 7/24/19, effective 8/24/19.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-78A-340 Pilot of multiple measures for the teacher performance assessment.

OTS-3049.1

AMENDATORY SECTION (Amending WSR 21-08-023, filed 3/29/21, effective 4/29/21)

WAC 181-80-010 Basic requirements. (1) Alternative routes to teacher certification programs are partnerships between professional educator standards board-approved preparation program providers, Washington school districts, and other partners as appropriate. These partnerships are focused on district-specific teacher shortage areas. Approved alternative routes partnerships are eligible to apply for the

alternative routes block grant and to facilitate alternative route conditional scholarship program as described in RCW 28A.660.050.

(2) Each prospective teacher preparation program provider, in cooperation with a Washington school district or consortia of school districts operating an approved alternative route to teacher certification program must meet the following requirements:

(a) **Partnership requirements.** Alternative routes providers shall establish an alternative routes partnership memorandum of agreement (MOA) between the approved teacher preparation program provider and each partnering district or consortia of districts. Each MOA shall require:

(i) An identification, indication of commitment, and description of the role of approved teacher preparation program provider and partnering district or consortia of districts, including specific duties of each partner;

(ii) The role of each partner in candidate recruitment, screening, selection, and oversight;

(iii) The role of each partner in field placement and student teaching and a description of when each begins within the program;

(iv) The role of each partner in mentor selection, training, and support;

(v) A description of how the district intends for the alternative route program to support its workforce development plan and how the presence of alternative route candidates will advance its school improvement plans.

(b) **Programmatic requirements.** Programs shall uphold the following requirements in addition to requirements and standards listed in chapter 181-78A WAC.

(i) Ensure candidates meet ((assessment)) requirements for basic skills((~~r~~)) and content knowledge((~~r~~ and performance-based)) assessments ((~~per~~)) under RCW 28A.410.220((~~r~~, 28A.410.280~~r~~)) and chapter 181-78A WAC.

(ii) Fingerprint and character clearance under RCW 28A.410.010 must be current at all times during the field experience for candidates who do not hold a valid Washington certificate.

(iii) Clinical practice for teacher candidates should consist of no less than five hundred forty hours in classroom settings.

(iv) Mentorship requirements must be met in accordance with chapter 181-78A WAC and each candidate must be assigned a mentor. The candidate must receive mentoring for the duration of the residency.

(v) **Teacher development plan:** Ensure the design and use of a teacher development plan for each candidate. The plan shall specify the alternative route coursework and training required of each candidate and shall be developed by comparing the candidate's prior experience and coursework with the state's standards for residency certification. The plan must also include:

(A) Identification of one or more tools to be used to assess a candidate's performance once the candidate is about halfway through their residency;

(B) Recognition for relevant prior learning that demonstrates meeting residency certification competencies; and

(C) A description of the criteria that would result in early exit from the program with residency certification.

(vi) **Shortage areas.** Alternative route programs shall enroll candidates in a subject or geographic endorsement shortage area, as defined by the professional educator standards board.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-023, § 181-80-010, filed 3/29/21, effective 4/29/21; WSR 20-22-006, § 181-80-010, filed 10/21/20, effective 11/21/20. Statutory Authority: RCW 28A.410.220. WSR 19-05-010, § 181-80-010, filed 2/7/19, effective 3/10/19; WSR 17-18-006, § 181-80-010, filed 8/24/17, effective 9/24/17.]

WSR 21-15-085
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 16, 2021, 10:35 p.m., effective August 16, 2021]

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

Purpose: This proposed rule enacts the provisions of HB [ESHB] 1426: Certificate renewal relating to equity-based school practices, professional standards for educational leaders, and government-to-government relations. The proposed WAC also includes a clarification and reorganizational changes. All certificates, initial, continuing, residency, and professional, will now be renewed in the same manner in terms of timelines and other structures. Educational staff associates and administrators meeting the requirements for continuing certificates will now be issued professional certificates. Clarifications and updates were also made for clock hours for mentoring, and national board maintenance of certification. Finally, the proposed WAC includes changing standards for clock hour courses and professional growth plans to align with the cultural competency, diversity, equity, and inclusion standards; social emotional learning; and professional educator role standards.

This rule updates WAC to align with the recently passed HB [ESHB] 1426. This rule further aligns preparation and credentialing WAC with existing and emerging standards. This rule simplifies the system, making it easier for educators and education leaders to understand.

Citation of Rules Affected by this Order: New WAC 181-79A-240, 181-79A-244, 181-79A-247, 181-79A-260, 181-85-020, 181-85-035, 181-85-040, 181-85-075, 181-85-100 and 181-85-130; repealing WAC 181-79A-011, 181-79A-115, 181-79A-118, 181-79A-207, 181-79A-213, 181-79A-226, 181-79A-250, 181-79A-251, 181-79A-2510, 181-79A-2511, 181-79A-2512, 181-79A-253, 181-85-020, 181-85-035, 181-85-040, 181-85-075, 181-85-100 and 181-85-130; and amending WAC 181-79A-030, 181-79A-110, 181-79A-117, 181-79A-123, 181-79A-124, 181-79A-130, 181-79A-140, 181-79A-142, 181-79A-145, 181-79A-150, 181-79A-200, 181-79A-206, 181-79A-211, 181-79A-221, 181-79A-223, 181-79A-231, 181-85-025, 181-85-030, 181-85-033, 181-85-105, 181-85-106, 181-85-108, 181-85-202, 181-85-203, 181-85-205, 181-77-031, 181-77-041, 181-77-071, 181-77-081, 181-77-110, 181-77-120, 181-78A-010, 181-78A-233, and 181-77A-165.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 21-12-091 on July 14 [June 1], 2021.

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 10, Amended 34, Repealed 18.

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: July 14, 2021.

Maren Johnson
Rules Coordinator

OTS-3063.4

AMENDATORY SECTION (Amending WSR 21-08-023, filed 3/29/21, effective 4/29/21)

WAC 181-77-031 Requirements for candidates seeking career and technical education certification who have completed approved teacher preparation programs in a career and technical education endorsement area. Candidates shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-155. Candidates shall complete preparation programs under the standards in chapter 181-78A WAC.

(1) **Initial.**

(a) Candidates for the initial certificate shall hold a baccalaureate degree or higher from an accredited college or university.

(b) Candidates for the initial certificate shall demonstrate competency in one or more of the career and technical education broad areas: Agriculture education, business and marketing education, family and consumer sciences education, and technology education, as listed in WAC 181-77-005.

(c) Candidates for the initial certificate shall complete a state approved career and technical education teacher (~~(training)~~) preparation program which shall include completion of student teaching in the relevant career and technical education subject area.

(d) Candidates for the initial certificate shall provide documentation of two thousand hours occupational experience in the broad area for which certification is sought. If all or part of the two thousand hours is more than ten years old, candidates must complete an additional three hundred hours of recent (occurring in the last two years) occupational experience. The candidate must also apply for the residency teacher certificate or add the subject area to their teacher certificate in their subject area, (~~(take and pass)~~) meet the content knowledge (~~(test(s))~~) assessment requirement for the subject area, and be issued the residency teacher certificate before the CTE initial certificate can be issued.

(e) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

~~(2) ((**Initial renewal.** Candidates for renewal of the initial certificate must complete one hundred continuing education credit hours in the subject area certified to teach since the initial certificate was issued, or four professional growth plans as defined in WAC 181-85-033. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

~~Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.~~

~~Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

~~An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.~~

~~(3-))~~ **Continuing.**

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least ~~((fifteen quarter hours or))~~ one hundred fifty continuing education credit hours of career and technical education educator training in the career and technical education subject area to be certified completed subsequent to the conferral of the baccalaureate degree, or, hold a valid national board certificate issued by the National Board for Professional Teaching Standards in any certificate area.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject area certified to teach with an authorized employer (i.e., school district(s) or skills center(s)).

~~((4) Continuing certificate renewal.~~ Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate:

~~(a) Ten quarter hours or one hundred continuing education credit hours of career and technical education educator training, or four professional growth plans as defined in WAC 181-85-033. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

~~Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.~~

~~Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

~~An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.~~

~~(b) Continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to career and technical education endorsement areas. This STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6-).)~~ (3) Certificates under this section are renewed under chapter 181-79A WAC.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-023, § 181-77-031, filed 3/29/21, effective 4/29/21. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-112, § 181-77-031, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 18-21-070, § 181-77-031, filed 10/11/18, effective 11/11/18; WSR 18-08-007, § 181-77-031, filed 3/22/18, effective 4/22/18. Statutory Authority: RCW 28A.410.210. WSR 16-23-064, § 181-77-031, filed 11/14/16, effective 12/15/16; WSR 16-07-096, § 181-77-031, filed 3/18/16, effective 4/18/16; WSR 08-16-004, § 181-77-031, filed 7/23/08, effective 8/23/08; WSR 06-14-010, § 181-77-031, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-77-031, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) through (4). WSR 02-04-018, § 180-77-031, filed 1/24/02, effective 2/24/02. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010. WSR 00-18-064, § 180-77-031, filed 9/1/00, effective 10/2/00. Statutory Authority: RCW 28A.410.010. WSR 98-01-026, § 180-77-031, filed 12/8/97, effective 1/8/98; WSR 97-04-085, § 180-77-031, filed 2/5/97, effective 3/8/97; WSR 95-12-056, § 180-77-031, filed 6/2/95, effective 7/3/95.]

AMENDATORY SECTION (Amending WSR 21-08-024, filed 3/29/21, effective 4/29/21)

WAC 181-77-041 Requirements for candidates seeking career and technical education certification on the basis of business and industry work experience. Candidates seeking career and technical education certification on the basis of business and industry work experience shall complete the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155 (1) and (2).

(1) **Initial.**

(a) Candidates for the initial certificate shall provide documentation of occupational experience in the specialty area for which certification is sought.

(i) Six thousand hours is required.

(ii) Two thousand hours must be within the past ten years. Candidates may use up to four thousand hours of teaching experience in the specialty area they are experienced in and the remaining two thousand hours must be from nonteaching occupational experience. For STEM, candidate may use all six thousand hours of teaching experience in science, technology, engineering and/or math in lieu of occupational experience. For biomedical sciences and health science biotechnology, candidates may use all six thousand hours of teaching experience in biology in lieu of occupational experience.

(iii) If all or part of the two thousand hours is more than ten years old, an additional three hundred hours of recent (occurring in the last two years) occupational experience is required.

(b) Candidates for the initial certificate shall complete a professional educator standards board approved program under WAC 181-77A-029.

(c) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

~~(2) ((Initial renewal. Candidates for renewal of the initial certificate must complete ten quarter hours of credit or one hundred con-~~

~~tinuing education credit hours of career and technical education educator training in the subject matter certified to teach since the initial certificate was issued or renewed, or four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

~~Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.~~

~~Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

~~An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.~~

~~(3-))~~ **Continuing.**

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least one of the following:

(i) ~~((Fifteen quarter hours or))~~ One hundred fifty continuing education credit hours of career and technical education educator training in the career and technical education subject matter to be certified completed subsequent to the issuance of the initial certificate; or

(ii) Hold a valid national board certificate issued by the National Board for Professional Teaching Standards in any certificate area.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years full-time equivalency (FTE) of teaching/coordination in the career and technical education subject matter certified to teach with an authorized employer (i.e., school district(s) or skills center(s)).

~~((4) Continuing certificate renewal.~~

~~(a) Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued:~~

~~(i) Ten quarter hours or one hundred continuing education credit hours of career and technical education educator training, or four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

~~(ii) Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.~~

~~(iii) Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

~~(iv) An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.~~

~~(b) Continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to career and technical education endorsement areas. This STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6).)~~ (3) Certificates under this section are renewed under chapter 181-79A WAC.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-024, § 181-77-041, filed 3/29/21, effective 4/29/21. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-112, § 181-77-041, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 18-21-070, § 181-77-041, filed 10/11/18, effective 11/11/18; WSR 18-08-007, § 181-77-041, filed 3/22/18, effective 4/22/18. Statutory Authority: RCW 28A.410.210. WSR 16-23-064, § 181-77-041, filed 11/14/16, effective 12/15/16; WSR 16-15-057, § 181-77-041, filed 7/18/16, effective 8/18/16; WSR 16-07-096, § 181-77-041, filed 3/18/16, effective 4/18/16; WSR 15-12-023, § 181-77-041, filed 5/26/15, effective 6/26/15; WSR 08-16-004, § 181-77-041, filed 7/23/08, effective 8/23/08; WSR 07-12-001, § 181-77-041, filed 5/23/07, effective 6/23/07; WSR 06-14-010, § 181-77-041, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-77-041, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 02-18-039, § 180-77-041, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) through (4). WSR 02-04-018, § 180-77-041, filed 1/24/02, effective 2/24/02. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010. WSR 00-18-064, § 180-77-041, filed 9/1/00, effective 10/2/00. Statutory Authority: RCW 28A.410.010. WSR 98-01-026, § 180-77-041, filed 12/8/97, effective 1/8/98; WSR 97-04-085, § 180-77-041, filed 2/5/97, effective 3/8/97; WSR 95-12-056, § 180-77-041, filed 6/2/95, effective 7/3/95.]

AMENDATORY SECTION (Amending WSR 19-15-112, filed 7/22/19, effective 8/22/19)

WAC 181-77-071 Initial certification of career and technical education administrative personnel. (1) Initial certificate.

(a) Beginning September 1, 2014, a candidate is eligible for the initial career and technical education administrator certification if meeting one or more of the following:

(i) Currently holds a valid residency, initial, continuing or professional administrator certificate; or

(ii) Completion of three years of certificated experience as a ((certificated)) career and technical education supervisor, career and technical education instructor, career and technical education counselor, career and technical education career guidance specialist, or occupational information specialist; and

(b) In addition, the candidate must meet one or more of the following:

(i) Completion of the state authorized career and technical education administrator internship program; or

(ii) Completion of a state approved program for career and technical education administration.

(c) The career and technical education administrator certificate role standards are as published by the professional educator standards board.

~~((d) The initial career and technical education administrator certificate is valid for five years.~~

~~(2) Initial certificate renewal.~~

~~(a) In order to renew the initial career and technical education administrator certificate completion of at least ten quarter hours of college credit or one hundred continuing education credit hours or four professional growth plans in five years since the initial certificate was issued or renewed is required. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

~~Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.~~

~~Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

~~An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.~~

~~(b) The initial renewal certificate is valid for five years and may be renewed.~~

~~(3-)) (2) Continuing certificate. ((The continuing career and technical education administrator certificate is valid for five years.))~~

(a) In order to receive the continuing career and technical education administrator certificate, in addition to the requirements for the initial certificate, at least ((fifteen quarter hours of college credit course work or)) one hundred fifty continuing education credit hours completed subsequent to the conferral of the initial certificate is required; or, the individual may hold a valid national board certificate issued by the National Board for Professional Teaching Standards in any certificate area.

(b) Individuals shall provide as a condition for the issuance of a continuing certificate documentation of two years full-time equivalency (FTE) of career and technical administration with an authorized employer (i.e., school district(s) or skill center(s)).

~~((4) Continuing certificate renewal. The continuing career and technical education administrator certificate shall be renewed with the completion of ten quarter credits of college credit course work or the equivalent of one hundred continuing education credit hours in career and technical education, or supervisory or managerial subjects, or four professional growth plans, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates. Individuals completing fewer than four annual professional growth plans must complete the necessary~~

~~continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

~~Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.~~

~~Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

~~(5) **Previously issued certificate.** Any person with a valid career and technical education administrator certificate issued prior to September 1, 2014, under previous standards of the professional educator standards board shall meet requirements of, and may apply for, the continuing career and technical education administrator certificate by the expiration date of the original certificate held. Upon issuance of the continuing career and technical education administrator certificate such person will be subject to continuing certificate renewal requirements of subsection (4) of this section.)~~ (3) Certificates under this section are renewed under chapter 181-79A WAC.

[Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-112, § 181-77-071, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 18-21-070, § 181-77-071, filed 10/11/18, effective 11/11/18; WSR 17-22-136, § 181-77-071, filed 11/1/17, effective 12/2/17. Statutory Authority: RCW 28A.410.210. WSR 16-12-070, § 181-77-071, filed 5/27/16, effective 6/27/16; WSR 14-11-053, § 181-77-071, filed 5/16/14, effective 6/16/14.]

AMENDATORY SECTION (Amending WSR 21-12-039, filed 5/25/21, effective 6/25/21)

WAC 181-77-081 Requirements for certification of career guidance specialist. Career guidance specialists must meet the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155:

(1) **Probationary certificate.**

(a) ~~((Beginning July 1, 2018,))~~ A candidate is eligible for the probationary career guidance specialist certification if ~~((meeting))~~ they meet one or more of the following:

(i) Completion of three years of certificated experience at the initial, continuing, residency, or professional level as a career and technical education administrator career and technical education teacher, career and technical education counselor, or occupational information specialist; or

(ii) Hold a valid educational staff associate - School counselor certificate ~~((as provided in))~~ under WAC 181-79A-221; or

(iii) Provide documentation of six thousand hours of occupational experience of which two thousand hours shall have been in the last ten years, dealing with employment, including personnel or placement and evaluation of workers; or experience providing career guidance, employment, or career counseling services.

(b) Such a certificate may be issued upon recommendation by a school district according to the following:

(i) The candidate shall have developed a written training plan in cooperation with the career and technical education administrator. The plan must be approved by a local career and technical education advisory committee.

(ii) The plan shall develop procedures and timelines for the candidate to meet the requirements for the initial certificate.

(c) The probationary certificate is valid for two years and may be reissued one time for two additional years upon recommendation of the school district if the individual has completed the procedures outlined for the first year in the written training plan and has made additional progress in meeting the requirements for the initial certificate.

(2) Initial certificate.

~~(a) ((The initial career guidance specialist certificate is valid for five years.~~

~~(b))~~ Candidates must meet the eligibility requirements for the probationary certificate outlined in ~~((subsection (1)(a) of))~~ this section.

~~((e))~~ (b) Candidates for the initial certificate shall demonstrate competence through a course of study from a state approved educator preparation program provider or state approved continuing education credit hour provider in the general standards for career guidance specialist which include, but are not limited to, knowledge and skills in the following areas as approved and published by the professional educator standards board:

(i) Individual and group career guidance skills;

(ii) Individual and group career development assessment;

(iii) Information and resources in providing career guidance, including history and philosophy of career and technical education;

(iv) Career guidance program planning, implementation, and management;

(v) Diverse populations;

(vi) Student leadership development;

(vii) Ethical and legal issues;

(viii) Technology.

~~((d))~~ (c) In order to teach worksite learning and career choices courses, candidates must successfully complete requirements per WAC 181-77A-180.

(3) Initial certificate renewal.

~~((a) Candidates for renewal of the initial career guidance specialist certificate must complete at least ten quarter hours of college credit, one hundred continuing education credit hours, or four professional growth plans since the initial certificate was issued or renewed.)~~ Certificates under this section are renewed under chapter 181-79A WAC. At least fifteen continuing education credit hours ~~((or the equivalent in credit))~~ must be related to the knowledge and skills areas listed in subsection ~~((e))~~ (b) of this section. ~~((Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing edu-

~~education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

~~An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.~~

~~(b) The initial renewal certificate is valid for five years.)~~

(4) Continuing certificate.

(a) Candidates for the continuing career guidance specialist certificate shall have in addition to the requirements for the initial certificate at least one hundred fifty continuing education credit hours ~~((or the equivalent in credit))~~ completed subsequent to the issuance of the initial certificate; or hold a valid national board certificate issued by the National Board for Professional Teaching Standards in any certificate area.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years full-time equivalency (FTE) as a career guidance specialist with a school employer (i.e., school district(s) or skills center(s)).

~~((c) The continuing career guidance specialist certificate is valid for five years.)~~

(5) Continuing certificate renewal. ~~((The continuing career guidance specialist certificate shall be renewed with the completion of ten quarter hours of college credit, the equivalent of one hundred continuing education credit hours, or four professional growth plans prior to the lapse date of the first issuance of the continuing certificate and during each five-year period between subsequent lapse dates.))~~ Certificates under this section are renewed under chapter 181-79A WAC. At least thirty continuing education credit hours ~~((or the equivalent in credit))~~ must be related to the knowledge and skills areas listed in subsection (2) ~~((e))~~ (b) of this section. ~~((Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

~~Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.~~

~~Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred continuing education credit hours.~~

~~An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.)~~

(6) Certificates issued under previous standards.

(a) Any person with a valid one-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board may apply for the initial career guidance specialist certificate, and will be considered to have met the requirements to obtain an initial career guidance specialist certificate in subsection (2) of this section.

Holders of expired one-year occupational information specialist, or one-year career and technical education counselor certificates, may apply for the initial career guidance specialist certificate, and will be considered to have met the requirements to obtain an initial career guidance specialist certificate with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application.

These holders of expired one-year certificates must present evidence to the superintendent of public instruction of completing the continuing education credit hours within the five years prior to the date of the renewal application.

(b) Any person with a valid three-year or five-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board may apply for the continuing career guidance specialist certificate by the expiration date of the original certificate held, and will be considered to have met the requirements to obtain a continuing career guidance specialist certificate in subsection (4) of this section.

Holders of expired three-year or five-year occupational information specialist, or three-year or five-year career and technical education counselor certificates, may apply for the initial career guidance specialist certificate, and will be considered to have met the requirements to obtain an initial career guidance specialist certificate with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application.

These holders of expired three-year or five-year certificates must present evidence to the superintendent of public instruction of completing the continuing education credit hours within the five years prior to the date of the renewal application.

(c) Upon issuance of the initial or continuing career guidance specialist certificate, individuals addressed in this subsection will be subject to certificate renewal requirements of this section and chapter 181-79A WAC.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-12-039, § 181-77-081, filed 5/25/21, effective 6/25/21. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-112, § 181-77-081, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 19-03-108, § 181-77-081, filed 1/16/19, effective 2/16/19; WSR 18-21-070, § 181-77-081, filed 10/11/18, effective 11/11/18. Statutory Authority: RCW 28A.410.210. WSR 16-23-064, § 181-77-081, filed 11/14/16, effective 12/15/16; WSR 16-12-025, § 181-77-081, filed 5/23/16, effective 6/23/16.]

AMENDATORY SECTION (Amending WSR 19-15-112, filed 7/22/19, effective 8/22/19)

WAC 181-77-110 Career and technical education instructor certification reciprocity with community and technical colleges. The superintendent of public instruction will recognize community and technical college instructors certified under WAC 131-16-091 through 131-16-095 when these individuals provide instruction to high school students. These instructors must maintain their certification in good standing

and, when employed to provide services within a public common school shall be required to have completed and have on file:

(1) Documentation of completion of a course on the issues of abuse ((~~requirement~~)) and emotional or behavioral distress in students as required under RCW 28A.410.035 and WAC 181-79A-200; and

(2) A background check as defined in WAC 181-79A-150(2) and RCW 28A.410.010; and

(3) Evidence of good moral character as required in WAC 181-79A-155.

[Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-112, § 181-77-110, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-77-110, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-77-110, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) through (4). WSR 02-04-018, § 180-77-110, filed 1/24/02, effective 2/24/02. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010. WSR 00-18-064, § 180-77-110, filed 9/1/00, effective 10/2/00. Statutory Authority: RCW 28A.410.010. WSR 95-12-056, § 180-77-110, filed 6/2/95, effective 7/3/95. Statutory Authority: RCW 28A.410.050(2). WSR 92-05-039, § 180-77-110, filed 2/12/92, effective 3/14/92.]

AMENDATORY SECTION (Amending WSR 19-15-112, filed 7/22/19, effective 8/22/19)

WAC 181-77-120 Out-of-state candidates. Out-of-state applicants shall be eligible for Washington career and technical education certificates if they meet the standards in chapter 181-77 WAC or as follows: ~~((Candidates who apply for a career and technical education certificate who have not successfully completed course work or an in-service program on issues of abuse as described in WAC 181-79A-030, must complete such course work or in-service program as a condition of the issuance of a career and technical education certificate.))~~

(1) **Initial certificate.** The initial certificate shall be issued by the superintendent of public instruction to a candidate who has two thousand hours of occupational experience and who meets one of the following:

(a) Qualifies under provisions of the interstate compact;

(b) Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter, and has completed a state-approved preparation program in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4); or

(c) Holds an appropriate career and technical education certificate issued by another state and ~~((had))~~ has practiced at the P-12 level in that respective role outside the state of Washington for three years ~~((and has completed competency-based teacher training))~~.

(2) **Continuing certificate.** The continuing certificate shall be issued on verification that the candidate has met all requirements for initial and continuing certification in the state of Washington.

[Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-112, § 181-77-120, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 18-21-070, § 181-77-120, filed 10/11/18, effec-

tive 11/11/18. Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-77-120, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-77-120, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 04-23-005, § 180-77-120, filed 11/4/04, effective 12/5/04. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) through (4). WSR 02-04-018, § 180-77-120, filed 1/24/02, effective 2/24/02. Statutory Authority: RCW 28A.410.010. WSR 01-18-043, § 180-77-120, filed 8/29/01, effective 9/29/01; WSR 98-01-026, § 180-77-120, filed 12/8/97, effective 1/8/98; WSR 97-04-085, § 180-77-120, filed 2/5/97, effective 3/8/97; WSR 95-12-056, § 180-77-120, filed 6/2/95, effective 7/3/95.]

OTS-3047.1

AMENDATORY SECTION (Amending WSR 19-15-112, filed 7/22/19, effective 8/22/19)

WAC 181-77A-165 General standards for all career and technical education teacher certification based on business and industry work experience. In addition to the career and technical education teacher role standards as published by the professional educator standards board, all candidates shall demonstrate competence in the following standards:

(1) State learning goals - The teacher is able to apply and integrate the state's learning goals and essential academic learning requirements in program implementation and assessment.

(2) Learning environments - The teacher is able to create and sustain safe learning environments which prepare diverse students for the workplace, advanced training, and continued education.

(3) Student characteristics and related instructional strategies - The teacher is able to identify the diverse needs of students and implement programs and strategies which promote student competency development and success.

(4) Personal and professional attributes - The teacher models personal and professional attributes and leadership skills which reflect productive life and work roles.

(5) Partnerships - The teacher implements and maintains collaborative partnerships with students, colleagues, community, business, industry, and families, which maximize resources and promote student self-sufficiency.

(6) Law - The teacher understands school law and educational policy.

(7) Issues of abuse - The educator understands issues of abuse and emotional or behavioral distress in students as described in WAC (~~(181-79A-030)~~) 181-79A-200.

(8) Candidates shall also demonstrate knowledge and skills in the following areas:

- (a) General and specific safety;
- (b) Career and technical education teaching methods;
- (c) Occupational analysis;
- (d) Course organization and curriculum design;
- (e) Philosophy of vocational education;
- (f) Personal student development and leadership techniques.

[Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-112, § 181-77A-165, filed 7/22/19, effective 8/22/19. WSR 06-02-051, redefined as § 181-77A-165, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) through (4). WSR 02-04-018, § 180-77A-165, filed 1/24/02, effective 2/24/02. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010. WSR 00-18-064, § 180-77A-165, filed 9/1/00, effective 10/2/00. Statutory Authority: RCW 28A.410.010 and 28A.305.130. WSR 97-04-087, § 180-77A-165, filed 2/5/97, effective 3/8/97.]

OTS-3057.1

AMENDATORY SECTION (Amending WSR 18-17-089, filed 8/14/18, effective 9/14/18)

WAC 181-78A-010 Definition of terms. The following definitions shall be used in this chapter:

- (1) "Endorsement" means a specification placed on a certificate to indicate the subject area, grade level, and/or specialization for which the individual is prepared to teach.
- (2) "Interstate compact" means the contractual agreement among several states authorized by RCW 28A.690.010 and 28A.690.020 which facilitates interstate reciprocity.
- (3) "Program approval" means the approval by the professional educator standards board of an educator preparation program offered by an educator preparation program provider within Washington state.
- (4) "Field experience" means learning experiences in school, clinical, or laboratory settings. These learning experiences must be related to specific program outcomes and designed to integrate educational theory, knowledge, and skills in actual practice under the direction of a qualified supervisor.
- (5) "A positive impact on student learning" means students' documented increased knowledge and/or demonstration of a skill or skills related to the state approved standards; or for candidates employed by private schools, students' documented increased knowledge or demonstration of a skill or skills related to either:
 - (a) The state goals or essential academic learning requirements;
 or
 - (b) Alternative learning goals established by the private school.
- (6) "Collaboration" means ongoing communication among the professional growth team members to reach consensus regarding the content of the candidate's professional growth plan.
- (7) "Professional growth plan (PGP)" for program completion means the document which identifies the formalized learning opportunities and professional development activities that relate to the specific competencies, knowledge, skills and experiences needed to meet the standards set forth (~~in~~) under WAC (~~(181-79A-207)~~) 181-78A-233.
- (8) "Board" means the professional educator standards board.
- (9) "Clinical practice" means a specific, prolonged field experience where the candidate practices or serves in the role for which he or she is being prepared. Clinical practice must take place in an education setting and under the general supervision of a certificated

practitioner, with three years' experience in the role for which the candidate is seeking certification.

(10) "Components" means the design features of the program and actions of the provider.

(11) "Domains" means broad categories of educator preparation program providers' performance expectations and outcomes established by the board.

(12) "Educator preparation program" or "program" means all courses, requirements, and other activities leading to a specific educator certification including teaching, administrator, school counselor, or school psychologist certificate and/or teaching certificate endorsement.

(13) "Educator preparation program provider" or "program provider" or "provider" means the entity approved to provide one or more educator preparation programs and responsible for operating the programs in compliance with the board's standards and policies.

(14) "Indicator" means performance data determined by the board that identifies the need for further inquiry into the functioning of a program.

(15) "Internship" means the period of clinical practice for candidates enrolled in approved administrator, school counselor, and school psychologist preparation programs.

(16) "Review period" means the period between annual submissions of indicator performance data when the board may require sponsoring organizations to participate in graduated levels of intervention and reporting.

(17) "Review team" means a group of people with experience, expertise, and training to assess the adequacy of program components and domains.

(18) "Student teaching" means the period of clinical practice for individuals enrolled in teacher preparation programs. This period must include at least four hundred fifty hours of supervised planning, instruction, and reflection.

(19) "Thresholds" means the target level of overall performance, or maximum acceptable variance for indicators approved and published by the board.

[Statutory Authority: Chapter 28A.410 RCW. WSR 18-17-089, § 181-78A-010, filed 8/14/18, effective 9/14/18. Statutory Authority: RCW 28A.410.210. WSR 16-12-026, § 181-78A-010, filed 5/23/16, effective 6/23/16; WSR 12-18-004, § 181-78A-010, filed 8/23/12, effective 9/23/12; WSR 10-08-030, § 181-78A-010, filed 3/31/10, effective 12/1/11; WSR 09-22-023, § 181-78A-010, filed 10/26/09, effective 12/1/11; WSR 07-19-056, § 181-78A-010, filed 9/14/07, effective 10/15/07; WSR 06-14-010, § 181-78A-010, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-78A-010, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.401.010 [28A.410.010]. WSR 04-21-038, § 180-78A-010, filed 10/15/04, effective 11/15/04. Statutory Authority: RCW 28A.305.130 and 28A.410.010. WSR 02-18-037, § 180-78A-010, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) and (2). WSR 01-19-080, § 180-78A-010, filed 9/19/01, effective 10/20/01; WSR 00-03-049, § 180-78A-010, filed 1/14/00, effective 2/14/00. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-78A-010, filed 12/23/98, effective 1/23/99. Statutory Authority: RCW 28A.410.010 and 28A.305.130. WSR 98-01-025, § 180-78A-010, filed 12/8/97, effective 1/8/98. Statutory Authority: RCW

28A.305.130. WSR 97-04-084, § 180-78A-010, filed 2/5/97, effective 3/8/97.]

AMENDATORY SECTION (Amending WSR 21-08-023, filed 3/29/21, effective 4/29/21)

WAC 181-78A-233 Teacher, principal, career and technical education program administrator, superintendent, and program administrator—Specific program approval domain standard—Novice practitioners.

Novice practitioners. Providers prepare candidates who are role ready.

(1) Providers prepare candidates who are ready to engage effectively in their role and context upon completion of educator preparation programs.

(a) The provider demonstrates that program completers perceive their preparation as relevant to the responsibilities they confront on the job, and that the preparation was effective.

(b) Providers demonstrate that completers effectively apply the professional knowledge, skills, dispositions, and technical proficiency that the preparation experiences were designed to achieve.

(c) Faculty and supervisors contextualize educators' practice within contemporary socio-political context and within the administrative regulations in schools and districts.

(d) Inform and orient candidates to Washington state processes of certification, licensure, endorsements and ongoing professional learning opportunities and requirements as they apply to the role for which the candidate is being certified.

(2) Providers prepare candidates to develop reflective, collaborative, and professional growth-centered practices through regular evaluation of the effects of their practice through feedback and reflection.

(a) Prepare educator candidates to understand and demonstrate achievement and improvement in their practice.

(b) Providers prepare candidates to seek new learning to remain current in subject area(s), educational theories, practices, research, and ethical practice.

(c) Ensure that all candidates who complete the program exit the program with a professional growth plan (PGP) for program completion according to the guidance (~~provided~~) published by the professional educator standards board.

Candidates will align their PGPs to the most recently published standards as follows:

Teachers: The Interstate Teacher Assessment and Support Consortium (InTASC) standards.

CTE teachers: Standards under WAC 181-77A-165 and as published by the professional educator standards board.

Principals: The National Policy Board for Educational Administration (NPBEA) National Educational Leadership Preparation (NELP) Standards - Building level.

Superintendents: The National Policy Board for Educational Administration (NPBEA) National Educational Leadership Preparation (NELP) Standards - District level.

Program administrators: The National Policy Board for Educational Administration (NPBEA) National Educational Leadership Preparation (NELP) Standards - District or building level.

CTE directors: Standards as published by the professional educator standards board.

School counselors: American School Counseling Association (ASCA) Professional Standards and Competencies.

School psychologists: National Association of School Psychologists (NASP) Professional Practices.

(3) Providers prepare candidates for their role in directing, supervising, and evaluating paraeducators.

(a) Prepare teacher candidates to direct paraeducators working with students in the classroom.

(b) Prepare administrator candidates to supervise and evaluate paraeducators in schools.

(c) Providers ensure that all educator candidates demonstrate knowledge of the paraeducator standards of practice, as published by the paraeducator board.

(4) Providers require candidates to demonstrate knowledge of teacher evaluation research and Washington's evaluation requirements.

(a) Providers ensure educator candidates examine Washington's evaluation requirements specific to their role, including criteria, four-tiered performance rating system, student growth goals, and the preferred instructional frameworks used to describe the evaluation criteria.

(b) Providers ensure educator candidates demonstrate knowledge and skill in self-assessment, goal setting, and reflective practice.

(c) Providers of administrator programs ensure candidates examine and practice classroom observation skills that recognize and limit bias and promote rater agreement on the four-tiered system.

(d) Providers of administrator programs ensure candidates demonstrate knowledge and skill using student growth data and multiple measures of performance for use in evaluations.

(e) Providers of administrator programs ensure candidates demonstrate knowledge and skill conducting evaluation conferences and developing teacher and principal support plans resulting from evaluations.

(f) Providers of administrator programs ensure candidates demonstrate knowledge and skill in the use of an online tool to manage the collection of observation notes, teacher and principal submitted materials, and other information related to the conduct of the evaluation.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-023, § 181-78A-233, filed 3/29/21, effective 4/29/21. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-144, § 181-78A-233, filed 7/24/19, effective 8/24/19.]

OTS-3064.4

AMENDATORY SECTION (Amending WSR 21-08-023, filed 3/29/21, effective 4/29/21)

WAC 181-79A-030 Definitions. The following definitions shall apply to terms used in this chapter:

(1) The terms, "program approval," "endorsement," and "interstate compact," as defined in WAC 181-78A-010 shall apply to the provisions of this chapter.

(2) "Certificate" means the license issued by the superintendent of public instruction to teachers, administrators, and educational staff associates verifying that the individual has met the requirements set forth in this chapter.

(3) "Certificate renewal" means the process ~~((whereby))~~ by which the validity of a valid or expired certificate ~~((, subject to expiration,))~~ is ~~((extended))~~ regained or extended.

(4) "Certificate reinstatement" means the process ~~((whereby))~~ by which the validity of ~~((an expired))~~ a revoked, surrendered, or suspended certificate is regained.

(5) ~~((("Lapsed certificate" means a residency certificate that is subject to the timelines and renewal described under WAC 181-79A-251.))~~ "Continuing education" and "continuing education credit hours" are as defined in WAC 181-85-025 and 181-85-030.

(6) "Expired certificate" means a ~~((teacher))~~ certificate that is no longer valid and can only be ~~((reinstated))~~ renewed under WAC ~~((181-79A-251))~~ 181-79A-240. The expiration date is as calculated in WAC 181-79A-117.

(7) "Issuance date" means the date a certificate was issued by the office of the superintendent of public instruction.

(8) "Validity date" of a residency, professional, initial, continuing, limited certificate, permit, or any CTE certificate under chapter 181-77 WAC, means the actual date of issuance.

(9) "Classroom teaching" means instructing ~~((pupils))~~ students in an ~~((instructional))~~ educational setting.

~~((("Approved"))~~ (10) "Baccalaureate degree" ~~((for the purpose of this chapter,))~~ means a baccalaureate degree or higher from an accredited college or university ~~((in any of the subject areas of the endorsement listed in chapter 181-82 WAC as now or hereafter amended: Provided, That if))~~.

(a) If a candidate ~~((is))~~ was accepted into a program in Washington state on or before August 31, 2000, and completes the program on or before August 31, 2003, ~~((in accordance with WAC 181-79A-299,))~~ the candidate may hold a baccalaureate degree in any of the subject areas of the endorsements listed in chapter 181-82A WAC ~~((181-79A-302))~~. Such degrees shall require the completion of at least forty-five quarter hours (thirty semester hours) of course work in the subject area ~~((: Provided, That))~~.

(b) If a candidate ~~((who))~~ under (a) of this subsection holds a baccalaureate degree in another academic field, they will not be required to obtain a second baccalaureate degree if ~~((the candidate))~~ they provide ~~((s))~~ evidence to the superintendent of public instruction that ~~((he or she has))~~ they have completed the required forty-five quarter or thirty semester hours of course work in one of the subject areas of the endorsements listed in chapter 181-82A WAC.

~~((("Issues of abuse course work requirement" means completion of course work or an in-service program on issues of abuse. The content shall discuss the identification of physical, emotional, sexual, and substance abuse; commercial sexual abuse of a minor, as defined in RCW 9.68A.100; sexual exploitation of a minor as defined in RCW 9.68A.040; information on the impact of abuse on the behavior and learning abilities of students; discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are victims of abuse; and methods for teaching students about abuse of all~~

~~types and their prevention. Additionally, content areas identified by the legislature in RCW 28A.410.035 shall be required in the issues of abuse course, including knowledge and skill standards pertaining to recognition, initial screening and response to emotional or behavioral distress in students including, but not limited to, indicators of possible substance abuse, violence and youth suicide.~~

~~(10) "Approved)~~ (11) "Master's degree" for the purpose of this chapter, means a master's or higher degree from an accredited college or university.

~~((11))~~ (12) "Credit hour(s)" means credit (normally 100 level or above) awarded by an accredited institution of higher education.

~~((12))~~ (13) "Previous standards" means a certification system in place prior to a revision in rules that results in changed names and/or validity periods for the certificates issued.

~~((13))~~ (14) "Application for certification" means an application for a certificate or endorsement that includes a signed affidavit (as specified in WAC 181-79A-157) by the applicant. Such application shall be considered valid for two years from the date of receipt by the superintendent of public instruction, or its designee.

~~((14))~~ (15) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstration of a skill or skills related to the state goals and/or essential academic learning requirements. Teachers employed by private schools who are candidates for the professional teaching certificate shall document students' increased knowledge and/or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements;

or

(b) Such alternative learning goals as the private school has established.

~~((15) "Professional certificate support provider" means any organization or institution operating training or consulting services as a public entity or private company holding an appropriate business license.)~~

(16) "Approved private school" means any organization of institution providing educational services to children including, but not limited to, approved private schools, state institutions, juvenile institutions, nonpublic agencies providing special education services, development centers, and bureau of Indian affairs schools.

(17) "College" or "university" means any accredited institution as defined in WAC 250-61-050.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-023, § 181-79A-030, filed 3/29/21, effective 4/29/21. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-143, § 181-79A-030, filed 7/24/19, effective 8/24/19. Statutory Authority: RCW 28A.410.220. WSR 19-07-010, § 181-79A-030, filed 3/7/19, effective 4/7/19; WSR 18-08-064, § 181-79A-030, filed 4/2/18, effective 5/3/18. Statutory Authority: RCW 28A.410.210. WSR 14-24-057, § 181-79A-030, filed 11/25/14, effective 12/26/14; WSR 13-20-026, § 181-79A-030, filed 9/23/13, effective 10/24/13; WSR 12-18-005, § 181-79A-030, filed 8/23/12, effective 9/23/12; WSR 10-16-124, § 181-79A-030, filed 8/3/10, effective 9/3/10; WSR 09-20-088, § 181-79A-030, filed 10/6/09, effective 11/6/09; WSR 06-14-010, § 181-79A-030, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-030, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR

05-04-055, § 180-79A-030, filed 1/28/05, effective 2/28/05; WSR
 04-04-011, § 180-79A-030, filed 1/23/04, effective 2/23/04; WSR
 02-04-015, § 180-79A-030, filed 1/24/02, effective 2/24/02. Statutory
 Authority: RCW 28A.410.010, 28A.305.130 (1) and (2). WSR 01-03-153, §
 180-79A-030, filed 1/24/01, effective 2/24/01; WSR 99-23-023, §
 180-79A-030, filed 11/9/99, effective 12/10/99. Statutory Authority:
 RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR
 99-01-174, § 180-79A-030, filed 12/23/98, effective 1/23/99.]

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective
 1/1/06)

WAC 181-79A-110 Denial of application for certification or endorsement by approved professional preparation training institutions.
 Any person whose application for certification or for an endorsement is denied by ~~((an institution of higher education within the state with an))~~ a professional educator standards board approved ~~((professional))~~ educator preparation program provider, after exhausting any appeal procedures established by ~~((such institution))~~ the provider, may apply directly to the superintendent of public instruction for ~~((such))~~ the certificate or endorsement.

[WSR 06-02-051, recodified as § 181-79A-110, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 97-04-088, § 180-79A-110, filed 2/5/97, effective 3/8/97.]

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective
 7/23/06)

WAC 181-79A-117 Uniform expiration date. (1) All certificates issued for one or more stated years shall expire on June 30th of the stated year and shall be calculated as follows:

(a) Certificates issued prior to June 30th of a calendar year, other than limited certificates issued ~~((pursuant to))~~ under WAC 181-79A-231, shall have the expiration date of the certificate calculated on the basis such certificate was issued on June 30th of the same calendar year regardless of the date of issuance.

(b) Certificates issued July 1st or later in the calendar year, other than limited certificates issued ~~((pursuant to))~~ under WAC 181-79A-231, shall have the expiration date of the certificate calculated on the basis such certificate was issued on June 30th of the next calendar year regardless of the date of issuance.

~~((c) All valid existing certificates scheduled to expire on August 31 of a given year shall be valid until June 30 of the following year.))~~

(2) An applicant who holds a valid certificate, who submits an application for further certification prior to the expiration date of that certificate, and who meets all the requirements of WAC 181-79A-128, shall be granted a one hundred eighty-day permit ~~((as provided in))~~ under chapter 181-79A WAC.

(3) Any educator in the National Guard, U.S. military branch reserves, or U.S. Coast Guard reserve who is called up to active duty by one of the U.S. military branches by order of an authorized agency or

official of Washington state government, or by the U.S. Department of Homeland Security for more than thirty consecutive days shall be granted an extension of the expiration date of ((his/her)) their certificate. The extension shall be equal to the length of active duty service calculated to the next uniform expiration date.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-79A-117, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-117, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010 and 28A.305.130. WSR 04-04-088, § 180-79A-117, filed 2/3/04, effective 3/5/04. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) through (4). WSR 03-14-120, § 180-79A-117, filed 6/30/03, effective 7/31/03; WSR 02-04-018, § 180-79A-117, filed 1/24/02, effective 2/24/02. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-117, filed 12/23/98, effective 1/23/99. Statutory Authority: RCW 28A.410.010. WSR 98-05-024, § 180-79A-117, filed 2/6/98, effective 3/9/98; WSR 97-04-088, § 180-79A-117, filed 2/5/97, effective 3/8/97.]

AMENDATORY SECTION (Amending WSR 19-15-110, filed 7/22/19, effective 8/22/19)

WAC 181-79A-123 Certificates—Previous standards. (1) Certificates issued under previous standards which were issued for a specific term shall continue to be effective for that term.

(2) Certificates issued under standards prior to September 1, 2000, which were issued for an indefinite period shall continue to be in effect.

(3) All persons who hold any lifetime standard teacher, administrator, or specialized personnel certificate issued under previous standards of the professional educator standards board shall be issued a lifetime continuing certificate at such time as it is necessary for them to reissue a standard certificate or on application and payment of the fee as specified in WAC 181-79A-130.

(4) Any person who holds a provisional principal's or provisional superintendent's certificate under previous standards of the professional educator standards board shall be issued upon application, including payment of applicable fees, a ((~~continuing~~)) professional administrator's certificate for the appropriate role and such certificates shall be subject to the continuing education requirements of chapter ((~~181-85~~)) 181-79A WAC.

(5) Any person holding a provisional certificate as a school nurse under provisions of chapter 180-84 WAC shall be granted a ((~~continuing~~)) professional certificate.

(6) All persons who hold a valid initial certificate granted under previous standards of the professional educator standards board shall be authorized to meet requirements for continuing certification as set forth in the relevant previous standards except as noted below in subsection((s)) (7), (8) or (9) of this section.

(7) (a) Any person with a valid initial teacher's certificate granted under previous standards of the professional educator standards board may renew that certificate once after August 31, 2000. The individual shall meet requirements for and apply for the continuing certificate by the expiration date on the renewed certificate or meet

requirements for the residency certificate for further certification (~~(: Provided, That)~~). Any person who qualified for initial renewal or continuing certificate under the provisions of (~~WAC 181-79A-250 (1)(a)~~) (b) of this subsection prior to their expiration date, but whose initial certificate expired after August 31, 2000, because they applied for certification too late, may apply once for such renewal or continuing certificate and will be issued such certificate.

(b) An initial teacher certificate may be renewed for an additional three-year period on application and verification that the individual has completed all coursework requirements from an accredited institution of higher education as defined in WAC 181-79A-030 for continuing certification or has completed at least fifteen quarter credit hours (ten semester credit hours) since the certificate was issued or renewed. After August 31, 2000, provisions of this section will apply.

(8) Any person with a valid initial administrator certificate granted under previous standards of the professional educator standards board shall meet requirements for and apply for the continuing certificate by the expiration date on the initial certificate or meet requirements for the residency certificate for further certification (~~(: Provided, That)~~). Any person who qualified for a continuing certificate under the provisions of WAC (~~181-79A-250 (1)~~) 181-79A-211 (2)(b) prior to their expiration date, but whose initial certificate expired after June 30, 2004, because they applied for certification too late, may apply for such continuing certificate and will be issued such certificate.

(9) Any person with a valid initial ESA certificate granted under previous standards of the professional educator standards board shall meet requirements for and apply for the (~~(continuing)~~) role-appropriate professional certificate by the expiration date on the initial certificate or meet requirements for the role-appropriate residency or initial renewal certificate for further certification (~~(: Provided, That)~~). Any person who qualified for a continuing certificate under the provisions of WAC 181-79A-250 (1)(c) prior to their expiration date, but whose initial certificate expired after June 30, 2005, because they applied for certification too late, may apply for (~~(such continuing)~~) a professional certificate and will be issued such certificate.

(10) (~~(a)~~) Any person with a valid or expired residency ESA school social work certificate may meet requirements for and apply for the (~~(continuing)~~) professional certificate (~~(by the expiration date on the residency certificate.~~

~~(b) Residency ESA school social worker certificate holders have no residency renewal or professional certificate options and may apply for an initial ESA conversion or continuing ESA certificate under requirements in place at time of application submission), or meet requirements for renewal of an initial certificate.~~

[Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-110, § 181-79A-123, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.210. WSR 11-15-051, § 181-79A-123, filed 7/15/11, effective 8/15/11; WSR 10-16-124, § 181-79A-123, filed 8/3/10, effective 9/3/10; WSR 06-14-010, § 181-79A-123, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-123, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 05-23-043, § 180-79A-123, filed 11/9/05, effective 12/10/05; WSR 05-15-050, § 180-79A-123, filed 7/12/05, effective 8/12/05; WSR 00-09-048, § 180-79A-123, filed 4/14/00, effective 5/15/00. Statutory Authority:

RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-123, filed 12/23/98, effective 1/23/99.]

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-124 Application for certification. An individual who applies for a Washington state certificate, (~~unless seeking reinstatement pursuant to WAC 181-79A-253 or renewal pursuant to WAC 181-79A-127 or~~) unless otherwise stipulated by the provisions of WAC 181-79A-123, must meet the requirements in effect at the time of application.

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-79A-124, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-124, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010, 28A.305.130 (1) and (2). WSR 01-03-153, § 180-79A-124, filed 1/24/01, effective 2/24/01. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-124, filed 12/23/98, effective 1/23/99.]

AMENDATORY SECTION (Amending WSR 20-12-064, filed 6/1/20, effective 7/2/20)

WAC 181-79A-130 Fees for certificates. (1) Under provisions of RCW 28A.410.060 and 28A.415.010, the fee for certificates that are valid for more than one year, issued by authority of the state of Washington and authorizing the holder to serve in the common schools of the state, shall be as follows:

(a) For the purposes of this section only, the first issue of the residency certificate (~~(r)~~) shall be calculated as if it had seven years of validity, with a five-dollar (~~(s)~~) certificate fee for each year of validity;

(b) The continuing certificate, seventy dollars;

(c) Renewal of a continuing certificate, one dollar;

(d) The reinstatement, additional endorsement (~~(on the teaching certificate)~~), or substitute certificate (~~(s)~~), fifteen dollars;

(~~(d)~~) (e) The first peoples' language, culture, and oral tribal traditions teacher certificate, twenty-five dollars;

(~~(e)~~) (f) All career and technical education certificates, one dollar;

(~~(f)~~) (g) Any other certificate or credential or any renewal thereof, five dollars for each year of validity; and

(~~(g)~~) (h) A one-time late fee for a renewed initial or continuing certificate issued under the provisions of WAC 181-79A-123 (7), (8), or (9) for those whose initial certificate had already expired shall be one hundred dollars.

(2) The fee for any other certificate or credential, with a validity period of one year or less, or for any renewal thereof, issued by the authority of the state of Washington and authorizing the holder to serve in the common schools of the state, shall be five dollars.

(3) Officials authorized to collect certificate fees are educational service district superintendents, deans and directors of educa-

tion at colleges and universities, or their designees. Sovereign tribal governments may collect certificate fees for first peoples' language, culture, and oral tribal traditions certificates. The fee must accompany the application for a certificate and shall be transmitted by the receiving district, college or university, sovereign tribal government or program unit designee at least quarterly to the educational service district within which the application is filed for disposition in accordance with provisions of RCW 28A.410.060 or to the office of the superintendent of public instruction.

(4) Beginning September 1, 2013, the office of the superintendent of public instruction may collect certificate fees.

(5) The fee shall not be refunded unless the application is withdrawn before it is finally considered (i.e., the issuance of a certificate or a written communication denying such issuance) by the superintendent of public instruction or (~~his or her~~) their designee.

[Statutory Authority: Chapter 28A.410 RCW. WSR 20-12-064, § 181-79A-130, filed 6/1/20, effective 7/2/20. Statutory Authority: RCW 28A.410.210. WSR 14-11-076, § 181-79A-130, filed 5/20/14, effective 6/20/14; WSR 13-20-027, § 181-79A-130, filed 9/23/13, effective 10/24/13; WSR 08-12-055, § 181-79A-130, filed 6/2/08, effective 7/3/08; WSR 08-03-100, § 181-79A-130, filed 1/20/08, effective 2/20/08; WSR 07-12-006, § 181-79A-130, filed 5/24/07, effective 6/24/07; WSR 06-14-010, § 181-79A-130, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-130, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 05-23-043, § 180-79A-130, filed 11/9/05, effective 12/10/05. Statutory Authority: RCW 28A.410.010 and 28A.305.130. WSR 05-15-024, § 180-79A-130, filed 7/7/05, effective 8/7/05. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) through (4). WSR 02-04-018, § 180-79A-130, filed 1/24/02, effective 2/24/02. Statutory Authority: RCW 28A.410.010. WSR 01-09-005, § 180-79A-130, filed 4/5/01, effective 5/6/01; WSR 00-03-048, § 180-79A-130, filed 1/14/00, effective 2/14/00; WSR 97-04-088, § 180-79A-130, filed 2/5/97, effective 3/8/97.]

AMENDATORY SECTION (Amending WSR 21-08-024, filed 3/29/21, effective 4/29/21)

WAC 181-79A-140 ((Types of)) Certificate(s) roles. The provisions of this chapter apply to the certificate roles listed in this section. Certificates in the following ((types of certificates)) roles shall be issued:

(1) **Teacher.** The teacher certificate authorizes service as a classroom teacher.

(2) **Career and technical education.** The career and technical education certificates authorize((s)) service in career and technical education programs in accordance with chapter 181-77 WAC.

(3) **First ((people's language/culture)) peoples' language, culture, and oral tribal traditions.** The first peoples' language, culture, and oral tribal traditions teacher certificate authorizes service in accordance with WAC 181-78A-700.

(4) **Administrator.**

(a) The administrator certificate for principal authorizes services as a building administrator or assistant principal.

(b) The administrator certificates for superintendent or program administrator will be issued to persons who meet professional educator standards board certification standards for service in the roles of superintendent or program administrator.

(5) **Educational staff associate.**

(a) The educational staff associate certificate authorizes service in the following roles (~~of school speech pathologists or audiologists, school counselors, school nurses, school occupational therapists, school physical therapists, school psychologists, school social workers, school behavior analysts, and school orientation and mobility specialists.~~):

- (i) School behavior analyst;
- (ii) School counselor;
- (iii) School nurse;
- (iv) School occupational therapist;
- (v) School orientation and mobility specialist;
- (vi) School physical therapist;
- (vii) School psychologist;
- (viii) School social worker;
- (ix) School speech pathologist or audiologist.

(b) Nothing within chapter 181-79A WAC authorizes professional practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations adopted by the appropriate licensure board or agency.

~~((6) **Limited certificates.** The following limited certificates are issued to individuals in accordance with WAC 181-79A-231:~~

- ~~(a) Conditional certificate.~~
- ~~(b) Emergency substitute certificate.~~
- ~~(c) Intern substitute teacher certificate.~~
- ~~(d) Transitional certificate.~~

~~(7) **Substitute certificate.** The substitute certificate is issued to individuals in accordance with WAC 181-79A-232.)~~

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-024, § 181-79A-140, filed 3/29/21, effective 4/29/21. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-110, § 181-79A-140, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 18-21-072, § 181-79A-140, filed 10/11/18, effective 11/11/18. Statutory Authority: RCW 28A.410.210. WSR 12-02-025, § 181-79A-140, filed 12/28/11, effective 1/28/12; WSR 08-08-028, § 181-79A-140, filed 3/24/08, effective 4/24/08; WSR 07-04-003, § 181-79A-140, filed 1/24/07, effective 2/24/07; WSR 06-14-010, § 181-79A-140, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-140, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.305.130 and 28A.410.010. WSR 04-20-092, § 180-79A-140, filed 10/5/04, effective 11/5/04; WSR 02-18-037, § 180-79A-140, filed 8/26/02, effective 9/26/02; WSR 02-13-027, § 180-79A-140, filed 6/12/02, effective 7/13/02. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) through (4). WSR 02-04-018, § 180-79A-140, filed 1/24/02, effective 2/24/02. Statutory Authority: RCW 28A.410.010. WSR 00-13-063, § 180-79A-140, filed 6/16/00, effective 7/17/00. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) and (2). WSR 99-23-023, § 180-79A-140, filed 11/9/99, effective 12/10/99. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-140, filed 12/23/98, effective 1/23/99. Statutory

Authority: RCW 28A.410.010. WSR 97-04-088, § 180-79A-140, filed 2/5/97, effective 3/8/97.]

NEW SECTION

WAC 181-79A-142 Certificate types. The provisions of this chapter apply to the following certificate types:

(1) The following certificate types issued on or after August 31, 1987:

- (a) Residency certificates;
- (b) Professional certificates;
- (c) Initial certificates;
- (d) Continuing certificates;

(e) Standard certificates are provided for under previous standards of the professional educator standards board as described under WAC 181-79A-123.

(2) Limited certificates. The following limited certificates are issued to individuals in accordance with WAC 181-79A-231:

- (a) Conditional certificate;
- (b) Emergency substitute certificate;
- (c) Intern substitute teacher certificate;
- (d) Transitional certificate.

(3) Substitute certificate. The substitute certificate is issued to individuals in accordance with WAC 181-79A-232.

[]

AMENDATORY SECTION (Amending WSR 21-08-024, filed 3/29/21, effective 4/29/21)

WAC 181-79A-145 Levels and validity of certificates. Two levels of certification may be issued.

(1) **Initial and ((continuing)) professional certificates:**

~~((Teachers with program completion dates through August 31, 2000, administrators with program completion dates through August 31, 2004, and educational staff associates with program completion dates through August 31, 2005, will be issued the following levels of certificates. Initial and continuing teachers' certificates after August 31, 2000, initial and continuing principal and program administrator certificates after August 31, 2004, and initial and continuing school counselor and school psychologist certificates after August 31, 2005, will be issued only to previous Washington certificate holders, under WAC 181-79A-123.~~

~~(a) Initial certificate.~~

~~(i)) (a) Initial certificates.~~ The initial administrator certificates are valid for seven years ~~((; and the initial educational staff associate certificates are valid for five years. Initial teacher certificates shall be subject to renewal under WAC 181-79A-250(1) and 181-79A-123)).~~ Initial administrator certificates shall not be subject to renewal. ~~((Beginning September 1, 2020,))~~ Initial educational staff associate certificates in the roles of school nurse, school occupational therapist, school physical therapist, school speech language pathologist or audiologist, school social worker, school behavior ana-

lyst, and school orientation and mobility specialist are subject to renewal.

~~((i))~~ **(b) Professional certificates.** Initial administrator and educational staff associate certificate holders shall be issued a ~~((continuing))~~ professional certificate if they meet the requirements for such certificate. Initial principal and program administrator certificate holders, and initial school counselor and school psychologist certificate holders shall be issued a residency certificate if their initial certificate has expired or they do not meet the requirements for a continuing certificate.

~~((b) Continuing certificate. The continuing certificate is valid on a continuing basis as specified in WAC 181-79A-250(2).))~~

(2) **Residency and professional certificates:** Teachers, administrators, and educational staff associates with program completion dates commencing with the dates indicated below will be issued the following levels of certificates:

(a) **Residency certificate.** The residency certificate will be issued to teachers beginning September 1, 2000, to principal/program administrators beginning September 1, 2004, and to educational staff associate school counselors and school psychologists no later than September 1, 2005.

(b) The first issue of a residency certificate for principals, program administrators, and educational staff associates shall be valid until the holder has completed two years of ~~((successful))~~ service in the role in Washington with a school district, state-approved private school, or state agency that provides educational services for students, at which time their residency certificate will be reissued with a five-year expiration date. Prior to the expiration date, the candidate must meet residency renewal requirements or earn a second-tier certificate for the role under WAC 181-79A-250.

(c) A first issue residency teacher certificate remains undated until the teacher has two years of ~~((successful))~~ experience under WAC 181-79A-206, at which time the residency certificate is dated for five years as verified by the certification office of the office of superintendent of public instruction. Prior to the expiration date, the candidate must earn a professional certificate or meet ~~((residency))~~ renewal requirements under WAC ~~((181-79A-251))~~ 181-79A-240 and 181-79A-244.

(d) **Professional certificate.** The professional certificate will be issued to teachers beginning September 1, 2001, to principals/program administrators beginning September 1, 2007, and to educational staff associate school counselors and school psychologists beginning September 1, 2007. ~~((The professional certificate is valid for five years and shall be subject to renewal under chapter 181-79A WAC.))~~ A professional teacher's certificate based on the possession of a valid teacher's certificate issued by the National Board for Professional Teaching Standards under WAC 181-79A-257 or 181-79A-206 shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. A professional educational staff associate certificate for school counselors based on the possession of a valid school counselor's certificate issued by the National Board for Professional Teaching Standards National Board Certification under WAC 181-79A-257 or 181-79A-206 shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(3) **First peoples' language, culture, and oral tribal traditions certificates:** The first peoples' language, culture, and oral tribal traditions certificate will be issued beginning in January 2007. The

first peoples' language, culture, and oral tribal traditions certificate is valid for five years and shall be subject to renewal under WAC 181-79A-252.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-024, § 181-79A-145, filed 3/29/21, effective 4/29/21. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-110, § 181-79A-145, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 17-23-176, § 181-79A-145, filed 11/21/17, effective 12/22/17. Statutory Authority: RCW 28A.410.210. WSR 12-02-027, § 181-79A-145, filed 12/28/11, effective 1/28/12; WSR 11-12-032, § 181-79A-145, filed 5/25/11, effective 6/25/11; WSR 10-16-124, § 181-79A-145, filed 8/3/10, effective 9/3/10; WSR 08-03-100, § 181-79A-145, filed 1/20/08, effective 2/20/08; WSR 07-20-047, § 181-79A-145, filed 9/26/07, effective 10/27/07; WSR 07-12-006, § 181-79A-145, filed 5/24/07, effective 6/24/07; WSR 06-14-010, § 181-79A-145, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-145, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 05-23-042, § 180-79A-145, filed 11/9/05, effective 12/10/05. Statutory Authority: RCW 28A.410.010 and 28A.305.130. WSR 05-15-023, § 180-79A-145, filed 7/7/05, effective 8/7/05. Statutory Authority: RCW 28A.401.010 [28A.410.010]. WSR 04-21-040, § 180-79A-145, filed 10/15/04, effective 11/15/04. Statutory Authority: RCW 28A.305.130 and 28A.410.010. WSR 02-18-037, § 180-79A-145, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 28A.410.010. WSR 01-09-004, § 180-79A-145, filed 4/5/01, effective 5/6/01; WSR 00-03-048, § 180-79A-145, filed 1/14/00, effective 2/14/00. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-145, filed 12/23/98, effective 1/23/99.]

AMENDATORY SECTION (Amending WSR 18-19-085, filed 9/18/18, effective 10/19/18)

WAC 181-79A-150 General requirements—Teachers, administrators, educational staff associates and first peoples' language, culture, and oral tribal traditions teachers. The following requirements are to be met by candidates for certification (~~(as)~~), including teachers (~~(including)~~), career and technical education (~~(teachers)~~) educators, administrators, educational staff associates, or first peoples' language, culture, and oral tribal traditions teachers:

(1) **Age.** No person who is less than eighteen years of age shall receive a certificate to serve in the public or nonpublic schools of Washington state.

(2) **Character.** Applicants for certificates in Washington state who are not holders of a valid Washington state (~~(teacher's, administrator's)~~) teacher, administrator, educational staff (~~(associate's)~~) associate, career and technical education, or first peoples' language, culture, and oral tribal traditions (~~(teacher's)~~) teacher certificate must give evidence of good moral character and personal fitness as specified in WAC 181-79A-155 and must complete a record check through the Washington state patrol criminal identification system and through the Federal Bureau of Investigation at the applicant's expense as required by RCW 28A.410.010; such record check shall include a fingerprint check using a Washington state patrol approved fingerprint

card(~~(: Provided, That)~~). The superintendent of public instruction may waive the record check for an applicant who has had a record check within the two years prior to application.

(3) **Degrees and course work.** A candidate for certification shall hold appropriate degrees, licenses, and additional course work as prescribed in chapters 181-79A and 181-77 WAC or have qualified under WAC 181-79A-257 or 181-78A-700.

(4) **Approved preparation program.** Applicants for certification as teachers, administrators, school counselors, and school psychologists, except as otherwise provided in WAC 181-79A-257, and 181-79A-231, and in chapter 181-77 WAC, in order to be certified within the state of Washington shall have completed a state approved preparation program in the professional field for which certification is to be issued; such program shall have included a defined course of study and a supervised internship as per chapter 181-78A WAC. Applicants for certification as first peoples' language, culture, and oral tribal traditions teachers shall have completed a sovereign tribal government's first peoples' language, culture, and oral tribal traditions teaching certification program.

(5) **Assessments.** ((See)) Candidates for certification must complete assessments under chapters 181-01, 181-02, 181-79A WAC, and RCW 28A.410.220.

[Statutory Authority: RCW 28A.410.220. WSR 18-19-085, § 181-79A-150, filed 9/18/18, effective 10/19/18. Statutory Authority: RCW 28A.410.210. WSR 11-15-038, § 181-79A-150, filed 7/13/11, effective 8/13/11; WSR 08-03-100, § 181-79A-150, filed 1/20/08, effective 2/20/08; WSR 07-12-006, § 181-79A-150, filed 5/24/07, effective 6/24/07; WSR 06-14-010, § 181-79A-150, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-150, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.305.130 and 28A.410.010. WSR 02-18-037, § 180-79A-150, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) through (4). WSR 02-04-018, § 180-79A-150, filed 1/24/02, effective 2/24/02. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) and (2). WSR 99-23-023, § 180-79A-150, filed 11/9/99, effective 12/10/99. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-150, filed 12/23/98, effective 1/23/99. Statutory Authority: RCW 28A.410.010. WSR 98-01-030, § 180-79A-150, filed 12/8/97, effective 1/8/98; WSR 97-04-088, § 180-79A-150, filed 2/5/97, effective 3/8/97.]

NEW SECTION

WAC 181-79A-200 Course work on issues of abuse and emotional or behavioral distress in students. (1) The course work on issues of abuse and emotional or behavioral distress in students under RCW 28A.410.035 will include content on the following:

(a) **Issues of abuse:**

(i) Identification of physical abuse, emotional abuse, sexual abuse, and substance abuse;

(ii) Commercial sexual abuse of a minor, as defined in RCW 9.68A.100;

(iii) Sexual exploitation of a minor, as defined in RCW 9.68A.040;

(iv) Information on the impact of abuse on the behavior and learning abilities of students;

(v) Discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are the victims of abuse; and

(vi) Methods for teaching students about abuse of all types and their prevention.

(b) **Emotional or behavioral distress in students:**

(i) Knowledge and skill standards pertaining to recognition, initial screening, and response to emotional or behavioral distress in students;

(ii) This includes, but is not limited to, indicators of possible substance abuse, violence, and youth suicide.

(2) Candidates applying for certificate renewal or reinstatement who have not previously completed course work on issues of abuse and emotional or behavioral distress in students must present evidence of completion to the superintendent of public instruction.

(3) Candidates holding an initial or residency certificate applying for a continuing or professional certificate who have not previously completed course work on issues of abuse and emotional or behavioral distress in students must present evidence of completion to the superintendent of public instruction.

[]

AMENDATORY SECTION (Amending WSR 17-23-176, filed 11/21/17, effective 12/22/17)

WAC 181-79A-206 Academic and experience requirements for certification—Teachers. Candidates for teachers' certificates shall complete the following requirements ~~((in addition to those set forth in WAC 181-79A-150))~~.

(1) ~~((Initial/residency.))~~ **Residency.**

Candidates for the ~~((initial or))~~ residency certificate shall hold ~~((an approved))~~ a baccalaureate degree from an accredited college or university ~~((pursuant to))~~ under WAC 181-79A-030 ~~((5))~~.

(2) ~~((Continuing.))~~

~~(a) Candidates who apply for a continuing certificate shall have at least forty-five quarter hours (thirty semester hours) of upper division and/or graduate work completed from an accredited institution of higher education subsequent to the conferral of the baccalaureate degree: Provided, That if the individual is pursuing study in a new subject matter area or specialization, lower division (freshmen or sophomore level) credit hours in that subject area or specialization shall be accepted toward continuing certification upon completion of the requirements for an endorsement in that subject area or specialization.~~

~~(b) Candidates applying for a continuing certificate prior to September 1, 2000, shall have been granted at least two subject area endorsements.~~

~~(c) Candidates who apply for a continuing certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6).~~

~~(d) Candidates for continuing teachers' certificates shall provide documentation of one hundred eighty days or full-time equivalent or more satisfactory teaching experience with an authorized employer—i.e., school district, state agency, college or university, private school, or private school system and at least thirty days of such employment with the same employer.~~

~~(3))~~ **Professional.**

Candidates for a professional certificate must have successfully completed one or more of the following:

~~(a) ((Candidates for the professional certificate shall have successfully completed)) The external portfolio of evidence assessment adopted by the professional educator standards board. ((The professional certificate requires successful demonstration of the three standards (effective teaching, professional development, and professional contributions) and twelve criteria, pursuant to WAC 181-79A-207.~~

~~(i) A candidate may submit a portfolio of evidence to the external assessment for evaluation following two years of successful teaching in a state-approved public, private or state operated education program for children as defined in Title 28A RCW: Provided, the candidate was employed at least three-quarters time each year or a total of one and one-half full-time equivalent over a minimum of two years as defined in WAC 392-121-212. The portfolio assessment elements shall be determined by the professional educator standards board and include requirements for the candidates to prepare and submit a professional growth plan approved and supported by a professional growth team.~~

~~(ii) A professional growth plan identifying the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-79A-207 is prepared by the candidate for a professional certificate, in collaboration with members of the professional growth team. The candidate will identify a professional growth team as defined in WAC 181-79A-030(14).~~

~~(iii) Teacher professional certificate portfolio evidence of assessment pilot participants who have not attended a program but received a "met criteria" on all entries submitted to the pilot assessment would receive the professional certificate and not be required to attend a program.)~~

~~(b) ((Provided, individuals who hold)) A teaching certificate issued by the National Board for Professional Teaching Standards (NBPTS) ((shall be deemed to have met the requirements of the professional certificate, in place of the requirements in (a) of this subsection.~~

~~(c) Candidates who apply for a professional certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6).~~

~~(d) Candidates who have successfully completed the requirements for the professional certificate prior to the expiration of their residency certificate which would subject them to reinstatement according to WAC 181-79A-251 (1) (a) (iii) but failed to apply for the certificate may apply for the professional certificate).~~

[Statutory Authority: RCW 28A.410.220. WSR 17-23-176, § 181-79A-206, filed 11/21/17, effective 12/22/17. Statutory Authority: RCW 28A.410.210. WSR 12-11-100, § 181-79A-206, filed 5/21/12, effective 6/21/12; WSR 09-20-088, § 181-79A-206, filed 10/6/09, effective 11/6/09; WSR 09-12-129, § 181-79A-206, filed 6/3/09, effective 7/4/09; WSR 08-16-003, § 181-79A-206, filed 7/23/08, effective 8/23/08; WSR

06-14-010, § 181-79A-206, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-206, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 04-04-011, § 180-79A-206, filed 1/23/04, effective 2/23/04; WSR 02-14-111, § 180-79A-206, filed 7/2/02, effective 8/2/02. Statutory Authority: RCW 28A.410.010, 28A.305.130 (1) and (2). WSR 01-03-153, § 180-79A-206, filed 1/24/01, effective 2/24/01. Statutory Authority: RCW 28A.410.010. WSR 00-03-048, § 180-79A-206, filed 1/14/00, effective 2/14/00. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-206, filed 12/23/98, effective 1/23/99.]

AMENDATORY SECTION (Amending WSR 18-08-025, filed 3/26/18, effective 4/26/18)

WAC 181-79A-211 Academic and experience requirements for certification—Administrators. Candidates for the respective administrative certificate shall complete the following requirements (~~(in addition to those set forth in WAC 181-79A-150 and 181-79A-213)~~).

(1) **Superintendent.**

(a) Initial.

(i) The candidate shall hold (~~(an approved)~~) a master's degree or higher and have completed subsequent to the baccalaureate degree at least forty-five quarter credit hours (thirty semester credit hours) of graduate level course work in education.

(ii) The candidate shall hold or have held a valid teacher, educational staff associate, program administrator or principal certificate; excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.

(b) (~~(Continuing.)~~) Professional.

(i) The candidate shall hold (~~(an approved)~~) a master's degree or higher and have completed subsequent to the baccalaureate degree at least sixty quarter credit hours (forty semester credit hours) of graduate level course work in education or shall hold a doctorate in education.

(ii) The candidate shall hold or have held a valid teacher, educational staff associate, program administrator or principal certificate; excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.

(iii) Candidates applying for (~~(continuing)~~) the professional superintendent's certificate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(2) **Principal.**

(a) Residency.

(i) The candidate shall hold (~~(an approved)~~) a master's degree or higher.

(ii) The candidate shall have completed an approved program for the preparation of principals.

(iii) The candidate shall have three years of documented (~~(successful)~~) school-based experience in an instructional role with stu-

dents(~~(; provided)~~). However, candidates who were enrolled in an approved principal program prior to July 1, 2013, are not subject to the three-year minimum experience requirement.

(iv) The candidate shall hold or have held:

(A) A valid teacher's certificate, excluding certificates issued under WAC 181-79A-231; or

(B) A valid education staff associate certificate, excluding certificates issued under WAC 181-79A-231.

(v) Persons whose teacher (~~(of)~~) or educational staff associate certificates were revoked, suspended or surrendered are not eligible for principal(~~(s)~~) certificates.

(b) (~~(Continuing.)~~) Professional.

(i) The candidate shall hold a valid initial principal's certificate, an approved master's degree, and shall have completed at least (~~(fifteen quarter (ten semester) credit hours of graduate course work offered by a college or university with a state approved principal program or)~~) one hundred fifty (~~(clock hours of study, which meet the state continuing education clock hour criteria pursuant to)~~) continuing education credit hours under chapter 181-85 WAC (~~(, or a combination of credits and clock hours equivalent to the above)~~). Such study shall:

(A) Be based on the principal performance domains included in WAC 181-78A-270 (2) (a) or (b);

(B) Be taken subsequent to the issuance of the initial principal's certificate; and

(C) Be determined in consultation with and approved by the candidate's employer or the administrator of a state approved principal preparation program.

(ii) (~~(Provided, That a candidate who held a valid initial principal's certificate on August 31, 1998, may meet the academic requirement for the continuing certificate described in WAC 181-79A-211 (2) (c) (i), if the candidate meets requirements for and applies for the continuing certificate by the expiration date on that initial certificate.~~

~~(iii))~~) The candidate must meet requirements for a principal's certificate (~~(pursuant to)~~) under WAC 181-79A-150(4).

(~~(iv))~~) (iii) Candidates applying for the (~~(continuing)~~) professional principal's certificate shall provide documentation of three (~~(contracted)~~) school years of full-time employment as a principal or assistant principal.

(~~(e) Professional certificate.~~

~~(i) The candidate shall have completed an approved professional certificate program by September 2018.~~

~~(ii) The candidate shall have documentation of three contracted school years of employment as a principal or assistant principal.)~~

(3) **Program administrator.**

(a) (~~(Initial.~~

~~The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least twenty-four quarter credit hours (sixteen semester credit hours) of graduate level course work in education.~~

~~(b))~~) Residency certificate.

The candidate shall hold (~~(an approved)~~) a master's degree or higher and have completed an approved program for the preparation of program administrators.

(~~(e) Continuing.)~~) (b) Professional.

(i) The candidate shall hold a valid initial program administrator's certificate, an approved master's degree and have completed subsequent to the baccalaureate degree at least thirty quarter credit hours (twenty semester credit hours) of graduate level course work in education or shall hold a doctorate in education.

(ii) Candidates applying for ~~((continuing))~~ a professional program administrator's certificate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

~~((d) Professional certificate.~~

~~The candidate shall have completed an approved professional certificate program by September 2018.)~~

[Statutory Authority: RCW 28A.410.220. WSR 18-08-025, § 181-79A-211, filed 3/26/18, effective 4/26/18. Statutory Authority: RCW 28A.410.210. WSR 17-15-135, § 181-79A-211, filed 7/19/17, effective 8/19/17; WSR 13-11-081, § 181-79A-211, filed 5/17/13, effective 6/17/13; WSR 11-15-038, § 181-79A-211, filed 7/13/11, effective 8/13/11; WSR 09-12-056, § 181-79A-211, filed 5/28/09, effective 6/28/09; WSR 08-15-141, § 181-79A-211, filed 7/22/08, effective 8/22/08; WSR 06-14-010, § 181-79A-211, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-211, filed 12/29/05, effective 1/1/06; WSR 05-23-041, § 180-79A-211, filed 11/9/05, effective 12/10/05. Statutory Authority: RCW 28A.305.130 and 28A.410.010. WSR 02-18-037, § 180-79A-211, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) through (4). WSR 02-04-018, § 180-79A-211, filed 1/24/02, effective 2/24/02. Statutory Authority: RCW 28A.410.010. WSR 01-03-152, § 180-79A-211, filed 1/24/01, effective 2/24/01. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) and (2). WSR 99-23-023, § 180-79A-211, filed 11/9/99, effective 12/10/99. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-211, filed 12/23/98, effective 1/23/99.]

AMENDATORY SECTION (Amending WSR 19-15-110, filed 7/22/19, effective 8/22/19)

WAC 181-79A-221 Academic and experience requirements for certification—School counselors and school psychologists. Candidates for school counselor and school psychologist certification shall complete the following requirements ~~((in addition to those set forth in WAC 181-79A-150 and 181-79A-226))~~.

(1) **Degree.** It shall not be necessary for any candidate who holds a master's ~~((or doctorate))~~ degree or higher to obtain the specified master's degree if the candidate provides satisfactory evidence to the superintendent of public instruction that he or she has completed all course work requirements relevant to the ~~((required))~~ specified master's degree and has satisfactorily completed a comprehensive examination required in such master's degree program. This examination shall be an examination of an accredited institution of higher education or the National Counselor Examination (NCE) of the National Board of Cer-

tified Counselors (NBCC) or, in the case of school psychologists, hold the Nationally Certified School Psychologist (NCSP) credential from the National Association of School Psychologists (NASP). If any candidate has been awarded a master's degree without a comprehensive examination, the candidate, as a condition for certification, shall successfully complete the Praxis II exam in the appropriate role.

(2) **School counselor.**

(a) **Residency.**

(i) Hold a master's degree in counseling.

(ii) Completion of a state-approved school counselor program.

(b) **Professional.** A professional certificate may be earned by an individual who holds a valid school counseling certificate issued by the National Board for Professional Teaching Standards (NBPTS).

(c) (~~Beginning with certificates first issued or renewed after July 1, 2015, continuing and~~) Professional certificates for school counselors include a requirement for suicide prevention training under WAC 181-79A-244, RCW 28A.410.226, and 43.70.442.

(3) **School psychologist.**

(a) **Residency.**

(i) The candidate shall hold a master's degree in school psychology.

(ii) Completion of a state-approved school psychology program.

(b) **Professional.** An individual who holds a valid Nationally Certified School Psychologist (NCSP) credential issued by the National Association of School Psychologists (NASP) shall be deemed to have met the requirement for professional certification.

(c) (~~Continuing and/or~~) Professional certificates for school psychologists include a requirement for suicide prevention training under RCW 28A.410.226, 43.70.442, and as described in WAC ((181-85-075)) 181-79A-244.

[Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-110, § 181-79A-221, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 18-21-011, § 181-79A-221, filed 10/4/18, effective 11/4/18. Statutory Authority: RCW 28A.410.210. WSR 17-11-104, § 181-79A-221, filed 5/22/17, effective 6/22/17; WSR 15-20-059, § 181-79A-221, filed 10/1/15, effective 11/1/15; WSR 14-24-057, § 181-79A-221, filed 11/25/14, effective 12/26/14; WSR 14-09-121, § 181-79A-221, filed 4/23/14, effective 5/24/14; WSR 11-15-051, § 181-79A-221, filed 7/15/11, effective 8/15/11; WSR 08-12-055, § 181-79A-221, filed 6/2/08, effective 7/3/08; WSR 06-14-010, § 181-79A-221, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-221, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.401.010 [28A.410.010]. WSR 04-21-040, § 180-79A-221, filed 10/15/04, effective 11/15/04. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-221, filed 12/23/98, effective 1/23/99.]

AMENDATORY SECTION (Amending WSR 21-08-024, filed 3/29/21, effective 4/29/21)

WAC 181-79A-223 Academic and experience requirements for certification—School nurse, school occupational therapist, school physical therapist, school speech-language pathologist or audiologist, school

social worker, school behavior analyst, and school orientation and mobility specialist. Candidates for school nurse, school occupational therapist, school physical therapist and school speech-language pathologist or audiologist, school social worker, school behavior analyst, and school orientation and mobility specialist certification shall apply directly to the professional certification office. Such candidates shall complete the following requirements, in addition to those set forth in WAC 181-79A-150, except for a state-approved educator preparation program.

(1) **Degree.** Candidates who hold a master's degree or higher are not required to obtain a role-specific master's degree if the candidate provides satisfactory evidence to the superintendent of public instruction that they have completed all course work requirements relevant to the role-specific master's degree.

(2) **Professional transitions to public schools.** Candidates for the initial certificate for the roles under this section must complete the professional transitions to public schools coursework under WAC 181-79A-224.

(3) **Experience.** Candidates for the ~~((continuing))~~ professional certificate for the roles under this section must complete two years full-time equivalency (FTE) in the role in Washington with a school district, state-approved private school, state tribal compact school, state authorized charter school, or state agency that provides educational services for students.

(4) **School nurse.**

(a) **Initial.**

(i) The candidate shall hold a valid department of health license as a registered nurse (RN) in Washington state.

(ii) The candidate shall hold a baccalaureate degree or higher in nursing from a program accredited by the National League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education.

(b) ~~((Continuing.))~~ **Professional.**

(i) The candidate shall have completed the requirements for the initial certificate as a school nurse and have completed one hundred fifty continuing education credit hours related to education, nursing, or other health sciences since the first issuance of the initial certificate.

(ii) The candidate shall hold a valid department of health license as a registered nurse (RN) in Washington state.

(iii) The candidate shall have completed suicide prevention training under RCW 28A.410.226, 43.70.442, and as described in WAC ~~((181-85-075))~~ 181-79A-244.

(5) **School occupational therapist.**

(a) **Initial.**

(i) The candidate shall hold a valid department of health license as an occupational therapist in Washington state.

(ii) The candidate shall hold a baccalaureate degree or higher from an American Occupational Therapy Association approved program in occupational therapy.

(b) ~~((Continuing.))~~ **Professional.**

(i) The candidate shall have completed the requirements for the initial certificate as a school occupational therapist and have completed one hundred fifty continuing education credit hours related to occupational therapy, other health sciences, or education since the first issuance of the initial certificate.

(ii) The candidate shall hold a valid department of health license as an occupational therapist in Washington state.

(6) **School physical therapist.**

(a) **Initial.**

(i) The candidate shall hold a valid department of health license as a physical therapist in Washington state.

(ii) The candidate shall hold a baccalaureate degree or higher from an American Physical Therapy Association accredited program in physical therapy.

(b) ~~((Continuing-))~~ **Professional.** The candidate shall have completed the requirements for the initial certificate as a school physical therapist and have completed one hundred fifty continuing education credit hours related to physical therapy, other health sciences, or education since the first issuance of the initial certificate.

(7) **School speech-language pathologist or audiologist.**

(a) **Initial.** The candidate shall have completed all course work (except special project or thesis) for a master's degree or higher from a college or university program accredited by the American Speech and Hearing Association (ASHA). If the degree program requires a written comprehensive exam relevant to the role, the candidate must successfully complete it. If the degree program does not require a written comprehensive exam relevant to the role, the candidate may present verification from ASHA of a passing score on a national exam in speech pathology or audiology, or a passing score on an exam approved by the professional educator standards board.

(b) ~~((Continuing-))~~ **Professional.**

(i) The candidate shall hold a master's degree or higher.

(ii) The candidate shall have completed the requirements for the initial certificate as a speech language pathologist or audiologist and have completed one hundred fifty continuing education credit hours related to speech language pathology, audiology, other health sciences, or education since the first issuance of the initial certificate.

(8) **School social worker.**

(a) **Initial.** The candidate shall hold a masters degree or higher in social work or social welfare from an accredited institution of higher learning.

(b) ~~((Continuing-))~~ **Professional.**

(i) The candidate shall have completed the requirements for the initial certificate as a school social worker and have completed one hundred fifty continuing education credit hours related to the role of the school social worker or education since the first issuance of the initial certificate.

(ii) The candidate shall have completed suicide prevention training under RCW 28A.410.226, 43.70.442, and as described in WAC ~~((181-85-075))~~ 181-79A-244.

(9) **Behavior analyst.**

(a) **Initial.**

(i) Candidates must hold a valid board certified behavior analyst (BCBA) certificate from the behavior analyst certification board (BACB), or other national certificate as approved by the professional educator standards board.

(ii) Candidates must hold a master's degree or higher in any area.

(iii) Candidates must have achieved a passing score on the board certified behavior analyst (BCBA) exam from the behavior analyst certification board (BACB), or other assessment as approved by the professional educator standards board.

(b) (~~Continuing~~) Professional.

(i) Candidates must hold a valid board certified behavior analyst (BCBA) certificate from the behavior analyst certification board (BACB), or other national certificate as approved by the professional educator standards board.

(ii) The candidate shall have completed the requirements for the initial certificate as a behavior analyst and have completed one hundred fifty continuing education credit hours related to the role of the school behavior analyst or education since the first issuance of the initial certificate.

(10) Orientation and mobility specialist.**(a) Initial.**

(i) Candidates must hold a valid certified orientation and mobility specialist (COMS) certificate from the academy for certification of vision rehabilitation and education professionals (ACVREP), valid national orientation and mobility certification (NOMC) from the national blindness professional certification board (NBPCB), or other valid national certificate as approved by the professional educator standards board.

(ii) Candidates must hold a baccalaureate degree or higher in any area.

(b) (~~Continuing~~) Professional.

(i) Candidates must hold a valid certified orientation and mobility specialist (COMS) certificate from the academy for certification of vision rehabilitation and education professionals (ACVREP), valid national orientation and mobility certification (NOMC) from the national blindness professional certification board (NBPCB), or other valid national certificate as approved by the professional educator standards board.

(ii) The candidate shall have completed the requirements for the initial certificate as an orientation and mobility specialist and have completed one hundred fifty continuing education credit hours related to the role or to education since the first issuance of the initial certificate.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-024, § 181-79A-223, filed 3/29/21, effective 4/29/21. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-110, § 181-79A-223, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 18-19-086, § 181-79A-223, filed 9/18/18, effective 10/19/18. Statutory Authority: RCW 28A.410.210. WSR 17-11-104, § 181-79A-223, filed 5/22/17, effective 6/22/17; WSR 15-23-014, § 181-79A-223, filed 11/6/15, effective 12/7/15; WSR 14-09-121, § 181-79A-223, filed 4/23/14, effective 5/24/14; WSR 13-12-061, § 181-79A-223, filed 6/4/13, effective 7/5/13; WSR 12-20-072, § 181-79A-223, filed 10/3/12, effective 11/3/12; WSR 12-02-024, § 181-79A-223, filed 12/28/11, effective 1/28/12; WSR 11-15-051, § 181-79A-223, filed 7/15/11, effective 8/15/11; WSR 08-08-045, § 181-79A-223, filed 3/26/08, effective 4/26/08; WSR 06-14-010, § 181-79A-223, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-223, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 04-04-012, § 180-79A-223, filed 1/23/04, effective 2/23/04; WSR 99-14-012, § 180-79A-223, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-223, filed 12/23/98, effective 1/23/99.]

AMENDATORY SECTION (Amending WSR 21-08-024, filed 3/29/21, effective 4/29/21)

WAC 181-79A-231 Limited certificates. All applicants for limited certificates must meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2).

Nothing within chapter 181-79A WAC authorizes practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations adopted by the appropriate licensure board or agency.

(1) **Conditional certificate.**

(a) **Intent.** The intent of the conditional certificate is to assist school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals.

(b) **Roles.**

(i) Teacher roles. The conditional certificate may be issued to teachers in all endorsement areas. Specific minimum requirements defined in this section apply to the following:

- (A) Special education teachers;
- (B) Nonimmigrant exchange teachers;
- (C) Traffic safety education teachers.

(ii) Educational staff associate roles. The conditional certificate may be issued in the following education staff associate roles:

- (A) School counselor;
- (B) School nurse;
- (C) School psychologist;
- (D) School social worker;
- (E) School speech language pathologist or audiologist;
- (F) School behavior analyst;
- (G) School orientation and mobility specialist.

(iii) Administrator role. The conditional certificate may be issued in the following administrator role: Principal.

(c) **Request requirements.**

(i) When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that one or more of the following criteria have been met:

(A) The individual has extensive experience, unusual distinction, or exceptional talent in the subject matter to be taught or in the certificate role; or

(B) No person with regular certification in the area is available; or

(C) The individual holds a bachelor's degree or higher from an accredited college or university; or

(D) The individual is enrolled in an educator preparation program specific to the certificate role for which they are applying; or

(E) The individual will serve as a nonimmigrant exchange teacher and meets the specific minimum requirements defined in this section; or

(F) The individual will serve as a traffic safety education teacher and meets the specific minimum requirements defined in this section; or

(G) Circumstances warrant.

(ii) When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that all of the following criteria have been met:

(A) The district, educational service district, or approved private school has determined that the individual is competent for the assignment; and

(B) After specific inclusion on the agenda and a formal vote, the school board or educational service district board has authorized the conditional certificate; and

(C) The individual is being certificated for a specific assignment and responsibility in a specified activity/field; and

(D) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities; and

(E) The individual will not be serving in a paraeducator role; and

(F) The individual will be oriented and prepared for the assignment. In addition, prior to service, the individual will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment; and

(G) The individual will be assigned a mentor within twenty working days from the commencement of the assignment; and

(H) A written plan of support will be developed within twenty working days from the commencement of the assignment.

(d) **Minimum requirements.**

(i) Individuals must complete fifty continuing education credit hours after the issuance of the certificate, and prior to the reissuance of the certificate. Holders of conditional certificates in the role of nonimmigrant exchange teacher are not required to complete fifty continuing education credit hours.

(ii) Special education teacher. The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from an accredited college or university.

The issuance of a conditional certificate to a special education teacher is contingent upon the individual being enrolled in a state-approved teacher preparation program resulting in a teacher certificate endorsed in special education.

An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(iii) Traffic safety education teacher. The applicant qualifies to instruct in the traffic safety program under WAC 392-153-021. Written plans of support and mentors are not required for holders of conditional certificates in the role of traffic safety education teacher.

(iv) Nonimmigrant exchange. A conditional certificate in the role of teacher may be issued to an individual admitted to the United States for the purpose of serving as an exchange teacher.

The individual must be eligible to serve as a teacher in the elementary or secondary schools in their country of nationality or last residence.

(v) School counselor. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for the role, in accordance with Washington requirements for certification.

(vi) School nurse. The applicant possesses a state of Washington license for a registered nurse. Applicants who meet the requirements for the initial school nurse certificate will not be issued a conditional school nurse certificate.

(vii) School psychologist. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be en-

rolled in a state-approved preparation program for school psychologists, in accordance with Washington requirements for certification.

In addition, the candidate shall have completed all course work for the required master's degree, and shall be participating in the required internship.

(viii) School social worker. The applicant must hold a bachelor's degree or higher from an accredited college or university. The applicant must be enrolled in a master's degree program in social work or social welfare.

(ix) School speech language pathologist or audiologist. The applicant has completed a bachelor's degree or higher from an accredited college or university.

(x) School behavior analyst. Applicants must meet one or more of the following:

(A) Hold a valid Washington state department of health license as an assistant behavior analyst. The district, educational service district, or approved private school must provide a supervisor who meets the department of health requirements for a supervisor of assistant behavior analysts; or

(B) Hold a valid board certified assistant behavior analyst (BCABA) certificate from the behavior analyst certification board (BACB). The district, educational service district, or approved private school must provide a supervisor who meets the behavior analyst certification board (BACB) requirements for a supervisor of board certified assistant behavior analyst (BCABA); or

(C) Hold a bachelor's degree, and, must be enrolled in or have completed the course work requirements for the board certified behavior analyst (BCBA) certificate from the behavior analyst certification board (BACB), as verified by the institution providing the behavior analysis course work.

(xi) School orientation and mobility specialist.

(A) Applicants must have completed all requirements for an approved national certificate with the exception of the internship and the assessment, as verified by the institution providing the course-work for the national certificate. The approved national certificates are the certified orientation and mobility specialist (COMS) certificate from the academy for certification of vision rehabilitation and education professionals (ACVREP), and the national orientation and mobility certification (NOMC) from the national blindness professional certification board (NBPCB).

(B) The school employer must ensure the candidate has access to a mentor who meets the requirements for an intern supervisor set by the academy for certification of vision rehabilitation and education professionals (ACVREP) or the national blindness professional certification board (NBPCB).

(xii) Principal. The applicant holds a bachelor's degree from an accredited college or university.

The candidate for conditional certification as a principal shall be enrolled in a program resulting in the issuance of a residency principal certificate, in accordance with Washington requirements for certification.

(e) **Validity.** The conditional certificate is valid for two years or less, and is only valid for the activity or role specified on the certificate.

The reissuance of the special education conditional certificate will have a validity period of three years or less.

(f) **Reissuance.**

(i) The conditional certificate may be reissued upon request by the employing local school district, approved private school, or educational service district, provided all conditions for the first issuance of the certificate are met.

(ii) The requesting school district, approved private school, or educational service district will verify that the fifty continuing education credit hours earned as a requirement for reissuance of the certificate are designed to support the individual's professional growth, and enhance the individual's knowledge or skills to better assist students in meeting state learning goals.

(iii) Nonimmigrant exchange. The conditional certificate in the role of teacher may be reissued while the individual is being sponsored by a school district in an exchange and visiting teacher program.

(iv) Special education teacher. Conditional certificates in special education may only be reissued once. The reissuance of the special education conditional certificate will have a validity period of three years or less. The special education conditional certificate may only be reissued upon verification by the preparation program provider that the individual is completing satisfactory progress in a state-approved teacher certificate program leading to a special education endorsement.

(v) School speech language pathologist or audiologist. Conditional certificates as a school speech language pathologist or audiologist may be reissued twice.

The conditional certification as a school speech language pathologist or audiologist may be reissued if the candidate is enrolled in a master's degree program resulting in issuance of an initial ESA certificate in accordance with Washington requirements for certification.

The school speech language pathologist or audiologist conditional certificate may be reissued a second time upon verification by the degree provider that the individual is completing satisfactory progress in a master's degree program resulting in issuance of an initial school speech language pathologist or audiologist certificate in accordance with Washington requirements for certification.

(vi) Conditional certificates as a school behavior analyst may be reissued twice.

(vii) Conditional certificates as a school orientation and mobility specialist may be reissued once.

(2) **Transitional certificate.**

(a) **Intent.** The transitional certificate provides flexibility for school districts in employing an individual whose continuing certificate has lapsed or expired.

(b) **Roles.** The transitional certificate may be issued in roles of teacher, education staff associate, and administrator for continuing certificates.

(c) **Request requirements.**

(i) The transitional certificate is issued upon request by a school district, approved private school, or educational service district for an individual whose continuing certificate has lapsed or expired according to ((WAC 181-85-040)) this chapter.

(ii) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of support for the holder to complete the necessary ((continuing)) certificate renewal requirements under ((WAC 181-85-130)) this chapter.

(d) **Minimum requirements.**

(i) The holder of the transitional certificate must complete the requirements for ~~((continuing))~~ certificate renewal within two years of the date the holder was issued the transitional certificate.

(ii) No individual whose ~~((continuing))~~ certificate has been suspended ~~((or))~~, revoked, or surrendered shall be eligible to be employed under this section.

(e) **Validity.** The transitional certificate is valid until two years from the date the holder was issued the certificate. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(f) **Reissuance.** The transitional certificate is not renewable and may not be reissued.

(3) **Emergency substitute certificate.**

(a) **Intent.** The intent of the emergency substitute certificate is to assist school districts, approved private schools, and educational service districts with flexibility in meeting educator workforce needs.

(b) **Roles.**

(i) The emergency substitute certificate may be issued in the role of teacher.

(ii) To ensure that related services personnel deliver special education services in their respective discipline or profession, the emergency substitute certificate may not be issued for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b) (2) (ii).

(iii) Holders of the emergency substitute certificate may serve in the local school district, approved private school, or educational service district which requested the certificate.

(iv) Holders of the emergency substitute certificate may serve as substitutes if the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes under WAC 181-79A-232.

(c) **Request requirements.**

(i) The emergency substitute certificate is issued upon request by a school district, approved private school, or educational service district.

(ii) If the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, emergency substitute certificates may be issued to persons not fully qualified as substitutes under WAC 181-79A-232.

(d) **Validity.** Emergency substitute certificates shall be valid for two years or less.

(e) **Reissuance.** The emergency substitute certificate may be reissued upon request by the employing local school district, approved private school, or educational service district.

(4) **Intern substitute certificate.**

(a) **Intent.** The intent of the intern substitute certificate is to provide the intern the opportunity to serve as a substitute when the cooperating teacher is absent. This provides the intern with experience while allowing for consistency in instruction for the students.

(b) **Roles.** The intern substitute certificate may be issued to student teachers or intern teachers.

(c) **Request requirements.**

(i) School districts, educational service districts, and approved private schools may request intern substitute teacher certificates for

individuals enrolled in student teaching and internships to serve as substitute teachers in the absence of the cooperating teacher.

(ii) The supervising preparation program provider must approve the candidate for the intern substitute teacher certificate.

(d) **Minimum requirements.** The holder of the intern substitute certificate may be called at the discretion of the school district, education service district, or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher or intern.

(e) **Validity.** The intern substitute teacher certificate is valid for one year or less.

(f) **Reissuance.** The intern substitute certificate may be reissued upon request by the local school district, approved private school, or educational service district, and approved by the educator preparation program provider.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-024, § 181-79A-231, filed 3/29/21, effective 4/29/21. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-110, § 181-79A-231, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 18-21-072, § 181-79A-231, filed 10/11/18, effective 11/11/18; WSR 17-23-176, § 181-79A-231, filed 11/21/17, effective 12/22/17. Statutory Authority: RCW 28A.410.210. WSR 17-08-037, § 181-79A-231, filed 3/29/17, effective 4/29/17; WSR 16-16-044, § 181-79A-231, filed 7/26/16, effective 8/26/16; WSR 15-20-058, § 181-79A-231, filed 10/1/15, effective 11/1/15; WSR 10-16-124, § 181-79A-231, filed 8/3/10, effective 9/3/10; WSR 07-04-003, § 181-79A-231, filed 1/24/07, effective 2/24/07; WSR 06-14-010, § 181-79A-231, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-231, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 04-20-090, § 180-79A-231, filed 10/5/04, effective 11/5/04; WSR 03-14-115, § 180-79A-231, filed 6/30/03, effective 7/31/03; WSR 03-12-035, § 180-79A-231, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 28A.410.010 and 28A.305.130. WSR 02-13-027, § 180-79A-231, filed 6/12/02, effective 7/13/02. Statutory Authority: RCW 28A.410.010. WSR 00-13-063, § 180-79A-231, filed 6/16/00, effective 7/17/00. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) and (2). WSR 99-23-023, § 180-79A-231, filed 11/9/99, effective 12/10/99. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-231, filed 12/23/98, effective 1/23/99.]

NEW SECTION

WAC 181-79A-240 Certificate renewal and reinstatement. (1) **Certificate types and roles.** Certificate types under WAC 181-79A-142(1), for the certificate roles under WAC 181-79A-140, are renewed or reinstated as described in this section unless otherwise provided for in Title 181 WAC.

(2) **Validity period.** Unless otherwise specified in Title 181 WAC, certificates have a five year validity period. Certificate expiration dates are calculated under WAC 181-79A-117.

(3) **Renewal of valid certificates.**

(a) **Continuing education requirement:** Certificates are renewed with one hundred continuing education credit hours as described under

chapter 181-85 WAC. All other requirements for renewal of the specific certificate type and role must be met.

(b) Applications for certificate renewal may not be submitted more than five years prior to the current certificate expiration date.

(c) If the individual holds a certificate with a validity period of **five years or more**, the continuing education credit hours for certificate renewal must be completed after the issuance of the most recent certificate.

(d) If the individual holds a certificate with a validity period **less than five years**, continuing education credit hours for certificate renewal must be completed within five years prior to the certificate renewal application date.

(4) Renewal of expired certificates:

(a) Evidence of one hundred continuing education credit hours as described under chapter 181-85 WAC, completed within five years prior to the certificate application date, must be submitted to the superintendent of public instruction for renewal of an expired certificate. All other requirements for renewal of a valid certificate of that type and role must be met.

(b) The applicant must submit a fingerprint background check, evidence of character and fitness, and all other requirements under WAC 181-79A-150(2) for certificate candidates.

(c) The expiration date on the renewed certificate will be calculated as if it were a new certificate issued under WAC 181-79A-117.

(5) Reinstatement of revoked, surrendered, or suspended certificates with an expiration date before the reinstatement application date:

(a) For revoked or surrendered certificates, the applicant must meet all conditions for reinstatement under chapter 181-86 WAC. For suspended certificates, the applicant must meet all conditions in the order of suspension under WAC 181-86-035.

(b) Evidence of one hundred continuing education credit hours as described under chapter 181-85 WAC, completed within five years prior to the certificate application date, must be submitted to the superintendent of public instruction for reinstatement of a certificate. All other requirements for renewal of a certificate of that type and role must be met for reinstatement. Instead of completion of current certificate renewal or issuance requirements, individuals eligible under WAC 181-79A-123 may meet certificate renewal or issuance requirements under previous standards.

(c) The applicant must submit a fingerprint background check, evidence of character and fitness, and all other requirements under WAC 181-79A-150(2) for certificate candidates.

(d) The expiration date on the reinstated certificate will be calculated as if it were a new certificate issued under WAC 181-79A-117.

(e) Under RCW 28A.410.110, a revoked certificate may not be reinstated within one calendar year from the date of revocation.

(6) Reinstatement of revoked, surrendered, or suspended certificates with an expiration date after the reinstatement application date:

(a) For revoked or surrendered certificates, the applicant must meet all conditions for reinstatement under chapter 181-86 WAC. For suspended certificates, the applicant must meet all conditions in the order of suspension under WAC 181-86-035.

(b) The applicant must submit a fingerprint background check, evidence of character and fitness, and all other requirements under WAC 181-79A-150(2) for certificate candidates.

(c) The expiration date on the reinstated certificate will be the same as the certificate which was revoked or suspended.

(d) Under RCW 28A.410.110, a revoked certificate may not be reinstated within one calendar year from the date of revocation.

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NEW SECTION

WAC 181-79A-244 Certificate renewal requirements. Certificate renewal requirements include the following:

(1) **Equity-based school practices.** Applications for renewal dated July 1, 2023, and beyond, for the certificate types and roles as indicated in (a) and (b) of this subsection, must demonstrate completion of professional learning focused on equity based school practices aligned with the cultural competency, diversity, equity, and inclusion (CCDEI) standards under RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the professional learning must be aligned to the cultural competency standards published by the board.

(a) Completion of at least fifteen continuing education credit hours of professional learning in equity-based school practices is required for renewal of residency, professional, initial, and continuing teacher and CTE teacher certificates.

(b) Completion of at least ten continuing education credit hours of professional learning in equity-based school practices is required for renewal of residency, professional, initial, and continuing principal, program administrator, superintendent, and CTE director certificates.

(c) Individuals holding at least one valid, expiration dated administrator certificate under (b) of this subsection are only required to meet the equity-based school practices requirement for administrators when renewing or reinstating a teacher certificate under (a) of this subsection.

(d) Holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS) meet the equity-based school practices requirement by maintaining a valid National Board Certificate.

(e) A professional growth plan with at least one goal aligned to the standards in this subsection meets the equity-based school practices requirement.

(2) **National Professional Standards for Education Leaders.** Applications for renewal dated July 1, 2023, and beyond, for holders of residency, professional, initial, and continuing certificates in the role of principal, program administrator, superintendent and CTE director, must demonstrate completion of ten continuing education credit hours of professional learning focused on the National Policy Board for Educational Administration (NPBEA) Professional Standards for Educational Leaders (PSEL). A professional growth plan with at least one goal aligned to the PSEL standards meets the certificate renewal requirement in this subsection.

(3) **Providers for professional learning in equity-based school practices and National Professional Standards for Education Leaders.**

Professional learning under subsections (1) and (2) of this section must be provided by one or more of the following organizations. These organizations may only provide the professional learning for as long as they maintain status as a Washington state approved in-service education agency under chapter 181-85 WAC.

- (a) Association of Washington school principals;
- (b) Office of the superintendent of public instruction;
- (c) Professional educator standards board-approved administrator or teacher preparation program providers;
- (d) Washington education association;
- (e) Washington state educational service districts; or
- (f) Washington state school districts, tribal compact schools, approved charter schools, Washington school for the deaf, Washington school for the blind.

(4) Government-to-government relationships with federally recognized tribes.

(a) Applications for renewal dated July 1, 2023, and beyond, for holders of residency, professional, initial, and continuing certificates in the role of principal, program administrator, superintendent and CTE director, must demonstrate completion of five continuing education credit hours of professional learning focused on government-to-government relationships with federally recognized tribes.

(b) Professional learning related to government-to-government relationships with federally recognized tribes must be provided by one or more subject matter experts approved by the governor's office on Indian affairs in collaboration with the tribal leaders congress on education and the office of native education in the office of the superintendent of public instruction.

(c) Completion of a professional growth plan (PGP) may not be used to meet the requirement for professional learning in government-to-government relationships.

(5) Science, technology, engineering, math (STEM) integration. Applications for certificate renewal must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan, emphasizing the integration of science, technology, engineering, and/or mathematics instruction under RCW 28A.410.2212.

(a) This renewal requirement applies to teachers in the following areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics; secondary science; the designated sciences; and career and technical education. Specific endorsements in these endorsement areas are as published by the professional educator standards board.

(b) Holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS) meet this requirement by maintaining a valid National Board Certificate.

(6) Suicide prevention training requirement. Renewal of certificates, and issuance of professional certificates, for school counselors, school psychologists, school nurses, and school social workers requires completion of suicide prevention training under RCW 28A.410.226, 43.70.442, and as described in this section.

Approved trainings meeting this suicide prevention training requirement will be as published by the professional educator standards board. The training program must be at least three hours in length. The professional educator standards board will consider these training programs as continuing education credit hours.

(7) Washington state department of health licenses.

(a) Holding a valid department of health license as a physical therapist in Washington state is a requirement for renewal of school physical therapist educational staff associate (ESA) certificate.

(b) Holding a valid department of health license as an occupational therapist in Washington state is required for renewal of school occupational therapist ESA certificates.

(c) Holding a valid department of health license as a registered nurse (RN) in Washington state is a requirement for renewal of school nurse ESA certificates.

(8) National certificates related to educational staff associate roles.

(a) Holding a valid Board Certified Behavior Analyst (BCBA) certificate from the Behavior Analyst Certification Board (BACB), or other national certificate as approved by the professional educator standards board, is a requirement for renewal of School Behavior Analyst ESA certificates.

(b) Holding a valid Certified Orientation and Mobility Specialist (COMS) Certificate from Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP), or, a valid National Orientation and Mobility Certification (NOMC) from the National Blindness Professional Certification Board (NBPCB), is a requirement for renewal of school Orientation and Mobility Specialist ESA Certificates.

(9) Continuing education role requirements. Except as otherwise required in Title 181 WAC, continuing education for the following roles must relate to the described areas.

(a) CTE teacher. Continuing education credit hours for renewal of CTE teacher certificates must relate to career and technical education methods, including those described in RCW 28A.700.010 and WAC 181-77A-165, or to the subject matter certified to teach.

(b) CTE director. Continuing education credit hours for renewal of CTE director certificates must relate to career and technical education, or supervisory or managerial subjects.

(c) School counselor. Continuing education credit hours for renewal must relate to:

(i) American School Counseling Association (ASCA) Professional Standards and Competencies; or

(ii) School Counselor Standards published by the National Board for Professional Teaching Standards (NBPTS).

(d) School psychologist. Continuing education credit hours for renewal certificates must relate to the National Association of School Psychologists (NASP) Professional Practices.

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NEW SECTION

WAC 181-79A-247 Certificate renewal options. (1) **Professional growth plans.** Individuals may use professional growth plans towards meeting the continuing education requirement for certificate renewal. Professional growth plans are defined in WAC 181-85-033. For educators holding multiple certificates in chapter 181-77 or 181-79A WAC, a professional growth plan for teacher, administrator, educational staff associate, or paraeducator shall meet the continuing education requirement for all certificates held by an individual which is affected by this section.

(2) **National Board for Professional Teaching Standards Certification.** Each holder of a certificate affected by this chapter may present a copy of a valid certificate issued by the National Board for Professional Teaching Standards in lieu of the completion of the continuing education credit hours required by this chapter.

(a) A professional certificate renewed with a valid certificate issued by the National Board for Professional Teaching Standards is valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(b) A professional certificate cannot be renewed with the same National Board Certificate used to obtain that professional certificate.

(3) **National Association of School Psychologists credential.** Each holder of a certificate affected by this chapter may present a copy of a valid Nationally Certified School Psychologist credential issued by the National Association of School Psychologists in lieu of the completion of the continuing education credit hours required by this chapter.

(4) **American Speech-Language-Hearing Association certificate.** Each holder of a certificate affected by this chapter may present a copy of a valid certificate of clinical competence (CCC) issued by the American Speech-Language-Hearing Association (ASHA) in lieu of the completion of the continuing education credit hours required by this chapter.

(5) **Behavior analyst certificate.** Hours used to maintain a valid Board Certified Behavior Analyst (BCBA) certificate from the Behavior Analyst Certification Board (BACB), or other national certificate as approved by the professional educator standards board, will be considered by the professional educator standards board as continuing education credit hours, and may be used towards the continuing education credit hour requirement for renewal.

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AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-79A-260 Establishing equivalency for course work, degrees and programs completed in countries outside the United States. Certification candidates who have completed degree and/or approved professional preparation programs in a country other than the United States may be required to provide one or more of the following:

(1) A transcript from (~~a regionally~~) an accredited United States college or university indicating that the (~~college/university~~) college or university has accepted the degree as equivalent to its degree.

(2) A statement of degree equivalency for the appropriate degree from (~~a foreign~~) an international credentials' evaluation agency approved by the office of the superintendent of public instruction.

(3) A statement from an official of the college or university where the certification program was completed, indicating completion of the program and approval of the program by the agency governing certification in that country.

[WSR 06-02-051, recodified as § 181-79A-260, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 00-03-050, § 180-79A-260, filed 1/14/00, effective 2/14/00. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-260, filed 12/23/98, effective 1/23/99.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 181-79A-011	Knowledge and skill requirements of the performance-based certification system—Teachers.
WAC 181-79A-115	Validity date.
WAC 181-79A-118	Expiration and lapse dates of certificates.
WAC 181-79A-207	Standards for teachers with professional certification.
WAC 181-79A-213	Issues of abuse course work requirement for continuing certification—Administrators.
WAC 181-79A-226	Issues of abuse course work requirement for certification—Educational staff associate.
WAC 181-79A-250	Initial and continuing certificates—Renewal, reinstatement, and continuing education requirements.
WAC 181-79A-251	Teacher residency and professional certification—Renewal and reinstatement.
WAC 181-79A-2510	Principal and program administrator residency and professional certification—Renewal and reinstatement.
WAC 181-79A-2511	School counselor residency and professional certification—Renewal and reinstatement.
WAC 181-79A-2512	School psychologist residency and professional certification—Renewal and reinstatement.
WAC 181-79A-253	Reinstatement of continuing certificates and initial ESA certificates.

OTS-3065.2

AMENDATORY SECTION (Amending WSR 19-15-143, filed 7/24/19, effective 8/24/19)

WAC 181-85-025 Continuing education—Definition. As used in this chapter, the term "continuing education" shall mean:

(1) All college and/or university credit, normally 100 level or higher, or continuing education credit awarded by an accredited institution of higher education, under WAC 181-79A-030.

(2) All continuing education credit hours awarded by a vocational-technical college under WAC 181-85-030(3) and all continuing education credit hours awarded in conformance with the in-service education procedures and standards specified in this chapter by an approved in-service education agency.

(3) All continuing education credit hours awarded through a business, industry, or government internship that meets the requirements of chapter 181-83 WAC, Internships.

(4) All continuing education credit hours awarded in conformance with WAC 181-85-033.

(5) All continuing education units (CEUs) or other noncredit bearing units awarded by an accredited institution of higher education, under WAC 181-79A-030.

(6) All continuing education approved by the Washington state department of children, youth, and families to maintain staff standards and qualifications for (~~early learning providers~~) educators and practitioners under (~~chapter 110-300~~) Title 110 WAC.

[Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-143, § 181-85-025, filed 7/24/19, effective 8/24/19. Statutory Authority: Chapter 28A.410 RCW and RCW 28A.410.278. WSR 16-16-030, § 181-85-025, filed 7/25/16, effective 8/25/16. Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-85-025, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-85-025, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 05-19-104, § 180-85-025, filed 9/20/05, effective 10/21/05; WSR 04-20-094, § 180-85-025, filed 10/5/04, effective 11/5/04; WSR 02-18-050, § 180-85-025, filed 8/28/02, effective 9/28/02; WSR 97-04-086, § 180-85-025, filed 2/5/97, effective 3/8/97. Statutory Authority: RCW 28A.410.010 and 28A.415.025. WSR 96-08-013, § 180-85-025, filed 3/25/96, effective 4/25/96. Statutory Authority: RCW 28A.410.010. WSR 94-01-104, § 180-85-025, filed 12/16/93, effective 1/16/94. Statutory Authority: RCW 28A.70.005. WSR 89-01-043 (Order 28-88), § 180-85-025, filed 12/14/88; WSR 86-13-018 (Order 8-86), § 180-85-025, filed 6/10/86.]

AMENDATORY SECTION (Amending WSR 19-15-143, filed 7/24/19, effective 8/24/19)

WAC 181-85-030 Continuing education credit hour—Definition. As used in this chapter, the term "continuing education credit hour" shall mean:

(1) For each college or university semester hour credit, fifteen hours of continuing education credit hours shall be granted.

(2) For each college or university quarter hour credit, ten hours of continuing education credit hours shall be granted.

(3) For each sixty minutes of instruction in coursework provided by a vocational-technical college, one continuing education credit hour shall be granted.

(4) For each sixty minutes of instructional time in continuing education units (CEUs) or other noncredit bearing units provided by an accredited institution of higher education, under WAC 181-79A-030, one continuing education credit hour shall be granted.

(5) For each sixty minutes of instructional time in continuing education approved by the Washington state department of children, youth, and families to maintain staff standards and qualifications for ~~((early learning providers))~~ educators and practitioners under ~~((chapter 110-300))~~ Title 110 WAC, one continuing education credit hour shall be granted.

(6) For each sixty minutes of approved in-service education including reasonable time for breaks and passing time, one continuing education credit hour shall be granted. In the application of this subsection, the in-service education provider shall determine what is reasonable.

(7) In the application of this section, approved in-service credit hours shall not include:

(a) Routine staff meetings—such as district, building, or area meetings within an agency, district, or building—to discuss or explain operational policies or administrative practices within the agency, district, or building;

(b) Business meetings of professional associations to discuss operational policies or practices of the association;

(c) Social hours or actual meal time.

(8) In-service education agencies may not issue continuing education credit hours to individuals for serving as the instructor for an in-service program for which that individual is the only participant.

(9) In the application of this section, for the purpose of official records ~~((of))~~ documenting the ~~((amount))~~ number of in-service credit hours, the in-service provider or the superintendent of public instruction shall round continuing education credit hours down to the nearest half hour of credits actually completed ~~((—i.e.—))~~ : .50 ~~((—and))~~ or .00 ~~((—and))~~ . In no case shall an applicant receive credit for an in-service program that was less than a total of one continuing education credit hour.

[Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-143, § 181-85-030, filed 7/24/19, effective 8/24/19. WSR 06-02-051, recodified as § 181-85-030, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 00-13-065, § 180-85-030, filed 6/16/00, effective 7/17/00; WSR 97-04-086, § 180-85-030, filed 2/5/97, effective 3/8/97. Statutory Authority: RCW 28A.70.005. WSR 89-01-043 (Order 28-88), § 180-85-030, filed 12/14/88; WSR 88-01-086 (Order 16-87), § 180-85-030, filed 12/21/87; WSR 86-13-018 (Order 8-86), § 180-85-030, filed 6/10/86.]

AMENDATORY SECTION (Amending WSR 20-19-023, filed 9/4/20, effective 10/5/20)

WAC 181-85-033 Activity-based continuing education credit hours.

(1) **Eligibility period.** Individuals are eligible for the continuing

education credit hours described in this section for up to seven years following the completion date of the indicated activity.

(2) **Professional growth team.**

(a) A professional growth team for the purpose of certificate renewal means a team comprised of the individual renewing the certificate and a minimum of one colleague, who holds a valid Washington state educator certificate under Title 181 WAC, or paraeducator certificate under Title 179 WAC, chosen by the individual.

(b) For consultation and collaboration, members of a professional growth team, excluding the candidate, are eligible for the equivalent of three continuing education credit hours. The team member may not receive more than the equivalent of six continuing education credit hours, as defined by this section, during the period beginning July 1st of one year and ending June 30th of the following year.

(3) **School accreditation site visit team.** A person holding a valid educational certificate under RCW 28A.410.010 is eligible for the equivalent of ten continuing education credit hours for serving on a school accreditation site visit team. The person may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period.

(4) **Mentors and field experience supervisors ((and mentors)).**

~~((a))~~ Individuals officially designated as a mentor or field experience supervisor by a PESB approved educator preparation program, college or university, school district, educational service district, ((an)) approved private school, tribal compact school, approved charter school, a state agency providing educational services to students, or the superintendent of public instruction, ~~((a person holding))~~ who hold a valid educational certificate under RCW 28A.410.010 ~~((is)),~~ are eligible for the equivalent of thirty continuing education credit hours for service ~~((as a supervisor)).~~ The service must be as a mentor or field experience supervisor for teachers, administrators, educational staff associates, paraeducators, or interns or candidates in these roles. The ~~((person))~~ individual may not receive more than the equivalent of thirty continuing education credit hours under this subsection during a school year period.

~~((b) The term "supervisor" shall mean individuals officially designated as a supervisor or mentor by a college/university, school district, educational service district, an approved private school, a state agency providing educational services to students, or the office of superintendent of public instruction for supervising the training of teacher interns, administrative interns, educational staff associate interns, and paraprofessionals.)~~

(5) **National board certification from the National Board for Professional Teaching Standards (NBPTS):**

(a) Individuals who submitted at least one component of an initial NBPTS national board certification process in 2017 or earlier, and who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of forty-five continuing education credit hours for submission of a complete portfolio of four components of the National Board for Professional Teaching Standards certification process. Completion of a national board certification process shall be defined as published by the professional educator standards board. Upon achieving national board certification, the individual is eligible for the equivalent of an additional forty-five continuing education credit hours for a total of ninety continuing education credit hours per national board certificate. Beginning January 1, 2022, all individuals submitting complete components as part of an initial NBPTS

national board certification process are eligible for continuing education credit hours as described in (b) of this subsection.

(b) Individuals who first submitted a component of an initial NBPTS national board certification process in 2018 or later, and who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of fifty continuing education credit hours per submission of a complete national board component, for a total of two hundred continuing education credit hours per submission of a complete national board certification portfolio. Completion of a national board component shall be defined as published by the professional educator standards board.

(c) Individuals who submit a complete NBPTS national board renewal portfolio in 2018 or later, and who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of two hundred continuing education credit hours. Completion of a national board renewal portfolio shall be defined as published by the professional educator standards board.

(d) Individuals who submit a complete NBPTS national board maintenance of certification portfolio, for a national board certificate with a five-year validity period, and who hold a valid educational certificate under RCW 28A.410.010, are eligible for the equivalent of one hundred continuing education credit hours. Completion of a national board maintenance of certification portfolio shall be defined as published by the professional educator standards board.

(6) **External assessment for professional certification.** Teachers who achieve the professional certification through the external assessment under WAC 181-79A-206 are eligible for the equivalent of one hundred fifty continuing education credit hours.

(7) **First peoples' language, culture, and oral tribal traditions.** In-service training or continuing education in first peoples' language, culture, and oral tribal traditions provided by a sovereign tribal government participating in the Washington state first peoples' language, culture, and oral tribal traditions teacher certification program authorized under RCW 28A.410.045 shall be considered approved in-service training or approved continuing education under this section.

(8) **Scorers for the Washington teacher performance assessment.** Individuals who serve as scorers for the Washington teacher performance assessment are eligible for the equivalent of ten continuing education credit hours for each four assessments scored (~~(, provided that)~~). However, an individual may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period. Additionally, individuals who receive initial training as scorers for the Washington teacher performance assessment are eligible for the equivalent of ten continuing education credit hours.

(9) **Scorers for the Washington ProTeach Portfolio assessment.** Individuals who serve as scorers for the Washington ProTeach Portfolio assessment are eligible for the equivalent of ten continuing education credit hours for completing one full scoring session during a calendar year (~~(, provided that)~~). An individual may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period. Individuals who receive initial training as scorers for the Washington ProTeach Portfolio assessment are eligible for the equivalent of ten additional continuing education credit hours. Continuing education credit hours under this subsection are available through December 31, 2027.

(10) **Professional growth plans.**

(a) Educator individualized professional growth plan means the document which identifies the formalized learning opportunities and professional development activities that relate to the specific competencies, knowledge, skills and experiences needed to meet ~~((the standards at the "career level" benchmarks as published by the professional educator standards board, or other standards for the role as published by the professional educator standards board))~~ one or more of the following:

(i) Professional role standards under WAC 181-85-203, or paraeducator standards of practice under chapter 179-07 WAC;

(ii) Cultural competency, diversity, equity, and inclusion (CCDEI) standards under RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the professional growth plan must be aligned to the cultural competency standards published by the board; or

(iii) Social emotional learning standards, benchmarks, and indicators under RCW 28A.410.270.

(b) Only one professional growth plan may be completed each year. Professional growth plans will be completed during the period beginning July 1st of one year and ending June 30th of the following year. Completion of the professional growth plan will include review by the professional growth team, as defined in subsection (2) of this section.

(c) Individuals may apply their focused evaluation professional growth activities from the evaluation system towards the professional growth plan for certificate renewal under RCW 28A.405.100 (12) (c) (vi).

(d) Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan are eligible for thirty continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan are eligible for twenty-five continuing education credit hours.

(e) For educators holding multiple certificates as described in Title 179 or 181 WAC, a professional growth plan for teacher, administrator, education staff associate, or paraeducator shall meet the requirements of a professional growth plan for all certificates held by an individual.

(11) Paraeducator certificates.

(a) Individuals who complete the paraeducator fundamental course of study as described in chapter 179-09 WAC are eligible for the number of continuing education credit hours completed up to twenty-eight continuing education credit hours unless they are issued these continuing education credit hours by a state approved in-service education agency.

(b) Individuals who complete the course work for the English language learner subject matter certificate as described in chapter 179-13 WAC are eligible for the number of continuing education credit hours completed up to twenty continuing education credit hours unless they are issued these continuing education credit hours by a state approved in-service education agency.

(c) Individuals who complete the course work for the special education subject matter certificate as described in chapter 179-15 WAC are eligible for the number of continuing education credit hours completed up to twenty continuing education credit hours unless they are issued these continuing education credit hours by a state approved in-service education agency.

(12) Government-to-government relationships with federally recognized tribes. Individuals who complete the professional learning on government-to-government relationships with federally recognized

tribes as described under WAC 181-79A-244 are eligible for the number of continuing education credit hours completed up to five continuing education credit hours every five years unless they are issued these continuing education credit hours by a state approved in-service education agency.

[Statutory Authority: Chapter 28A.410 RCW. WSR 20-19-023, § 181-85-033, filed 9/4/20, effective 10/5/20. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-111, § 181-85-033, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 18-17-015, § 181-85-033, filed 8/2/18, effective 9/2/18. Statutory Authority: Chapter 28A.410 RCW. WSR 16-24-024, § 181-85-033, filed 11/29/16, effective 12/30/16. Statutory Authority: RCW 28A.410.210. WSR 12-17-039, § 181-85-033, filed 8/7/12, effective 9/7/12; WSR 12-04-031, § 181-85-033, filed 1/26/12, effective 2/26/12; WSR 11-04-048, § 181-85-033, filed 1/25/11, effective 2/25/11; WSR 10-20-079, § 181-85-033, filed 9/29/10, effective 10/30/10; WSR 08-03-101, § 181-85-033, filed 1/20/08, effective 2/20/08; WSR 06-14-010, § 181-85-033, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-85-033, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 05-19-104, § 180-85-033, filed 9/20/05, effective 10/21/05; WSR 04-20-094, § 180-85-033, filed 10/5/04, effective 11/5/04; WSR 02-18-050, § 180-85-033, filed 8/28/02, effective 9/28/02.]

AMENDATORY SECTION (Amending WSR 19-15-143, filed 7/24/19, effective 8/24/19)

WAC 181-85-105 SPI initial notice to certificate holders of continuing education requirement. Upon issuance, renewal, or reinstatement of ((an affected professional)) a certificate, the superintendent of public instruction shall notify the holder of the ((lapse)) expiration date and the continuing education requirements of this chapter and chapter 181-79A WAC, and the holder's responsibility to keep accurate records demonstrating attendance at approved in-service education programs. ((In addition, the superintendent of public instruction shall make available to the certificate holder a form which indicates compliance with the continuing education requirements, and which includes instruction for filing the report with the superintendent of public instruction.))

[Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-143, § 181-85-105, filed 7/24/19, effective 8/24/19. WSR 06-02-051, recodified as § 181-85-105, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 04-08-054, § 180-85-105, filed 4/2/04, effective 5/3/04. Statutory Authority: RCW 28A.70.005. WSR 90-12-076, § 180-85-105, filed 6/1/90, effective 7/2/90; WSR 86-13-018 (Order 8-86), § 180-85-105, filed 6/10/86.]

AMENDATORY SECTION (Amending WSR 21-08-022, filed 3/29/21, effective 4/29/21)

WAC 181-85-106 Filing requirement with SPI. Each certificate holder, affected by the continuing education requirements of this chapter, is responsible for filing with the superintendent of public instruction, before the ~~((lapse))~~ expiration date, ~~((a verification))~~ an application form supplied by the superintendent of public instruction, which indicates compliance with the continuing education requirements of this chapter. Such form shall:

- (1) Provide space for indicating how the certificate holder met the continuing education requirement.
- (2) Include an attestation by the certificate holder as to the accuracy of the information provided.
- (3) State thereon that falsification or deliberate misrepresentation, including omission, of any material fact shall be an act of unprofessional conduct for which the holder's certificate may be revoked.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-022, § 181-85-106, filed 3/29/21, effective 4/29/21. WSR 06-02-051, recodified as § 181-85-106, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-12-076, § 180-85-106, filed 6/1/90, effective 7/2/90.]

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-85-108 Documentation retention period. Documents indicating compliance with the continuing education requirement must be retained by the certificate holder for one year after the ~~((lapse))~~ expiration date or until such documentation is audited by the superintendent of public instruction, whichever is earlier.

[WSR 06-02-051, recodified as § 181-85-108, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-12-076, § 180-85-108, filed 6/1/90, effective 7/2/90.]

AMENDATORY SECTION (Amending WSR 19-15-143, filed 7/24/19, effective 8/24/19)

WAC 181-85-202 Content standards for continuing education credit hours. The content and objectives of in-service continuing education credit hours must relate to one or more of the following:

- ~~(1) ((Opportunities for participants to collect and analyze evidence related to student learning;~~
- ~~(2) Professional certificate standards;~~
- ~~(3) Paraeducator standards of practice as described in Title 179 WAC;~~
- ~~(4) School and district improvement efforts;~~
- ~~(5) Education frameworks and curriculum alignment;~~
- ~~(6) Research-based instructional strategies and assessment practices;~~

- ~~(7) Content of current or anticipated assignment;~~
~~(8) Advocacy for students and leadership;~~
~~(9) Supervision, mentoring, or coaching; or~~
~~(10) Building a collaborative learning community.)~~ Professional role standards under WAC 181-85-203;
(2) Paraeducator standards of practice under chapter 179-07 WAC;
(3) Cultural competency, diversity, equity, and inclusion (CCDEI) standards under RCW 28A.410.260. Until the CCDEI standards are adopted by the board, the content must relate to the cultural competency standards published by the board; or
(4) Social emotional learning standards, benchmarks, and indicators under RCW 28A.410.270.

[Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-143, § 181-85-202, filed 7/24/19, effective 8/24/19.]

NEW SECTION

WAC 181-85-203 Professional educator role standards. Professional educator role standards are the most recently published versions of the standards as follows:

- (1) **Teachers.**
 - (a) **Teachers:** National Board for Professional Teaching Standards (NBPTS) Standards, including the 5 Core Propositions;
 - (b) **CTE teachers:** Standards under WAC 181-77A-165 and as published by the professional educator standards board.
- (2) **Administrators.**
 - (a) **Principals, program administrators, superintendents:** National Policy Board for Educational Administration (NPBEA) Professional Standards for Educational Leaders (PSEL);
 - (b) **CTE directors:** Standards as published by the professional educator standards board.
- (3) **Educational staff associates.**
 - (a) **School behavior analysts:** Behavior Analyst Certification Board (BACB) Board Certified Behavior Analyst (BCBA) Task List.
 - (b) **School counselors:**
 - (i) American School Counseling Association (ASCA) Professional Standards and Competencies; or
 - (ii) National Board for Professional Teaching Standards (NBPTS) School Counseling Standards.
 - (c) **School nurses:** American Nurses Association (ANA) and National Association of School Nurses (NASN) School Nursing: Scope and Standards of Practice.
 - (d) **School occupational therapists:** American Occupational Therapy Association (AOTA) Standards for Continuing Competence.
 - (e) **School orientation and mobility specialists:**
 - (i) Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP) Certified Orientation and Mobility Specialist (COMS) Scope of Practice, Body of Knowledge, and Competencies; or
 - (ii) National Blindness Professional Certification Board (NBPCB) National Orientation and Mobility Certification (NOMC), including structured discovery methods and principles.
 - (f) **School physical therapists:** Academy of Pediatric Physical Therapy: Updated competencies for physical therapists working in

schools, including competency and related statements, and related clinical skills.

(g) **School psychologists:** National Association of School Psychologists (NASP) Professional Practices.

(h) **School social workers:** National Association of Social Workers (NASW) Standards for School Social Work Services.

(i) **School speech language pathologists or audiologists:**

(i) American Speech Language Hearing Association (ASHA) Standards for Clinical Competence in Speech Language Pathology: Knowledge and skills outcomes; or

(ii) American Speech Language Hearing Association (ASHA) Standards for Clinical Competence in Audiology: Knowledge and skills outcomes.

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AMENDATORY SECTION (Amending WSR 19-15-143, filed 7/24/19, effective 8/24/19)

WAC 181-85-205 Required recordkeeping by approved in-service education agencies. Each approved in-service education agency shall provide the following record service:

(1) Documentation that the in-service education program, including the program agenda as described in WAC 181-85-200(2), received approval by the board or committee (~~(provided in)~~) under WAC 181-85-045(2) prior to offering the in-service program;

(2) A copy of the summary of evaluations required by WAC 181-85-200(7);

(3) A copy of the minutes of the board or committee which demonstrates that such board or committee reviewed the evaluation required by WAC 181-85-200(6);

(4) A list, for each in-service education program, of all participants who have requested continuing education credit hours by signing a registration form made available at the in-service education program. Such registration form shall provide space for the registrant to indicate (~~(he or she is)~~) they are requesting fewer hours than the amount calculated for the entire in-service education program due to partial attendance;

(5) The registrant shall be provided a form to be completed at the in-service education program which includes the necessary information for recording in-service credits, and upon request if such request is made within seven calendar years of such in-service education program, including the number of continuing education credit hours recorded. In addition, the registrant shall be given specific instructions regarding the need to preserve the record and how to correct the record if attendance or credit hours has been recorded by the approved in-service education agency inaccurately; and

(6) The above records shall be available for inspection by the superintendent of public instruction for a period of seven calendar years from the date of each in-service education program. The amendments to this section reducing the amount of recordkeeping by in-service providers shall apply retroactively to August 31, 1987.

[Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-143, § 181-85-205, filed 7/24/19, effective 8/24/19. Statutory Authority:

RCW 28A.410.210. WSR 06-14-010, § 181-85-205, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-85-205, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.70.005. WSR 90-12-076, § 180-85-205, filed 6/1/90, effective 7/2/90; WSR 88-01-086 (Order 16-87), § 180-85-205, filed 12/21/87; WSR 86-13-018 (Order 8-86), § 180-85-205, filed 6/10/86.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 181-85-020	Effective date and applicable certificates.
WAC 181-85-035	Lapse date—Definition.
WAC 181-85-040	Lapsed—Definition.
WAC 181-85-075	Continuing education requirement.
WAC 181-85-100	Calculation of lapse dates.
WAC 181-85-130	Reinstatement of lapsed certificate.

WSR 21-15-103
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 20, 2021, 10:35 a.m., effective August 20, 2021]

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

Purpose: The curriculum and instruction review of teacher and principal preparation programs is designed to focus on how programs prepare preservice educators who can demonstrate the knowledge, skills, and performance laid out in the standards adopted by the professional educator standards board and required by the legislature, with a particular focus on role standards (inTASC and NELP), social emotional learning standards, and cultural competency, diversity, equity, and inclusion standards.

Citation of Rules Affected by this Order: Amending WAC 181-78A-100.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 21-12-032 on May 25, 2021.

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: July 14, 2021.

Maren Johnson
Rules Coordinator

OTS-3061.2

AMENDATORY SECTION (Amending WSR 21-08-023, filed 3/29/21, effective 4/29/21)

WAC 181-78A-100 Existing approved programs. Providers of programs approved by the board shall comply with the review process established in this chapter and published by the board.

(1) Teacher and principal preparation programs: The board will annually review performance data of all educator preparation programs based on components and indicators established in this chapter and published by the board. The professional educator standards board will provide annual updated written guidance to providers regarding the submission of annual program data.

(a) Notification: If annual preparation program data analysis indicates that program performance falls below thresholds during any given review period, the board staff will provide written notification

to the educator preparation program provider. The educator preparation program provider may choose to submit a response to the board staff. The response must be received by board staff within four weeks following receipt of the notification by the provider. The response should offer evidence of factors and circumstances that explain why program performance is below board approved thresholds on the indicators identified in the notice. The board staff will offer providers guidance on content and timelines for submission of this optional response. The board will review responses concurrently with annual data analysis reports.

(b) Interventions: Providers with program performance below indicator thresholds are subject to graduated levels of intervention as follows:

(i) Intervention 1 - Required self-study report: If a provider that received written notification of performance below threshold on one or more indicators during the previous review period has performance below thresholds on the same indicator(s) during the subsequent review period, the board will send the provider a second notification. The provider must complete a self-study report related to the components and domain(s) identified in both notifications and submit it to the board. The board will give providers written timelines and guidance for the submission of these materials. In the self-study report, the provider may also submit evidence and a description of the provider's performance related to the indicator(s), components, and domains identified in the notifications. If the board is satisfied with the self-study report, the board will approve it at a board meeting. If the board is not satisfied with the self-study report, staff will give providers additional written timelines and guidance to address the board's concerns.

(ii) Intervention 2 - Formal review: If a provider demonstrates performance below thresholds for a third successive review period or more, the professional educator standards board will provide a third notification. Based on its discretion and authorized by a vote, the board also may require a formal review related to the provider's performance in the domains of practice identified in the notifications. Prior to commencing a formal review, the board will consider the notifications, responses, and self-study report to determine whether to proceed with or postpone a formal review.

(A) The formal review will incorporate the following elements:

(I) ~~The board shall determine the schedule ((for formal reviews and whether an on-site visit or other forms of documentation and))~~, format, and which forms of validation ((will)) shall be used to evaluate programs ((under program approval standards)).

(II) The provider will submit requested evidence to the board staff.

(III) A review team(~~, including at least one member of the board,~~) will review the evidence and request additional information including information provided through interviews with provider staff or affiliates as needed.

The review team may request additional information including information provided through interviews with provider staff or affiliates as needed.

(IV) The review team will provide a report to the board identifying areas of practice associated with the previous notifications where the provider is out of compliance with educator preparation program requirements, expectations, and outcomes established in chapter 181-78A WAC. The review team may also identify areas of practice where

the provider is out of compliance with educator preparation program requirements that were not associated with previous notifications but were noticed by the review team during the process of review. The report may also identify whether the approved indicators or thresholds are functioning as intended.

(V) Board staff serving on the review team will provide assistance to the review team during the review process but will not serve in an evaluative role.

(VI) The review team will submit its report and other appropriate documentation to the provider and the board within one year of the board designating the program for formal review.

(VII) The board may extend the length of the one-year period for submission of the review team's report up to two years at its discretion.

(B) Providers may submit a reply to the review team report within two weeks following receipt of the report. The reply is to focus on the evidence, conclusions, and recommendations in the report but also may include additional evidence of factors and circumstances that explain why program performance is persistently below board approved thresholds on the indicators identified in the notice and self-study report. The board shall publish the process for submitting and reviewing the reply.

(C) In considering the review team's report, the board may request additional information or review, or take action to extend, or change the program's approval status per the provisions of WAC 181-78A-110.

(c) A provider may request a hearing in instances where it disagrees with the board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW and will adhere to the process of brief adjudicated hearings. The provider seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035 no more than thirty calendar days from the decision date.

(d) In addition to annual indicator reviews, the board will publish a schedule for ((its review of the domains, components, indicators and thresholds. This review will occur at least every five years and not more frequently than every two years)) focused curriculum and instruction review for fully approved teacher and principal preparation programs.

(e) The professional educator standards board shall conduct formal reviews to evaluate curriculum and instruction, with particular focus on the cultural competency, diversity, equity, and inclusion standards; the social and emotional learning standards and benchmarks; and the approved preservice educator role standards. The board shall determine the schedule, format, and which forms of documentation and validation shall be used to evaluate programs. The result of the review will be a report. Based on the findings of the report, the board will decide to either renew full approval status or designate the program on limited approval pending action on the findings of the review report.

(i) Curriculum and instruction reviews will be conducted at least every five years and not more frequently than every three years.

(ii) Program providers will submit requested evidence to the staff of the board.

(iii) A review team will review the evidence and request additional information including information provided through interviews

with provider staff or affiliates as needed. One board staff member will serve on the review team to provide assistance to the review team during the review process but will not serve in an evaluative role. Members of the review team shall include two preparation program providers at peer programs, at least one P-12 practitioner and one PEAB member with expertise related to the program scheduled for review, and two individuals with expertise related to culturally responsive practice and social and emotional learning.

(iv) Following the review, the review team will provide a report identifying any areas where the program is out of compliance with requirements established under this chapter and the program expectations and outcomes established in WAC 181-78A-220.

(2) Superintendent programs: The board will annually review data related to the performance of all superintendent programs according to data reporting guidance published by the board.

(a) Annual data analysis: After each annual review period, the board will give superintendent program providers written analysis of the program's annual data submission.

(b) Superintendent program review: The professional educator standards board shall determine the schedule for formal reviews (~~and whether an on-site visit or other forms of documentation and validation shall be used for evaluation~~).

The board will determine whether a formal review will take place and what forms of documentation and validation shall be used for evaluation.

(i) Superintendent program reviews will be conducted at least every five years and not more frequently than every three years.

(ii) Superintendent program providers will submit requested evidence to the staff of the professional educator standards board.

(iii) A review team (~~(, including at least one member of the professional educator standards board,)~~) will review the evidence and request additional information including information provided through interviews with provider staff or affiliates as needed. One board staff member will serve on the review team to provide assistance to the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include at least one P-12 practitioner with expertise related to the program scheduled for review and two individuals with expertise related to the domains of practice identified in annual written analyses.

(iv) One of the two providers with peer representatives on the review team will be scheduled for annual review during the subsequent review period.

(v) At least three months in advance of scheduled review, superintendent program providers must complete a self-study report related to the components and domain(s) identified in the written analyses of annual data submissions. The board will give providers written timelines and guidance for the submission of these materials. In the self-study report, the provider may also provide evidence and a description of the provider's performance related to the indicator(s), components, and domains identified in the notifications. Evidence shall include such data and information from the annual data submissions required per WAC 181-78A-255(2) as have been designated by the board as evidence pertinent to the program approval process.

(c) Following the review, the review team will provide a report identifying any areas where the program is out of compliance with requirements, expectations, and outcomes established in chapter 181-78A WAC.

(i) The report may also verify or contradict that the approved indicators or thresholds are functioning as intended.

(ii) The board may extend the length of the one-year report period up to two years at its discretion. The review team's report and other appropriate documentation will be submitted to the provider and the board within one year of the board designating the program for formal review.

(iii) Providers may submit a reply to the review team report within two weeks following receipt of the report. The reply is limited to evidence that the review disregarded state standards, failed to follow state procedures for review, or failed to consider evidence that was available at the time of the review. The board shall publish the process for submitting and reviewing the reply.

(iv) In considering the review team's report, the board may request additional information or review, or take action to extend or change the educator preparation program's approval status per the provisions of WAC 181-78A-110.

(d) A provider may request a hearing in instances where it disagrees with the professional educator standards board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW and will adhere to the process of brief, adjudicated hearings. The provider seeking a hearing will provide a written request to the board in accordance with WAC 10-08-035 no more than thirty calendar days from the decision date.

(3) Program administrator programs: The board will annually review data related to the performance of all program administrator programs according to data and reporting guidelines published by the board.

(a) Program administrator programs implemented in conjunction with principal preparation programs will be reviewed concurrently with that provider's principal preparation program.

(b) Program administrator programs implemented in conjunction with superintendent preparation programs will be reviewed concurrently with that provider's superintendent preparation program.

(c) Program administrator programs not implemented in conjunction with a principal or superintendent program will be reviewed on a schedule published by the board.

(4) School counseling programs. School counseling program providers shall comply with accrediting procedures for council for the accreditation for counseling and related education programs, unless the program has been specifically approved to operate under alternative national standards per WAC 181-78A-225. The professional educator standards board will review preparation programs' alignment with any additions to the national standards deemed necessary by the professional educator standards board.

(a) A provider of residency school counseling programs without approval from council for the accreditation for counseling and related education programs shall provide proof to the professional educator standards board that it will seek such accreditation, unless the program has been specifically approved to operate under alternative national standards per WAC 181-78A-225.

(b) The board will place any existing approved residency school counseling program not accredited from the council for the accreditation for counseling and related education programs into disapproval status on November 1, 2022, unless the program provider produces evidence of seeking such accreditation, or unless that program has been

specifically approved to operate under alternative national standards per WAC 181-78A-225.

(5) School psychology programs. Providers of school psychology programs shall comply with accrediting procedures for the National Association for School Psychology. School psychology program providers shall comply with accrediting procedures for the National Association for School Psychology, unless the program has been specifically approved to operate under alternative national standards per WAC 181-78A-225. The professional educator standards board will review preparation programs' alignment with any additions to the national standards deemed necessary by the professional educator standards board.

(a) A provider of school psychology programs without approval from the National Association for School Psychology shall provide proof to the professional educator standards board that it will seek such accreditation, unless the program has been specifically approved to operate under alternative national standards per WAC 181-78A-225.

(b) The board will place any existing approved school psychology program not accredited from the National Association of School Psychology into disapproval status on November 1, 2022, unless the program provider produces evidence of seeking such accreditation, or unless that program has been specifically approved to operate under alternative national standards per WAC 181-78A-225.

(6) Career and technical education administrator and business and industry route educator preparation programs: The board will annually review data related to the performance of all such programs according to data reporting guidance published by the board.

(a) Annual data analysis: After each annual review period, the board will give career and technical education administrator and business and industry route educator preparation program providers written analysis of the program's annual data submission.

(b) Career and technical education administrator and business and industry route educator preparation program review: The board shall determine the schedule, format, and which forms of documentation and validation shall be used to evaluate programs.

(i) Career and technical education administrator and business and industry route educator preparation program reviews will be conducted at least every five years and not more frequently than every three years.

(ii) At least three months in advance of their scheduled review, career and technical education administrator and business and industry route educator preparation program providers must complete a self-study report related to the components and domain(s) identified in the written analyses of annual data submissions. The board will give providers written timelines and guidance for the submission of these materials.

(iii) Career and technical education administrator and business and industry route educator preparation program providers will submit requested evidence to the staff of the professional educator standards board. Evidence shall include such data and information from the annual data submissions required per WAC 181-78A-235(3) as have been designated by the board as evidence pertinent to the program approval and review processes.

(iv) A review team will review the evidence and request additional information including information provided through documents and interviews with program provider staff or affiliates as needed. One board staff member will serve as chair on the review team during the

review process but will not serve in an evaluative role. Additional members of the review team shall include one member of the program's professional educator advisory board, one P-12 practitioner with expertise in career and technical education related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members, must be identified individuals with expertise related to the domains of practice and standard components identified in annual written program feedback analyses or in the program's self-study report. One of the two providers with peer representatives on the review team will be scheduled for the subsequent program review.

(v) The review team will use multiple data sources to address the specific goals listed in this section.

(A) The review team and the preparation program provider will use the self-study report to identify program provider's goals and strategies for improvement.

(B) The review team and the preparation program provider will use preparation program data available at the time of review.

(C) The review team and the preparation program provider will use evidence compiled by the provider that demonstrates performance aligned with all program standards and requirements. Staff of the board will offer program providers guidance regarding the evidence required, how it may be gathered and used, and how it must be submitted.

(vi) The review team will use available evidence to write the review report that will be used by the board in consideration of continued approval status.

(c) Following the review, the review team will provide a report identifying any areas of practice in which program performance is out of alignment with standards and requirements.

(i) The review team's report and other appropriate documentation will be submitted to the provider and the board within six months of the formal review.

(ii) Providers may submit a reply to the review team report within three weeks following receipt of the report. The board shall publish the process for submitting and reviewing the reply.

(iii) In considering the review team's report, the board may request additional information for review, or take action to extend or change the educator preparation program's approval status.

(iv) Based upon the review team's report, the program provider's response, and any subsequent requests for information, as applicable, the board shall take one of the following actions:

(A) The board shall give full approval as described in WAC 181-78A-110 (1)(a).

(B) Limited approval as described in WAC 181-78A-110 (1)(b).

(C) Disapproval as described in WAC 181-78A-110 (1)(c).

(v) A provider may request a hearing in instances where it disagrees with the board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW and will adhere to the process of brief adjudicated hearings. The provider seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035 no more than thirty calendar days from the decision date.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-023, § 181-78A-100, filed 3/29/21, effective 4/29/21; WSR 20-16-027, § 181-78A-100, filed 7/24/20, effective 8/24/20; WSR 18-17-089, §

181-78A-100, filed 8/14/18, effective 9/14/18. Statutory Authority: RCW 28A.410.210. WSR 15-12-123, § 181-78A-100, filed 6/3/15, effective 7/4/15; WSR 14-24-004, § 181-78A-100, filed 11/19/14, effective 12/20/14; WSR 14-12-018, § 181-78A-100, filed 5/23/14, effective 6/23/14; WSR 13-20-028, § 181-78A-100, filed 9/23/13, effective 10/24/13; WSR 12-23-023, § 181-78A-100, filed 11/13/12, effective 12/14/12; WSR 12-12-033, § 181-78A-100, filed 5/29/12, effective 6/29/12; WSR 12-02-028, § 181-78A-100, filed 12/28/11, effective 1/28/12; WSR 10-08-017, § 181-78A-100, filed 3/29/10, effective 4/29/10; WSR 08-16-005, § 181-78A-100, filed 7/23/08, effective 8/23/08; WSR 06-24-082, § 181-78A-100, filed 12/5/06, effective 1/5/07; WSR 06-14-010, § 181-78A-100, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-78A-100, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 05-15-052, § 180-78A-100, filed 7/12/05, effective 8/12/05; WSR 05-04-056, § 180-78A-100, filed 1/28/05, effective 2/28/05; WSR 04-21-038, § 180-78A-100, filed 10/15/04, effective 11/15/04. Statutory Authority: RCW 28A.305.130 and 28A.410.010. WSR 04-04-090, § 180-78A-100, filed 2/3/04, effective 3/5/04; WSR 02-18-037, § 180-78A-100, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 28A.305.130 (1) and (2). WSR 00-09-049, § 180-78A-100, filed 4/14/00, effective 5/15/00. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-78A-100, filed 12/23/98, effective 1/23/99.]

WSR 21-15-104

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed July 20, 2021, 11:18 a.m., effective August 20, 2021]

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

Purpose: This rule change adjusts six references within the existing WAC provisions from September 1 to July 1. This allows for earlier reallocation of unutilized bond cap from initial set-aside categories to applicants in other categories reducing wait times for projects to proceed. This assists with maximizing utilization of bond cap during the calendar year.

The change to WAC 365-135-035(1) amends the date (from September 1 to July 1) after which housing programs and projects are given priority for the first fifty percent of released/reallocated volume cap.

The change to WAC 365-135-035(2) amends the date (from September 1 to July 1) of the provision which indicates that applicants from all other categories will be considered for allocation of released/reallocated volume cap.

The change to WAC 365-135-070 (1)(a) amends the date (from September 1 to July 1) when an exempt facility applicant may be awarded more than thirty percent of the initial set-aside for exempt facility projects.

The change to WAC 365-135-070(4) amends the date (from September 1 to July 1) at which the application criteria for exempt facility applicants are softened.

The change to WAC 365-135-070(5) amends the date (from September 1 to July 1) when exempt facility projects may receive an allocation to convert taxable financing to tax-exempt financing.

The change to WAC 365-135-070(6) amends the date (from September 1 to July 1) when four tiers of limitations on the proportion of volume cap allocation to total project cost can be waived.

Citation of Rules Affected by this Order: Amending 6.

Statutory Authority for Adoption: RCW 34.05.353 (1)(b) and (d).

Adopted under notice filed as WSR 21-11-100 on May 19, 2021.

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 6, 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: July 20, 2021.

Amber Siefer
Rules Coordinator

OTS-3071.1

AMENDATORY SECTION (Amending WSR 10-07-128, filed 3/23/10, effective 4/23/10)

WAC 365-135-035 Reallocations. (1) Housing programs and projects will be given priority for the first fifty percent of the annual tax exempt private activity bond cap available after (~~September~~) July 1st each year because of the need for affordable housing, the program's ability to serve lower-income households, its contribution to and support of economic development and long-term benefits that may be achieved.

(2) Bond cap will consider other categories of applications including industrial development bonds, exempt facilities, public utility districts, and student loans for allocation from the remaining bond cap available after (~~September~~) July 1st.

(a) The program will consider and then evaluate and balance the public benefits listed in statute and in rule in making allocation decisions. Allocations will be based upon the likelihood of a project achieving the highest overall public purposes and the degree to which a project:

(i) Provides an economic boost to an economically distressed community (based on the three-year unemployment figures from employment security);

(ii) Creates or retains jobs that pay higher than the median wage for the county in which it is located, in sustainable industries, particularly for lower-income persons;

(iii) Retains or expands the local tax base;

(iv) Encourages and facilitates the provision of student loans for institutions of higher education;

(v) Reduces environmental pollution;

(vi) Facilitates investments in new manufacturing technologies enabling Washington industries to stay competitive;

(vii) Diverts solid waste from disposal and manufactures it into value-added products;

(viii) Encourages the environmentally sound handling of solid waste using best management's practices; or

(ix) Produces competitively priced energy for use in the state.

(b) The criteria in this section and other applicable criteria otherwise established in statute and rule shall not be considered as ranked in any particular order but shall be weighed and balanced for each application and among applications in making allocation decisions.

(3) For the purposes of qualified energy conservation bonds, the federal code and U.S. Department of Treasury guidance contained in IRS Notice 2009-29 allow formula allocations to be reallocated to the state and passed on by the state to other issuers. An originally awarded locality may designate other issuing localities within the jurisdiction of the originally awarded locality to use all or a portion of its original allocation by any procedure mutually acceptable to both parties, on condition that the originally awarded locality provides documentation of the designation to the department within thirty days of making the designation and ensures that all other department requests for documentation are met. The following procedures will apply to qualified energy conservation bond reallocations:

(a) An originally awarded locality that intends to use its original allocation or intends to designate another issuer within the jurisdiction of the originally awarded locality to use the original al-

location must file a *Notice of Intent* form with the department by January 1, 2010.

(b) An originally awarded locality that has chosen to decline its original allocation may affirmatively reallocate to the state by submitting an appropriately marked *Notice of Intent* form.

(i) The form must be signed by the official(s) of the jurisdiction authorized to execute the form pursuant to a resolution declining the allocation adopted by the jurisdiction's governing body; and

(ii) The form and the resolution declining the allocation must be delivered to the department by January 1, 2010.

(c) An originally awarded locality that has used the *Notice of Intent* form to express its intent to use its original allocation may amend the *Notice of Intent* at a later time if it is determined that the locality is unable to use the allocation and has decided to reallocate to the state.

(d) An originally awarded locality intending to use its original allocation must provide the department with project information and supporting documents by February 1, 2010. Supporting documents include *Bond Counsel* and *Underwriter Statement of Intent* forms, or equivalent, at the discretion of the bond cap manager, and a certified copy of an inducement resolution by the governing board. A locality may request an extension if filed by February 1, 2010.

(e) If an originally awarded locality has not provided the department with the documents required by subsections (1), (2) or (4) of this section or has not issued bonds or requested an extension by June 1, 2010, the department may issue a *Notice of Intent to Reallocate*, informing the locality of the intent to reallocate the original allocation to another locality.

(f) An originally awarded locality will have fifteen days from receipt of a *Notice of Intent to Reallocate* to respond to the department with the required documentation or to ask the department to reconsider the reallocation determination.

(g) The department will respond to a request to reconsider a reallocation determination within ten business days with a decision by the assistant director of the local government division or designee to grant an extended time in which the issuing jurisdiction must demonstrate progress toward a qualified energy conservation bond issuance, or a decision to go forward with reallocation of the authority. The length of the time extension shall be determined at the discretion of the assistant director.

(4) For the purposes of recovery zone economic development bond and recovery zone facility bond allocations, an originally awarded locality may designate other issuing localities within the jurisdiction of the originally awarded locality to use all or a portion of its original allocation by any procedure mutually acceptable to both parties, on condition that the originally awarded locality provides documentation of the designation to the department within thirty days of making the designation and ensures that all other department requests for documentation are met.

If an originally awarded locality is not able to or chooses not to use its original allocation or to offer it to another issuer within the jurisdiction of the originally awarded locality, the authority may be waived. Waived recovery zone economic development bond or recovery zone facility bond authority may be reallocated by the department to other issuing localities. In addition, if an originally awarded locality does not respond to the department's requests for information regarding its intent to use its original allocation or progress in mov-

ing toward issuance by the federal deadline, the department may deem the allocation to have been waived.

In such cases, federal code provisions and U.S. Department of Treasury guidance in IRS Notice 2009-50 allow original allocations to be waived then reallocated by the state to other issuing localities. The following procedures will apply to any reallocations of waived recovery zone economic development bond or recovery zone facility bond authority:

(a) An originally awarded locality that intends to use its original allocation or intends to designate another issuer within the jurisdiction of the originally awarded locality to use the original allocation must file a Notice of Intent form with the department by January 1, 2010.

(b) An originally awarded locality that has chosen to decline its original allocation may affirmatively waive the allocation for reallocation by the state by submitting an appropriately marked *Notice of Intent* form.

(i) The form must be signed by the official(s) of the jurisdiction authorized to execute the form pursuant to a resolution declining the allocation adopted by the jurisdiction's governing body; and

(ii) The form and the resolution declining the allocation must be delivered to the department by January 1, 2010.

(c) An originally awarded locality that has used the *Notice of Intent* form to express its intent to use its original allocation may amend the *Notice of Intent* at a later time if it is determined that the locality is unable to use its original allocation and has decided to waive the allocation for reallocation by the state.

(d) An originally awarded locality intending to use its original allocation must provide the department with project information and supporting documents by February 1, 2010. Supporting documents include *Bond Counsel* and *Underwriter Statement of Intent* forms, or equivalent, at the discretion of the bond cap manager, and a certified copy of an inducement resolution by the governing board. A locality may request an extension if filed by February 1, 2010.

(e) If an originally awarded locality has not provided the department with the documents required by subsections (1), (2) or (4) of this section or has not issued bonds or requested an extension by June 1, 2010, the department may issue a *Notice of Intent to Reallocate*, informing the locality of the intent to deem the original allocation to have been waived and to reallocate it to another locality.

(f) An originally awarded locality will have fifteen days from receipt of a *Notice of Intent to Reallocate* to respond to the department with the required documentation or to ask the department to reconsider its waiver and reallocation determination.

(g) The department will respond to the request to reconsider its waiver and reallocation determination within ten business days with a decision by the assistant director of the local government division to grant an extended time in which the issuing jurisdiction must demonstrate progress toward a recovery zone economic development bond or recovery zone facility bond issuance, or a decision to go forward with waiver and reallocation of the authority. The length of the time extension shall be determined at the discretion of the assistant director.

(h) All recovery zone bonds must be issued by the deadlines established in the code.

[Statutory Authority: Chapter 39.86 RCW, Executive Order 09-06, Federal American Recovery and Reinvestment Act of 2009, and Section 301(a) of Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Division C of Pub. L. 110-343. WSR 10-07-128, § 365-135-035, filed 3/23/10, effective 4/23/10. Statutory Authority: Chapter 39.86 RCW and RCW 43.330.040 (2)(g). WSR 97-02-093, § 365-135-035, filed 1/2/97, effective 2/2/97.]

AMENDATORY SECTION (Amending WSR 97-02-093, filed 1/2/97, effective 2/2/97)

- WAC 365-135-070 Criteria for exempt facility bonds.** (1) In addition to the state statute, the following guidelines will be used as criteria for evaluating exempt facility requests:
- (a) Until ((September)) July 1st of each year, any one exempt facility project may not receive more than thirty percent of the initial allocation amount available in the exempt facility category.
 - (b) The level of unemployment in a particular community within a county, to the extent that figures are available from the Washington state employment security department.
 - (c) The number of direct jobs and secondary or spin-off jobs expected to be generated by the project.
 - (d) The degree to which the project proposes to provide jobs for lower-income persons from the community.
 - (e) The number of jobs created in proportion to the amount of the bond cap allocation.
 - (f) The proportionate number of persons in relationship to the size of the community who will benefit from the project.
 - (g) The degree to which the project provides an economic boost to an economically distressed community (based on the three-year unemployment figures from employment security).
 - (h) The degree to which the project retains or expands the local tax base.
 - (i) The degree to which the project reduces environmental pollution.
 - (j) The degree to which the project diverts solid waste from disposal and manufactures it into value-added products.
 - (k) The degree to which the project produces energy at a lower cost than alternative or existing energy sources.
 - (l) The environmental benefit of the project to the particular community, the county or the state.
 - (m) The availability of bond cap from the exempt facility category.
 - (n) Recognize and accommodate the unique timing, and issuance needs of large scale projects that may require allocations in more than one year.
 - (o) Projects that result in publicly owned facilities over privately owned facilities.
- (2) Exempt facility applications will not be considered for allocation until:
- (a) The department receives:
 - (i) A list of all permits required to complete the project and the date each permit application was submitted to and/or granted by the appropriate authority;

- (ii) A copy of any environmental impact statements; and
- (b) Significant progress is demonstrated in securing project financing.
- (3) The criteria in this section and other applicable criteria otherwise established in rule and statute shall not be considered as ranked in any particular order but shall be weighed and balanced for each application and among applications in making allocation decisions.
- (4) After (~~September~~) July 1st of each year, the department may approve an allocation amount prior to the issuer completing all of the criteria listed above.
- (5) Exempt facility projects may receive an allocation in order to convert taxable financing to tax-exempt financing, but only in January or (~~September~~) July of any year. The request for conversion will be compared against other requests for conversion and current exempt facility applications. Projects that use the Washington economic development finance authority to complete their financing will have priority over projects in obtaining future allocations to convert to tax-exempt financing. Conversion is only allowed within the federal guidelines of one year after the project comes online or two calendar years after the Washington economic development finance authority financing is approved, whichever comes first.
- (6) Exempt facility projects up to \$50,000,000 may receive an allocation for up to one hundred percent of the total project cost. Projects from \$50,000,001 to \$75,000,000 may receive an allocation for up to ninety percent of the total project cost. Projects from \$75,000,001 to \$100,000,000 may receive an allocation for up to eighty percent of the total project cost. Projects over \$100,000,000 may receive an allocation for up to seventy percent of the total project cost. A project may obtain additional allocation above these percentages after (~~September~~) July 1st of the last year of eligibility only if the total demand for cap is lower than the amount available.

[Statutory Authority: Chapter 39.86 RCW and RCW 43.330.040 (2) (g). WSR 97-02-093, § 365-135-070, filed 1/2/97, effective 2/2/97. Statutory Authority: Chapter 39.86 RCW. WSR 93-13-012 (Order 93-05), § 365-135-070, filed 6/7/93, effective 1/1/94.]

WSR 21-15-106

PERMANENT RULES

SKAGIT VALLEY COLLEGE

[Filed July 20, 2021, 12:33 p.m., effective August 20, 2021]

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

Purpose: Washington community and technical college presidents recently approved a global definition of directory information for all Washington community and technical colleges. The proposed changes will bring Skagit Valley College into compliance with the new global definition. Additionally, an update has been made for the title of the position referred to in the WAC.

Citation of Rules Affected by this Order: Amending WAC 132D-125-090 Directory information.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 21-11-048 on May 13, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: July 20, 2021.

Lisa Radeleff
Rules Coordinator

OTS-3069.1

AMENDATORY SECTION (Amending WSR 94-01-028, filed 12/6/93, effective 1/6/94)

WAC 132D-125-090 Directory information. (1) The college may release "directory information" concerning a student to the public unless the student requests in writing of the dean of (~~administrative and student~~) enrollment services that the student's directory information not be released except as provided in WAC 132D-125-070, 132D-125-080, or 132D-125-085.

(2) The term "directory information" shall include information relating to the student's name; (~~local and home telephone number; local and home address; date and place of birth;~~) major field of study(~~(, dates of attendance, and degrees and awards received; participation in officially recognized sports and activities; weight and height if a member of an athletic team; and the most recent previous educational institution attended)~~); enrollment status; dates of attendance; participation in recognized sports; degree or certificate earned; term degree or certificate awarded; honors.

[Statutory Authority: RCW 28B.50.140. WSR 94-01-028, § 132D-125-090, filed 12/6/93, effective 1/6/94.]

WSR 21-15-114

PERMANENT RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed July 21, 2021, 8:42 a.m., effective August 28, 2021]

Effective Date of Rule: August 28, 2021.

Purpose: WAC 246-817-580 Novel coronavirus disease 2019 screening. The dental quality assurance commission (commission) adopted a new, permanent rule to allow a dentist to delegate novel coronavirus disease 2019 (COVID-19) screening tests to dental staff under appropriate supervision and demonstration of competency.

In response to COVID-19, the commission determined screening for the disease is essential to dental practice safety. Dentistry produces large amounts of aerosols and it is important for dentists to appropriately screen patients prior to dental treatment. Delegating patient COVID-19 screening tests assists dentists by reducing their workload to effectively continue dental care to patients. Knowing a patient's COVID-19 screening test result helps dentists prepare appropriate oral health treatment planning for the patient and maintain a safe work environment.

As dental procedures are proceeding during this pandemic, there is an influx of patients needing dental care and a greater need of the dental workforce. Delegating COVID-19 screening tests under appropriate supervision to credentialed dental staff allows dentists to provide safe dental care to more patients.

The commission filed emergency rule making for COVID-19 screening tests on April 30, 2021, as WSR 21-10-058. The commission intends for the emergency rule to remain in place until the permanent rule is effective.

Citation of Rules Affected by this Order: New WAC 246-817-580.

Statutory Authority for Adoption: RCW 18.260.040, 18.260.070, 18.29.050, and 18.32.0365.

Other Authority: RCW 18.32.002.

Adopted under notice filed as WSR 21-09-040 on April 13, 2021.

A final cost-benefit analysis is available by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4893, fax 360-236-2901, TTY 711, email jennifer.santiago@doh.wa.gov, website www.doh.wa.gov/dental, dental@doh.wa.gov.

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

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

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

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

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

Date Adopted: June 25, 2021.

David L. Carsten, DDS, Chairperson
Dental Quality Assurance Commission

OTS-2716.3

NEW SECTION

WAC 246-817-580 Novel coronavirus disease 2019 screening. (1) A supervising dentist may delegate the administration of a test for screening of novel coronavirus disease 2019 to a registered dental assistant and licensed expanded function dental auxiliary under the dentist's close supervision, provided the registered dental assistant and licensed expanded function dental auxiliary have demonstrated skills necessary to perform the task competently.

(2) A supervising dentist may delegate the administration of a test for screening of novel coronavirus disease 2019 to a licensed dental hygienist under the dentist's general supervision, provided the licensed dental hygienist has demonstrated skills necessary to perform the task competently.

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WSR 21-15-117

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

(Pulse Crops Commission)

[Filed July 21, 2021, 9:09 a.m., effective August 21, 2021]

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

Purpose: The purpose of this rule making is to amend the Washington pulse crops commission marketing order by (1) removing term limits, (2) changing the terms "dry peas and lentils" to "pulse crops," and (3) adding public records request procedures.

Citation of Rules Affected by this Order: New WAC 16-536-090, 16-536-100, 16-536-110, 16-536-115, 16-536-120, 16-536-125, 16-536-130 and 16-536-135; and amending WAC 16-536-020.

Statutory Authority for Adoption: RCW 15.65.047 and 42.56.040.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 21-11-041 on May 12, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 8, 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: July 21, 2021.

Derek I. Sandison
Director

OTS-3004.1

AMENDATORY SECTION (Amending WSR 16-15-004, filed 7/7/16, effective 8/7/16)

WAC 16-536-020 The pulse crops board. (1) **Administration.** The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

(2) **Board membership.**

(a) The board shall consist of ten members. Eight members shall be affected producers appointed as provided in this marketing order. One member shall be an affected handler appointed as provided in this marketing order. The director shall appoint one member of the board who is neither an affected producer nor an affected handler to represent the director. The position representing the director shall be a voting member.

(b) For the purpose of nomination and appointment of producer members of the board, the affected area of the state of Washington shall be divided into four representative districts as follows:

(i) District I shall have three board members, being positions 1, 2 and 3 and shall include the county of Whitman.

(ii) District II shall have two board members, being positions 4 and 5 and shall include the county of Spokane.

(iii) District III shall have one board member being position 6 and shall include the counties of Walla Walla, Garfield, Columbia and Asotin.

(iv) District IV shall have two board members, being positions 7 and 8 and shall include all other counties of the state of Washington: Provided, That the addition of another member, being position 8, shall not become effective until approved by a referendum vote of the affected commercial wrinkled pea seed producers.

(3) Board membership qualifications.

(a) The producer members of the board must be practical producers of pulse crops in the district in and for which they are nominated and appointed and each shall be a citizen and resident of the state, over the age of eighteen years. Each producer board member must be and have been actually engaged in producing pulse crops within the state of Washington for a period of five years and has during that time derived a substantial portion of his or her income therefrom and is not engaged in business, directly or indirectly, as a handler or other dealer.

(b) The handler member of the board must be a practical handler of pulse crops and shall be a citizen and resident of the state, over the age of eighteen years. The handler board member must be and have been, either individually or as an officer or an employee of a corporation, firm, partnership, association or cooperative actually engaged in handling pulse crops within the state of Washington for a period of five years and has during that period derived a substantial portion of his or her income therefrom.

(c) The qualifications of members of the board must continue during their term of office.

(4) Term of office.

(a) The term of office for members of the board shall be three years, and one-third of the membership as nearly as possible shall be appointed each year.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions one through eight, the affected handler shall have position nine and the member representing the director position ten.

(c) The term of office for the initial board members shall be as follows:

Positions seven, eight, nine, and ten - One year

Positions four, five and six - Two years

Positions one, two, and three - Three years

(d) ~~((Except for the director's representative, no appointed member of the board may serve more than two full consecutive three-year terms.~~

~~(e))~~ To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the currently elected board members shall be forwarded to the director for appointment within thirty days of the effective date of this amended marketing order.

(5) Nomination of director-appointed board members.

(a) For the purpose of nominating candidates for appointment to board membership the director shall call separate meetings of affected producers and affected handlers.

(b) Each year the director shall call a nomination meeting for director-appointed board members in those districts whose board members term is about to expire. The meeting(s) shall be held at least thirty days in advance of the date set by the director for the advisory vote of board members.

(c) Notice of a nomination meeting shall be published in newspapers of general circulation within the affected district not less than ten days in advance of the date of such meeting and in addition, written notice of every such meeting shall be given to all affected producers within such affected district and handlers according to the list maintained by the board pursuant to RCW 15.65.295.

(d) Nonreceipt of notice by any interested person shall not invalidate the proceedings at a nomination meeting.

(e) Any qualified affected producer or handler may be nominated orally for membership on the board at a nomination meeting. Nominations may also be made within five days after the meeting by written petition filed with the director signed by not less than five affected producers or affected handlers.

(f) If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the open board position(s) by mail to all affected producers and handlers. Nominating petitions for producers and handlers shall be signed by not less than five affected producers and handlers. Final date for filing nominations shall be not less than twenty days after the notice was mailed.

(g) When only one nominee is nominated for a director-appointed position, RCW 15.65.250 shall apply.

(6) Advisory vote of board members.

(a) An advisory vote shall be conducted by secret ballot under the supervision of the director within the month of May. Each affected producer and affected handler shall be entitled to one vote.

(b) An advisory vote shall be conducted for board members appointed by the director under the provisions of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(c) Notice of every advisory vote for board membership shall be published in a newspaper of general circulation within the affected district not less than ten days in advance of the date of the advisory vote. Not less than ten days prior to every advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer and affected handler entitled to vote whose name appears upon the list of such affected producers and affected handlers maintained by the board pursuant to RCW 15.65.295. Any other affected producer or affected handler entitled to vote may obtain a ballot by application to the director upon establishing his or her qualifications.

(d) Nonreceipt of a ballot by an affected producer or affected handler shall not invalidate the advisory vote of any board member.

(7) Vacancies. In the event of a vacancy in a director-appointed position, the position shall be filled as specified in RCW 15.65.270.

(8) **Quorum.** A majority of the members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(9) **Board compensation.** No member of the board shall receive any salary or other compensation, but each member may be compensated in accordance with RCW 43.03.230 and shall be reimbursed for subsistence, lodging, and mileage in accordance with RCW 43.03.050 and 43.03.060, as provided for in RCW 15.65.270. The board may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270.

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce and control the provisions of this order as the designee of the director.

(b) To elect a chairman and such other officers as the board deems advisable.

(c) To employ and discharge at its discretion such personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.

(d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration and enforcement of the order. Such expenses and costs may be paid by check, draft or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited money with the director in order to defray the costs of formulating the order: Provided, That the total reimbursement to all applicants shall not exceed two thousand dollars.

(f) To establish a "pulse crops board marketing revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done pursuant to this order. Such records, books and accounts shall be audited at least annually subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year of the state of Washington. A copy of such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the or-

der during each fiscal year. The board, at least fifteen days prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget.

(j) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books and minutes of board meetings shall be kept at such headquarters.

(k) To adopt rules of a technical or administrative nature for the operation of the board, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act).

(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act, along with the necessary authority and procedure for obtaining such information.

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by the act or order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders.

(o) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

(p) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(q) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.29 RCW.

(r) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(s) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of pulse crops.

(t) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general.

(u) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(v) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of pulse crops including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(w) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(x) To maintain a list of the names and addresses of persons who handle pulse crops within the affected area and data on the amount and value of the (~~dry peas and lentils~~) pulse crops handled for a minimum three-year period by each person pursuant to RCW 15.65.280.

(y) To maintain a list of the names and addresses of all affected persons who produce pulse crops and the amount, by unit, of pulse crops produced during the past three years pursuant to RCW 15.65.295.

(z) To maintain a list of all persons who handle pulse crops and the amount of pulse crops handled by each person during the past three years pursuant to RCW 15.65.295.

(aa) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(11) Procedures for board.

(a) The board shall hold regular meetings with the time and date thereof to be fixed by resolution of the board and the meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act). The notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be published in the state register at least twenty days prior to the re-scheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least ten days prior to the meeting through regular wire news services and radio-television press.

(c) The board may call special meetings as provided under RCW 42.30.080.

[Statutory Authority: RCW 15.65.047, 15.65.050, and chapter 34.05 RCW. WSR 16-15-004, § 16-536-020, filed 7/7/16, effective 8/7/16. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 04-17-021, § 16-536-020, filed 8/9/04, effective 9/9/04. Statutory Authority: RCW 15.65.050. WSR 95-17-117 (Order 5079), § 16-536-020, filed 8/23/95, effective 9/23/95. Statutory Authority: Chapter 15.65 RCW. WSR 82-15-020 (Order 1768), § 16-536-020, filed 7/13/82; Marketing Order Article II, §§ A through K, filed 3/26/65.]

NEW SECTION

WAC 16-536-090 Description, address, and telephone number of the Washington pulse crops commission. Headquartered at 2780 W. Pullman Road, Moscow, Idaho 83843, the Washington pulse crops commission serves Washington pulse crops producers by supporting the pulse crops industry in the areas of marketing, education, and research. The telephone number is 208-882-3023.

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NEW SECTION

WAC 16-536-100 Public records officer. (1) The commission's public records shall be in the charge of the public records officer designated by the commission. The commission or its executive director may appoint a temporary public records officer to serve during the absence of the designated records officer. The public records officer shall be responsible for implementing the commission's rules regarding

disclosure of public records, coordination of staff regarding disclosure of public records, and generally ensuring compliance by staff with public records disclosure requirements.

(2) The name of the commission's current public records officer is on file with the office of the code reviser in accordance with RCW 42.56.580 and is published in the *Washington State Register*.

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NEW SECTION

WAC 16-536-110 Request for public records. (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail to Washington Pulse Crops Commission, 2780 W. Pullman Road, Moscow, Idaho 83843. The request may also be submitted by email to: eaune@usapulses.org. The written request must include:

(a) The name, address, and telephone number or other contact information of the person requesting the records;

(b) The calendar date on which the request is made; and

(c) Sufficient information to readily identify records being requested.

(2) Any person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the commission's public records, the following will apply:

(a) Public records made available for inspection may not be removed from the area the commission makes available for inspection;

(b) Inspection of any public record will be conducted in the presence of the public records officer or designee;

(c) Public records may not be marked or altered in any manner during the inspection; and

(d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission's office and the availability of authorized staff to operate that equipment.

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NEW SECTION

WAC 16-536-115 Response to public records requests. (1) The public records officer shall respond to public records requests within five business days by:

(a) Making the records available for inspection or copying;

(b) Providing a link or address for a record available on the internet under RCW 42.56.520;

(c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request;

(d) Sending the copies to the requestor if copies are requested and payment of a deposit for the copies is made or terms of payment have been agreed upon; or

(e) Denying the public records request. Responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing withholding of the record, or any part of the record, and a brief explanation of how the exemption applies to the record withheld or to any redactions in records produced.

(2) Additional time to respond to the request may be based upon the need to:

(a) Clarify the intent of the request;

(b) Locate and assemble the information requested;

(c) Notify persons or agencies affected by the request; or

(d) Determine whether any of the information requested is exempt from disclosure and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public records request that is unclear, the public records officer may ask the requestor to clarify what records the requestor is seeking. The public records officer is not obligated to provide further response if the requestor fails to clarify the request.

(4) In the event the requested records name a specific person or pertain to a specific person and may be exempt from disclosure, the commission may, prior to providing the records, give notice to others whose rights may be affected by the disclosure. Sufficient notice will be given to allow affected persons to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

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NEW SECTION

WAC 16-536-120 Fees—Inspection and copying. (1) No fee will be charged for the inspection of public records.

(2) Pursuant to RCW 42.56.120(2), the commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate actual costs and the commission lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(3) The commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120. For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of invoice payable to the Washington pulse crops commission. The commission may require that all charges be paid in advance of release of the copies of the records.

(4) The commission or its designee may waive any of the foregoing copying costs.

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NEW SECTION

WAC 16-536-125 Exemptions. The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

- (1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 15.65 RCW (reference RCW 42.56.380(3)).
- (2) Financial and commercial information and records supplied by persons:
 - (a) To the commission for the purpose of conducting a referendum for the establishment of the commission; or
 - (b) To the commission under chapter 15.65 RCW with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).
- (3) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(8)).
- (4) Records that are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the commission and the office of the attorney general (reference RCW 5.60.060(2) and 42.56.290).
- (5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required or governed by other law (reference RCW 42.56.230(5)).

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NEW SECTION

WAC 16-536-130 Review of denial of public records requests. (1) Any person who objects to the initial denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to the statement which constituted or accompanied the denial.

(2) The commission's executive director or designee shall immediately consider the matter and either affirm or reverse the denial within ten business days following the commission's receipt of the written request for review of the original denial.

(3) Under RCW 42.56.530, if the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550.

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NEW SECTION

WAC 16-536-135 Records index. The commission shall establish a records index, which shall be made available for public review. The index includes the following records:

- (1) Commission authorizing statute;
- (2) Commission marketing order;
- (3) Minutes of commission meetings;
- (4) Commission board roster; and
- (5) List of marketing, education, and research projects.

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WSR 21-15-124
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed July 21, 2021, 10:25 a.m., effective August 21, 2021]

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

Purpose: WAC 314-55-077 Marijuana processor license—Privileges, requirements and fees and 314-55-079 Marijuana retailer license—Privileges, requirements and fees. The Washington state liquor and cannabis board (board) has adopted rule amendments to allow the board to take disciplinary action against any licensed marijuana processor or retailer failing to comply with the provisions of WAC 246-80-021, concerning the sale of vitamin E acetate.

Citation of Rules Affected by this Order: Amending WAC 314-55-077 and 314-55-079.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Adopted under notice filed as WSR 21-12-052 on May 26, 2021.

A final cost-benefit analysis is available by contacting Jeff Kildahl, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1781, fax 360-664-3208, email rules@lcb.wa.gov, website www.lcb.wa.gov.

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

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

Date Adopted: July 21, 2021.

David Postman
Chair

OTS-2297.2

AMENDATORY SECTION (Amending WSR 20-01-172, filed 12/18/19, effective 1/1/20)

WAC 314-55-077 Marijuana processor license—Privileges, requirements, and fees. (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label useable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers.

(2) **Application and license fees.**

(a) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a marijuana processor license is one thousand three hundred eighty-one dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(c) The application window for marijuana processor licenses is closed. The board may reopen the marijuana processor application window at subsequent times when the board deems necessary.

(3) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(4) (a) A marijuana processor that makes marijuana-infused solid or liquid product meant to be ingested orally (marijuana edibles) must obtain a marijuana-infused edible endorsement from the department of agriculture as required under chapter 15.125 RCW and rules adopted by the department to implement that chapter (chapter 16-131 WAC). A licensee must allow the board or their designee to conduct physical visits and inspect the processing facility, recipes, and records required under WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice.

(b) A marijuana processor licensed by the board must ensure marijuana-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapter 15.125 RCW and rules promulgated to implement chapters 16-131, 16-165 and 16-167 WAC.

(5) (a) A marijuana processor may blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee so long as the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(b) A processor may not treat or otherwise adulterate useable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the useable marijuana.

(6) Recipes, product, packaging, and labeling approval.

(a) A marijuana processor licensee must obtain label and packaging approval from the board for all marijuana-infused products meant for oral ingestion prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product, labeling, and packaging to the board for approval. More information on the product, packaging, and label review process is available on the board's website.

(b) All recipes for marijuana-infused products meant for oral ingestion (marijuana edible products) must be approved by the department of agriculture under chapter 16-131 WAC. Licensees must obtain recipe approval from the department of agriculture prior to submitting any marijuana edible products, packages, and labels for review and approval by the board. The recipe for any marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana processor's licensed premises and made available for inspection by the board or its designee.

(c) If the board denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request

an administrative hearing under chapter 34.05 RCW, Administrative Procedure Act.

(7) With the exception of the marijuana, all ingredients used in making marijuana-infused products for oral ingestion must be a commercially manufactured food as defined in WAC 246-215-01115.

(8) Marijuana-infused edible products in solid or liquid form must be homogenized to ensure uniform disbursement of cannabinoids.

(9) A marijuana processor may infuse food or drinks with marijuana, provided that:

(a) The product or products do not require cooking or baking by the consumer;

(b) Coatings applied to the product or products are compliant with the requirements of this chapter;

(c) The product and package design is not similar to commercially available products marketed for consumption by persons under twenty-one years of age, as defined by WAC 314.55.105 (1)(c).

(10) To reduce the risk to public health, potentially hazardous foods as defined in WAC 246-215-01115 may not be infused with marijuana. Potentially hazardous foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.

(11) Other food items that may not be infused with marijuana to be sold in a retail store include:

(a) Any food that has to be acidified to make it shelf stable;

(b) Food items made shelf stable by canning or retorting;

(c) Fruit or vegetable juices (this does not include shelf stable concentrates);

(d) Fruit or vegetable butters;

(e) Pumpkin pies, custard pies, or any pies that contain egg;

(f) Dairy products of any kind such as butter, cheese, ice cream, or milk; and

(g) Dried or cured meats.

(h) Vinegars and oils derived from natural sources may be infused with dried marijuana if all plant material is subsequently removed from the final product. Vinegars and oils may not be infused with any other substance, including herbs and garlic.

(i) Marijuana-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.

(12) Consistent with WAC 314-55-104, a marijuana processor may infuse dairy butter or fats derived from natural sources, and use that extraction to prepare allowable marijuana-infused solid or liquid products meant to be ingested orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.

The board may designate other food items that may not be infused with marijuana.

(13) Marijuana processor licensees are allowed to have a maximum of six months of their average useable marijuana and six months average of their total production on their licensed premises at any time.

(14) **Processing service arrangements.** A processing service arrangement is when one processor (processor B) processes useable marijuana or an altered form of useable marijuana (marijuana product) for another licensed processor (processor A) for a fee.

(a) Processor A is the product owner. However, processor B may handle the product under its license as provided in chapter 69.50 RCW

and this chapter. Processor B is not allowed to transfer the product to a retailer and may only possess marijuana or marijuana products received from processor A for the limited purposes of processing it for ultimate transfer back to processor A.

(b) Processing service arrangements must be made on a cash basis only as provided in WAC 314-55-115 and payment for the service and return of the processed product must be made within thirty calendar days of delivery to processor B. Failure to do so as provided by the preceding sentence is a violation of this section and any marijuana or marijuana product involved in the transaction will be subject to seizure and destruction. Payment with any marijuana products, barter, trade, or compensation in any form other than cash for processing service arrangements is prohibited under processing service arrangements.

(c) Each processor that enters into a processing service arrangement must include records for each service arrangement in recordkeeping documents which must be maintained consistent with this chapter.

(15) Marijuana may not be returned by any retail licensee to any processor except as provided in this section.

(a) Every processor must maintain on the licensed premises for a period of five years complete records of all refunds and exchanges made under this section including an inventory of marijuana and marijuana products returned to the processor by any retail licensee.

(b) Marijuana may be returned by a retail licensee in the event a retailer goes out of the business of selling marijuana at retail and a cash refund, as defined by WAC 314-55-115, may be made upon the return of the marijuana or marijuana products, so long as WSLCB approval is acquired prior to returns and refunds under this subsection.

(c) Marijuana products different from that ordered by a retailer and delivered to the retailer may be returned to a processor and either replaced with marijuana products which were ordered or a cash refund, as defined by WAC 314-55-115, may be made. These incorrect orders must be discovered and corrected within eight days of the date the delivery was made to be eligible for returns and refunds under this subsection.

(d) A marijuana processor may accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer. It is the responsibility of the retailer to ensure the product or sample jar is returned to the processor.

(16) The board may take disciplinary action against any marijuana processor that fails to comply with the provisions of WAC 246-80-021.

[Statutory Authority: RCW 69.50.342, 69.50.345 and 2019 c 393. WSR 20-01-172, § 314-55-077, filed 12/18/19, effective 1/1/20. Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-077, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-077, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-077, filed 5/20/15, effective 6/20/15; WSR 14-10-044, § 314-55-077, filed 4/30/14, effective 5/31/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-077, filed 10/21/13, effective 11/21/13.]

OTS-1798.3

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

WAC 314-55-079 Marijuana retailer license—Privileges, requirements, and fees. (1) A marijuana retailer license allows the licensee to sell only useable marijuana, marijuana concentrates, marijuana-infused products, marijuana paraphernalia, and lockable boxes to store marijuana at retail in licensed retail outlets to persons twenty-one years of age and older, except as allowed for persons under twenty-one years of age consistent with RCW 69.50.357 and WAC 314-55-080.

(2) The WSLCB may accept applications for marijuana retail licenses at time frames published on its website at www.lcb.wa.gov. Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the WSLCB will determine the maximum number of marijuana retail locations per county.

(a) The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county and to accommodate the medical needs of qualifying patients and designated providers. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated.

(b) The number of retail licenses determined by the board can be found on the WSLCB website at www.lcb.wa.gov.

(3) Any entity and/or principals within any entity are limited to no more than five retail marijuana licenses.

(4) Application and license fees.

(a) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is responsible for fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a marijuana retailer license is one thousand three hundred eighty-one dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(5) Internet sales and delivery of product to customers are prohibited.

(6) Sales of marijuana-infused products not permissible under WAC 314-55-077 are prohibited.

(7) Marijuana retailers may not sell marijuana products below the current acquisition cost.

(8) All marijuana products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(9) A marijuana retailer may not sell lockable boxes for less than the cost of acquisition or sell boxes received as a donation. The donation of lockable boxes must come from a person or entity that is not a licensed marijuana producer, processor, or retailer.

(10) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

(11) A marijuana retailer may transport product to other locations operated by the licensee or to return product to a marijuana processor as outlined in WAC 314-55-085.

(12) A marijuana retailer may accept returns of open marijuana products. Products must be returned in their original packaging with the lot, batch, or inventory ID number fully legible.

(13) A marijuana retailer may dispose of marijuana products as provided in WAC 314-55-097.

(14) The board may take disciplinary action against any marijuana retailer that fails to comply with the provisions of WAC 246-80-021.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-079, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342, 69.50.345, 2016 c 170, 2016 c 171, and 2016 c 17. WSR 16-19-102, § 314-55-079, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-079, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-079, filed 5/20/15, effective 6/20/15; WSR 14-10-044, § 314-55-079, filed 4/30/14, effective 5/31/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-079, filed 10/21/13, effective 11/21/13.]

WSR 21-15-128

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed July 21, 2021, 11:57 a.m., effective August 21, 2021]

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

Purpose: The health care authority is amending these sections to fix outdated behavioral health references and terminology, to update references to correct state agencies, and other minor housekeeping changes.

Citation of Rules Affected by this Order: Amending WAC 182-550-1050, 182-550-1100, 182-550-1400, 182-550-2400, 182-550-2650, 182-550-3000, 182-550-4300, and 182-550-4400.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-11-081 on May 18, 2021.

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

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

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

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

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

Date Adopted: July 21, 2021.

Wendy Barcus
Rules Coordinator

OTS-3051.2

AMENDATORY SECTION (Amending WSR 16-06-053, filed 2/24/16, effective 4/1/16)

WAC 182-550-1050 Hospital services definitions. The following definitions and abbreviations, those found in chapter 182-500 WAC, Medical definitions, and definitions and abbreviations found in other sections of this chapter apply to this chapter. When a term is not defined in this chapter, other agency or agency's designee WAC, or state or federal law, the medical definitions found in *Taber's Cyclopedic Medical Dictionary* apply.

"Accommodation costs" - The expenses incurred by a hospital to provide its patients services for which a separate charge is not customarily made. These expenses include, but are not limited to, room and board, medical social services, psychiatric social services, and the use of certain hospital equipment and facilities.

"Accredited" or **"accreditation"** - A term used by nationally recognized health organizations, such as the commission on accreditation of rehabilitation facilities (CARF), to indicate a facility meets both professional and community standards of medical care.

"Acute" - A medical condition of severe intensity with sudden onset. For the purposes of the acute physical medicine and rehabilitation (Acute PM&R) program, acute means an intense medical episode, not longer than three months.

"Acute care" - Care provided for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a health care professional to maintain their health status.

"Acute physical medicine and rehabilitation (acute PM&R)" - A comprehensive inpatient rehabilitative program coordinated by an interdisciplinary team at an agency-approved rehabilitation facility. The program provides twenty-four-hour specialized nursing services and an intense level of therapy for specific medical conditions for which the client shows significant potential for functional improvement. Acute PM&R is a twenty-four hour inpatient comprehensive program of integrated medical and rehabilitative services provided during the acute phase of a client's rehabilitation.

"Administrative day" or **"administrative days"** - One or more days of a hospital stay in which an acute inpatient or observation level of care is not medically necessary, and a lower level of care is appropriate.

"Administrative day rate" - The agency's statewide medicaid average daily nursing facility rate.

"Aggregate cost" - The total cost or the sum of all constituent costs.

"Aggregate operating cost" - The total cost or the sum of all operating costs.

"All-patient DRG grouper (AP-DRG)" - A computer software program that determines the medical and surgical diagnosis-related group (DRG) assignments used by the agency for inpatient admissions between August 1, 2007, and June 30, 2014.

"All-patient refined DRG grouper (APR-DRG)" - A computer software program that determines the medical and surgical diagnosis-related group (DRG) assignments used by the agency for inpatient admissions on and after July 1, 2014.

"Allowable" - The calculated amount for payment, after exclusion of any "nonallowed service or charge," based on the applicable payment method before final adjustments, deductions, and add-ons.

"Allowed amount" - The initial calculated amount for any procedure or service, after exclusion of any "nonallowed service or charge," that the agency allows as the basis for payment computation before final adjustments, deductions, and add-ons.

"Allowed charges" - The total billed charges for allowable services.

"Allowed covered charges" - The total billed charges for services minus the billed charges for noncovered services, denied services, or both.

"Ambulatory payment classification (APC)" - A grouping that categorizes outpatient visits according to the clinical characteristics, the typical resource use, and the costs associated with the diagnoses and the procedures performed.

"Ambulatory surgery" - A surgical procedure that is not expected to require an inpatient hospital admission.

"Ancillary services" - Additional or supporting services provided by a hospital to a client during the client's hospital stay. These services include, but are not limited to: Laboratory, radiology,

drugs, delivery room, operating room, postoperative recovery rooms, and other special items and services.

"Appropriate level of care" - The level of care required to best manage a client's illness or injury based on:

- (1) The severity of illness and the intensity of services required to treat the illness or injury; or
- (2) A condition-specific episode of care.

"Audit" - An assessment, evaluation, examination, or investigation of a health care provider's accounts, books, and records, including:

- (1) Health, financial, and billing records pertaining to billed services paid by the agency through Washington apple health, by a person not employed or affiliated with the provider, to verify the service was provided as billed and was allowable under program regulations; and
- (2) Financial, statistical, and health records, including mathematical computations and special studies conducted supporting the medicare cost report (Form 2552-96 and 2552-10 or successor form), submitted to the agency to establish program rates for payment to hospital providers.

"Authorization" - See **"prior authorization"** and **"expedited prior authorization (EPA)."**

"Bad debt" - An operating expense or loss incurred by a hospital because of uncollectible accounts receivables.

"Bedside nursing services" - Services included under the room and board services paid to the facility and provided by nursing service personnel. These services include, but are not limited to: Medication administration, IV hydration and IV medication administration, vaccine administration, dressing applications, therapies, glucometry testing and other point of care testing, catheterizations, tube feedings and irrigations, and equipment monitoring services.

"Billed charge" - The charge submitted to the agency by the provider.

"Bordering city hospital" - A hospital located in one of the cities listed in WAC 182-501-0175.

"Budget neutral" - A condition in which a claims model produces aggregate payments to hospitals that are the same under two separate payment systems. See also **"budget neutrality factor."**

"Budget neutrality factor" - A multiplier used by the agency to ensure that modifications to the payment method and rates are budget neutral. See also **"budget neutral."**

"Budget target" - Funds appropriated by the legislature or through the agency's budget process to pay for a specific group of services, including anticipated caseload changes or vendor rate increases.

"Budget target adjuster" - A multiplier applied to the outpatient prospective payment system (OPPS) payment to ensure aggregate payments do not exceed the established budget target.

"Bundled services" - Interventions integral to or related to the major procedure. The agency does not pay separately for these services.

"Case mix" - A relative value assigned to a DRG or classification of patients in a medical care environment representing the resource intensity demands placed on an institution.

"Case mix index (CMI)" - The average relative weight of all cases treated in a hospital during a defined period.

"Centers for Medicare and Medicaid Services (CMS)" - See WAC 182-500-0020.

"Charity care" - See chapter 70.170 RCW.

(~~"Chemical dependency" - An addiction or dependence on alcohol or drugs, or both.~~)

"Children's health insurance program (CHIP)" - The federal Title XXI program under which medical care is provided to uninsured children younger than age nineteen. Part of Washington apple health.

"Children's hospital" - A hospital primarily serving children.

"Client" - A person who receives or is eligible to receive services through agency programs.

"Commission on accreditation of rehabilitation facilities (CARF)" - See <http://www.carf.org/home/>.

"CMS PPS input price index" - A measure, expressed as a percentage, of the annual inflationary costs for hospital services.

"Comprehensive hospital abstract reporting system (CHARS)" - The department of health's (DOH's) inpatient hospital data collection, tracking, and reporting system.

"Condition-specific episode of care" - Care provided to a client based on the client's primary condition, complications, comorbidities, standard treatments, and response to treatments.

"Contract hospital" - A hospital contracted by the agency to provide specific services.

"Conversion factor" - A hospital-specific dollar amount that is used in calculating inpatient payments.

"Core provider agreement (CPA)" - The basic contract the agency holds with providers serving Washington apple health clients.

"Cost report" - See **"medicare cost report."**

"Costs" - Agency-approved operating, medical education, and capital-related costs (capital costs) as reported and identified on the "cost report."

"Covered charges" - Billed charges submitted to the agency on a claim by the provider, less the noncovered charges indicated on the claim.

"Covered services" - See **"hospital covered service"** and WAC 182-501-0050.

"Critical border hospital" - An acute care hospital located in a bordering city (see WAC 182-501-0175 for list) that the agency has, through analysis of admissions and hospital days, designated as critical to provide health care for Washington apple health clients.

"Current procedural terminology (CPT)" - A systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians. CPT is copyrighted and published annually by the American Medical Association (AMA).

"Deductible" - The dollar amount a client is responsible for before an insurer, such as medicare, starts paying or the initial specific dollar amount for which the client is responsible.

"Department of social and health services (DSHS)" - The Washington state agency that provides food assistance, financial aid, medical and behavioral health care, and other services to eligible children, families, and vulnerable adults and seniors of Washington state.

"Diabetes education program" - A comprehensive, multidisciplinary program of instruction offered by a DOH-approved diabetes education provider to diabetic clients for managing diabetes. This includes instruction on nutrition, foot care, medication and insulin administra-

tion, skin care, glucose monitoring, and recognition of signs/symptoms of diabetes with appropriate treatment of problems or complications.

"Diagnosis code" - A set of numeric or alphanumeric characters assigned by the current published ICD-CM coding guidelines used by the agency as a shorthand symbol to represent the nature of a disease or condition.

"Diagnosis-related group (DRG)" - A classification system that categorizes hospital patients into clinically coherent and homogenous groups with respect to resource use. Classification of patients is based on the current published ICD-CM coding guidelines used by the agency, the presence of a surgical procedure, patient age, presence or absence of significant comorbidities or complications, and other relevant criteria.

"Direct medical education costs" - The direct costs of providing an approved medical residency program as recognized by medicare.

"Discharging hospital" - The institution releasing a client from the acute care hospital setting.

"Discount factor" - The percentage applied to additional significant procedures when a claim has multiple significant procedures or when the same procedure is performed multiple times on the same day. Not all significant procedures are subject to a discount factor.

"Disproportionate share hospital (DSH) payment" - A supplemental payment made by the agency to a hospital that qualifies for one or more of the disproportionate share hospital programs identified in the state plan. See WAC 182-550-4900.

"Disproportionate share hospital (DSH) program" - A program through which the agency makes payment adjustments to eligible hospitals that serve a disproportionate number of low-income clients in accordance with legislative direction and established payment methods. See 1902 (a) (13) (A) (iv) of the Social Security Act. See also WAC 182-550-4900 through 182-550-5400.

"Dispute conference" - See **"hospital dispute conference."**

"Distinct unit" - A distinct area for psychiatric, rehabilitation, or ~~((detox))~~ withdrawal management services which has been certified by medicare within an acute care hospital or approved by the agency within a children's hospital.

"Division of behavioral health and recovery services (DBHR)" - The division within ~~((DSHS))~~ HCA that administers mental health, problem gambling, and substance abuse programs authorized by chapters 43.20A, 71.05, 71.24, 71.34, and 70.96A RCW.

"DRG" - See **"diagnosis-related group."**

"DRG allowed amount" - The DRG relative weight multiplied by the conversion factor.

"DRG average length-of-stay" - The agency's average length-of-stay for a DRG classification established during an agency DRG rebasing and recalibration project.

"DRG-exempt services" - Services paid through methods other than DRG, such as per diem rate, per case rate, or ratio of costs-to-charges (RCC).

"DRG payment" - The total payment made by the agency for a client's inpatient hospital stay. The DRG payment is the DRG allowed amount plus the high outlier minus any third-party liability, client participation, medicare payment, and any other adjustments applied by the agency.

"DRG relative weight" - A factor used in the calculation of DRG payments. As of July 1, 2014, the medicaid agency uses the 3M™ Corpo-

ration's national weights developed for the all-patient refined-diagnosis-related group (APR-DRG) software.

"Enhanced ambulatory patient groupings (EAPG)" - The payment system used by the agency to calculate reimbursement to hospitals for the facility component of outpatient services on and after July 1, 2014. This system uses 3M's EAPGs as the primary basis for payment.

"Emergency medical condition" - See WAC 182-500-0030.

"Emergency room" or "emergency facility" or "emergency department" - A distinct hospital-based facility which provides unscheduled services to clients who require immediate medical attention. An emergency department must be capable of providing emergency medical, surgical, and trauma care services twenty-four hours a day, seven days a week. A physically separate extension of an existing hospital emergency department may be considered a freestanding emergency department as long as the extension provides comprehensive emergency medical, surgical, and trauma care services twenty-four hours a day, seven days a week.

"Emergency services" - Health care services required by and provided to a client after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in placing the client's health in serious jeopardy; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part. Inpatient maternity services are considered emergency services by the agency.

"Equivalency factor (EF)" - A factor that may be used by the agency in conjunction with other factors to determine the level of a state-administered program payment. See WAC 182-550-4800.

"Exempt hospital - DRG payment method" - A hospital that for a certain client category is reimbursed for services to Washington apple health clients through methodologies other than those using DRG conversion factors.

"Expedited prior authorization (EPA)" - See WAC 182-500-0030.

"Experimental service" - A procedure, course of treatment, drug, or piece of medical equipment, which lacks scientific evidence of safety and effectiveness. See WAC 182-531-0050. A service is not "experimental" if the service:

- (1) Is generally accepted by the medical profession as effective and appropriate; and
- (2) Has been approved by the federal Food and Drug Administration (FDA) or other requisite government body if approval is required.

"Fee-for-service" - See WAC 182-500-0035.

"Fiscal intermediary" - Medicare's designated fiscal intermediary for a region or category of service, or both.

"Fixed per diem rate" - A daily amount used to determine payment for specific services provided in long-term acute care (LTAC) hospitals.

"Formal release" - When a client:

- (1) Discharges from a hospital or distinct unit;
- (2) Dies in a hospital or distinct unit;
- (3) Transfers from a hospital or distinct unit as an acute care transfer; or
- (4) Transfers from the hospital or distinct unit to a designated psychiatric unit or facility, or a designated acute rehabilitation unit or facility.

"Global surgery days" - The number of preoperative and follow-up days that are included in the payment to the physician for the major surgical procedure.

"Graduate medical education costs" - The direct and indirect costs of providing medical education in teaching hospitals. See "direct medical education costs" and "indirect medical education costs."

"Grouper" - See **"all-patient DRG grouper (AP-DRG)"** and **"all-patient refined DRG grouper (APR-DRG)."**

"Health care authority (medicaid agency)" - The Washington state agency that administers Washington apple health.

"High outlier" - A DRG claim classified by the agency as being allowed a high outlier payment that is paid under the DRG payment method, does not meet the definition of "administrative day," and has extraordinarily high costs as determined by the agency. See WAC 182-550-3700.

"Hospice" - A medically directed, interdisciplinary program of palliative services for terminally ill clients and the clients' families. Hospice is provided under arrangement with a Washington state-licensed and Title XVIII-certified Washington state hospice.

"Hospital" - An entity that is licensed as an acute care hospital in accordance with applicable state laws and regulations, or the applicable state laws and regulations of the state in which the entity is located when the entity is out-of-state, and is certified under Title XVIII of the federal Social Security Act. The term "hospital" includes a medicare or state-certified distinct rehabilitation unit, a "psychiatric hospital" as defined in this section, or any other distinct unit of the hospital.

"Hospital covered service" - Any service, treatment, equipment, procedure, or supply provided by a hospital, covered under a Washington apple health program, and within the scope of an eligible client's Washington apple health program.

"Hospital cost report" - See **"cost report."**

"Hospital readmission" - A situation in which a client who was admitted as an inpatient and discharged from the hospital has returned to inpatient status to the same or a different hospital.

"Indirect medical education costs" - The indirect costs of providing an approved medical residency program as recognized by medicare.

"Inflation adjustment" - For cost inflation, this is the hospital inflation adjustment. This adjustment is determined by using the inflation factor method approved by the legislature. For charge inflation, this is the inflation factor determined by comparing average discharge charges for the industry from one year to the next, as found in the comprehensive hospital abstract reporting system (CHARS) Hospital Census and Charges by Payer report.

"Inpatient hospital admission" - A formal admission to a hospital based on an evaluation of the client using objective clinical indicators to provide medically necessary, acute inpatient care. These indicators include assessment, monitoring, and therapeutic services as required to best manage the client's illness or injury. All applicable indicators must be documented in the client's health record. The decision to admit a client to inpatient status should be based on the condition-specific episode of care, severity of illness presented, and the intensity of services rendered. The agency does not deem inpatient hospital admissions as covered or noncovered solely on the basis of the length of time the client actually spends in the hospital. Generally, a client remains overnight and occupies a bed. Inpatient status

can apply even if the client is discharged or transferred to another acute hospital and does not actually use a hospital bed overnight. For the agency to recognize a stay as inpatient there must be a physician admission order in the client's medical record indicating the status as inpatient.

"Inpatient medicaid DRG conversion factor" - A dollar amount that represents selected hospitals' average costs of treating medicaid and CHIP clients. The conversion factor is a rate that is multiplied by a DRG relative weight to pay medicaid and CHIP claims under the DRG payment method. See WAC 182-550-3800 for how this conversion factor is calculated.

"Inpatient services" - Health care services provided to a client during hospitalization whose condition warrants formal admission and treatment in a hospital.

"Inpatient state-administered program conversion factor" - A DRG conversion factor reduced from the inpatient medicaid DRG conversion factor to pay a hospital for inpatient services provided to a client eligible under a state-administered program. The conversion factor is multiplied by a DRG relative weight to pay claims under the DRG payment method.

"Intermediary" - See **"fiscal intermediary."**

"International Classification of Diseases (ICD-9-CM and ICD-10-CM)" - The systematic listing of diseases, injuries, conditions, and procedures as numerical or alpha numerical designations (coding).

"Length of stay (LOS)" - The number of days of inpatient hospitalization, calculated by adding the total number of days from the admission date to the discharge date, and subtracting one day.

"Long-term acute care (LTAC) services" - Inpatient intensive long-term care services provided in agency-approved LTAC hospitals to eligible Washington apple health clients who meet criteria for level 1 or level 2 services. See WAC 182-550-2565 through 182-550-2596.

"LTAC level 1 services" - LTAC services provided to a client who requires eight or more hours of direct skilled nursing care per day and the client's medical needs cannot be met at a lower level of care due to clinical complexity. Level 1 services include one of the following:

- (1) Ventilator weaning care; or
- (2) Care for a client who has:
 - (a) Chronic open wounds that require on-site wound care specialty services and daily assessments and/or interventions; and
 - (b) At least one comorbid condition (such as chronic renal failure requiring hemodialysis).

"LTAC level 2 services" - LTAC services provided to a client who requires four or more hours of direct skilled nursing care per day, and the clients' medical needs cannot be met at a lower level of care due to clinical complexity. Level 2 services include at least one of the following:

- (1) Ventilator care for a client who is ventilator-dependent and is not weanable and has complex medical needs; or
- (2) Care for a client who:
 - (a) Has a tracheostomy;
 - (b) Requires frequent respiratory therapy services for complex airway management and has the potential for decannulation; and
 - (c) Has at least one comorbid condition (such as quadriplegia).

"Major diagnostic category (MDC)" - One of the mutually exclusive groupings of principal diagnosis areas in the AP-DRG and APR-DRG classification systems.

"Medical care services (MCS)" - See WAC 182-500-0070.

"Medical education costs" - The expenses incurred by a hospital to operate and maintain a formally organized graduate medical education program.

"Medical visit" - Diagnostic, therapeutic, or consultative services provided to a client by a health care professional in an outpatient setting.

"Medicare cost report" - The medicare cost report (Form 2552-96 or Form 2552-10), or successor document, completed and submitted annually by a hospital provider.

"Medicare crossover" - A claim involving a client who is eligible for both medicare benefits and medicaid.

"Medicare physician fee schedule (MPFS)" - The official CMS publication of relative value units and medicare payment policy indicators for the resource-based relative value scale (RBRVS) payment program.

"Medicare Part A" - See WAC 182-500-0070.

"Medicare Part B" - See WAC 182-500-0070.

"Medicare payment principles" - The rules published in the federal register regarding payment for services provided to medicare clients.

~~(**"Mental health designee"** - A professional contact person authorized by the division of behavioral health and recovery (DBHR) of DSHS, who operates under the direction of a behavioral health organization (BHO) or a prepaid inpatient health plan (PIHP). See WAC 182-550-2600.)~~

"Military hospital" - A hospital reserved for the use of military personnel, their dependents, and other authorized users.

"Modifier" - A two-digit alphabetic and/or numeric identifier added to the procedure code to indicate the type of service performed. The modifier provides the means by which the reporting hospital 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.

"National Correct Coding Initiative (NCCI)" - A national standard for the accurate and consistent description of medical goods and services using procedural codes. The standard is based on coding conventions defined in the *American Medical Associations' Current Procedural Terminology (CPT®)* manual, current standards of medical and surgical coding practice, input from specialty societies, and analysis of current coding practices. The Centers for Medicare and Medicaid Services (CMS) maintain NCCI policy. Information can be found at <http://www.cms.hhs.gov/NationalCorrectCodInitEd/>.

"National Drug Code (NDC)" - The eleven-digit number the manufacturer or labeler assigns to a pharmaceutical product and attaches to the product container at the time of packaging. The eleven-digit NDC is composed of a five-four-two grouping. The first five digits comprise the labeler code assigned to the manufacturer by the FDA. The second grouping of four digits is assigned by the manufacturer to describe the ingredients, dose form, and strength. The last grouping of two digits describes the package size.

"National payment rate (NPR)" - A rate for a given procedure code, published by CMS, that does not include a state- or location-specific adjustment.

"National Provider Identifier (NPI)" - A standard, unique identifier for health care providers assigned by CMS. The agency's Provider-

One system pays for inpatient and outpatient services using only one NPI per provider. The agency may make an exception for inpatient claims billed with medicare-certified, distinct unit NPIs.

"Nationwide rate" - See **"national payment rate (NPR)."**

"NCCI edit" - A software step used to determine if a claim is billing for a service that is not in accordance with federal and state statutes, federal and state regulations, agency fee schedules, billing instructions, and other publications. The agency has the final decision whether the NCCI edits allow automated payment for services that were not billed in accordance with governing law, NCCI standards, or agency policy.

"Newborn" or **"neonate"** or **"neonatal"** - A person younger than twenty-nine days old.

"Nonallowed service or charge" - A service or charge billed by the provider as noncovered or denied by the agency. This service or charge cannot be billed to the client except under the conditions identified in WAC 182-502-0160.

"Noncovered charges" - Billed charges a provider submits to the agency on a claim and indicates them on the claim as noncovered.

"Noncovered service or charge" - A service or charge the agency does not consider or pay for as a "hospital covered service." This service or charge may not be billed to the client, except under the conditions identified in WAC 182-502-0160.

"Nursing service personnel" - A group of health care professionals that includes, but is not limited to: Registered nurse (RN), licensed practical nurse (LPN), certified nursing assistant/nursing assistant certified (CNA/NAC).

"Observation services" - A well-defined set of clinically appropriate services furnished while determining whether a client will require formal inpatient admission or be discharged from the hospital. Services include ongoing short-term treatment, monitoring, assessment, and reassessment. Rarely do reasonable and necessary observation services exceed forty-eight hours. The agency or ~~((its))~~ the agency's designee may determine through the retrospective utilization review process that an inpatient hospital service should have been billed as an observation service.

"Operating costs" - All expenses incurred providing accommodation and ancillary services, excluding capital and medical education costs.

"Orthotic device" or **"orthotic"** - A corrective or supportive device that:

- (1) Prevents or corrects physical deformity or malfunction; or
- (2) Supports a weak or deformed portion of the body.

"Out-of-state hospital" - Any hospital located outside the state of Washington and the bordering cities designated in WAC 182-501-0175. For Washington apple health clients requiring psychiatric services, an "out-of-state hospital" is any hospital located outside the state of Washington.

"Outliers" - Cases with extraordinarily high costs when compared to other cases in the same DRG.

"Outpatient" - A client who is receiving health care services, other than inpatient services, in a hospital setting.

"Outpatient care" - See **"outpatient hospital services."**

"Outpatient (~~(code editor (OCE))~~) enhanced ambulatory payment grouper (EAPG)" - A software program the agency uses for classifying and editing in enhanced ambulatory payment (~~(classification (APC))~~) grouping-based OPSS.

"Outpatient hospital" - A hospital authorized by DOH to provide outpatient services.

"Outpatient hospital services" - Those health care services that are within a hospital's licensure and provided to a client who is designated as an outpatient.

"Outpatient observation" - See **"observation services."**

"Outpatient prospective payment system (OPPS)" - The payment system used by the agency to calculate reimbursement to hospitals for the facility component of outpatient services.

"Outpatient prospective payment system (OPPS) conversion factor" - See **"outpatient prospective payment system (OPPS) rate."**

"Outpatient prospective payment system (OPPS) rate" - A hospital-specific multiplier assigned by the agency that is one of the components of the APC payment calculation.

"Outpatient surgery" - A surgical procedure that is not expected to require an inpatient hospital admission.

"Pass-throughs" - Certain drugs, devices, and biologicals, as identified by CMS, for which providers are entitled to additional separate payment until the drugs, devices, or biologicals are assigned their own APC.

"Per diem" - A method which uses a daily rate to calculate payment for services provided as a "hospital covered service."

"PM&R" - See **"Acute PM&R."**

"Point of care testing (POCT)" - A test designed to be used at or near the site where the patient is located, that does not require permanent dedicated space, and that is performed outside the physical facilities of the clinical laboratory.

"Primary care case management (PCCM)" - The coordination of health care services under the agency's Indian health center or tribal clinic managed care program. See WAC 182-538-068.

"Principal diagnosis" - The condition chiefly responsible for the admission of the patient to the hospital.

"Prior authorization" - See WAC 182-500-0085.

"Private room rate" - The rate customarily charged by a hospital for a one-bed room.

"Prospective payment system (PPS)" - A payment system in which what is needed to calculate payments (methods, types of variables, and other factors) is set in advance and is knowable by all parties before care is provided. In a retrospective payment system, what is needed (actual costs or charges) is not available until after care is provided.

"Prosthetic device" or **"prosthetic"** - A replacement, corrective, or supportive device prescribed by a physician or other licensed practitioner, within the scope of his or her practice as defined by state law, to:

- (1) Artificially replace a missing portion of the body;
- (2) Prevent or correct physical deformity or malfunction; or
- (3) Support a weak or deformed portion of the body.

"Psychiatric hospital" - A medicare-certified distinct psychiatric unit, a medicare-certified psychiatric hospital, or a state-designated pediatric distinct psychiatric unit in a medicare-certified acute care hospital. Eastern state hospital and western state hospital are excluded from this definition.

"Public hospital district" - A hospital district established under chapter 70.44 RCW.

"Ratable" - A factor used to calculate inpatient payments for state-administered programs.

"Ratio of costs-to-charges (RCC)" - A method used to pay hospitals for some services exempt from the DRG payment method. It also refers to the percentage applied to a hospital's allowed covered charges for medically necessary services to determine estimated costs, as determined by the agency, and payment to the hospital for some DRG-exempt services.

"Rebasing" - The process used by the agency to update hospital payment policies, related variables (rates, factors, thresholds, multipliers, and caps), and system processes (edits, adjudication, grouping, etc.).

"Recalibration" - The process of recalculating DRG relative weights using historical data.

"Rehabilitation units" - Specifically identified rehabilitation hospitals and designated rehabilitation units of hospitals that meet agency and medicare criteria for distinct rehabilitation units.

"Relative weights" - See **"DRG relative weights."**

"Reserve days" - The days beyond the ninetieth day of hospitalization of a medicare patient for a benefit period or incidence of illness. See also **"lifetime hospitalization reserve."**

"Revenue code" - A nationally assigned coding system for billing inpatient and outpatient hospital services, home health services, and hospice services.

"Room and board" - Routine supplies and services provided to a client during the client's hospital stay. This includes, but is not limited to, a regular or special care hospital room and related furnishings, room supplies, dietary and bedside nursing services, and the use of certain hospital equipment and facilities.

"Rural health clinic" - See WAC 182-549-1100.

"Rural hospital" - An acute care health care facility capable of providing or assuring availability of inpatient and outpatient hospital health services in a rural area.

"Semi-private room rate" - A rate customarily charged for a hospital room with two to four beds; this charge is generally lower than a private room rate and higher than a ward room. See also **"multiple occupancy rate."**

"Significant procedure" - A procedure, therapy, or service provided to a client that constitutes one of the primary reasons for the visit to the health care professional, and represents a substantial portion of the resources associated with the visit.

"Specialty hospitals" - Children's hospitals, psychiatric hospitals, cancer research centers or other hospitals which specialize in treating a particular group of patients or diseases.

"Spendedown" - See chapter 182-519 WAC.

"State plan" - The plan filed by the agency with CMS, Department of Health and Human Services (DHHS), outlining how the state will administer medicaid and CHIP services, including the hospital program.

"Status indicator (SI)" - A code assigned to each medical procedure or service by the agency that contributes to the selection of a payment method.

"Subacute care" - Care provided to a client which is less intensive than that given at an acute care hospital. Skilled nursing, nursing care facilities and other facilities provide subacute care services.

"Substance use disorder (SUD)" - See RCW 71.05.020.

"Survey" - An inspection or review conducted by a federal, state, or private agency to evaluate and monitor a facility's compliance with program requirements.

"Swing bed" - An inpatient hospital bed certified by CMS for either acute inpatient hospital or skilled nursing services.

"Swing-bed day" - A day in which a client is receiving skilled nursing services in a hospital-designated swing bed at the hospital's census hour.

"Total patient days" - All patient days in a hospital for a given reporting period, excluding days for skilled nursing, nursing care, and observation days.

"Transfer" - To move a client from one acute care setting to a higher level acute care setting for emergency care or to a post-acute, lower level care setting for ongoing care.

"Transferring hospital" - The hospital or distinct unit that transfers a client to another acute care or subacute facility or distinct unit, or to a nonhospital setting.

"UB-04" - The uniform billing document required for use nationally by hospitals, nursing facilities, hospital-based skilled nursing facilities, home health agencies, and hospice agencies in billing for services provided to patients. This document includes the current national uniform billing data element specifications developed by the National Uniform Billing Committee and approved and modified by the Washington state payer group or the agency.

"Vendor rate increase" - An adjustment determined by the legislature, that may be used to periodically increase rates for payment to vendors, including health care providers, that do business with the state.

"Washington apple health program" - Any health care program administered through the medicaid agency.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2014 c 225. WSR 16-06-053, § 182-550-1050, filed 2/24/16, effective 4/1/16. Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-12-047, § 182-550-1050, filed 5/29/14, effective 7/1/14. WSR 11-14-075, recodified as § 182-550-1050, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 07-14-052, § 388-550-1050, filed 6/28/07, effective 8/1/07; WSR 04-20-057, § 388-550-1050, filed 10/1/04, effective 11/1/04. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. WSR 03-19-043, § 388-550-1050, filed 9/10/03, effective 10/11/03. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395 x(v), 42 C.F.R. 447.271, .11303, and .2652. WSR 01-16-142, § 388-550-1050, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 74.09.730, 42 U.S.C. 1395 x(v), 42 C.F.R. 447.271, .11303 and .2652. WSR 99-14-039, § 388-550-1050, filed 6/30/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 42 U.S.C. 1395 x(v), 42 C.F.R. 447.271, 447.11303, and 447.2652. WSR 99-06-046, § 388-550-1050, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-1050, filed 12/18/97, effective 1/18/98.]

AMENDATORY SECTION (Amending WSR 16-06-053, filed 2/24/16, effective 4/1/16)

WAC 182-550-1100 Hospital care—General. (1) The medicaid agency:

(a) Pays for an eligible Washington apple health (~~((WAH))~~) client's admission to a hospital only when the client's attending physician orders admission and when the admission and treatment provided:

- (i) Are covered under WAC 182-501-0050, 182-501-0060 and 182-501-0065;
- (ii) Are medically necessary as defined in WAC 182-500-0070;
- (iii) Are determined according to WAC 182-501-0165 when prior authorization is required;
- (iv) Are authorized when required under this chapter; and
- (v) Meet applicable state and federal requirements.

(b) For hospital admissions, defines "attending physician" as the client's primary care provider, or the primary provider of care to the client at the time of admission.

(2) Medical record documentation of hospital services must meet the requirements in WAC 182-502-0020.

(3) The agency:

(a) Pays for a hospital covered service provided to an eligible (~~((WAH))~~) apple health client enrolled in an agency-contracted managed care organization (MCO) plan, under the fee-for-service program if the service is excluded from the MCO's capitation contract with the agency and meets prior authorization requirements. (See WAC 182-550-2600 for inpatient psychiatric services.)

(b) Does not pay for nonemergency services provided to (~~((a-WAH))~~) an apple health client from a nonparticipating hospital in a selective contracting area (SCA) unless exclusions in WAC 182-550-4700 apply. The agency's selective contracting program and selective contracting payment limitations end for hospital claims with dates of admission before July 1, 2007.

(4) The agency pays up to twenty-six days of inpatient hospital care for hospital-based (~~((detoxification))~~) withdrawal management, medical stabilization, and drug treatment for chemical dependent pregnant clients eligible under the chemical-using pregnant (CUP) women program.

See WAC 182-533-0701 through 182-533-0730.

(5) The agency pays for inpatient hospital (~~((detoxification))~~) withdrawal management of acute alcohol or other drug intoxication when the services are provided to an eligible client:

(a) In a (~~((detoxification))~~) withdrawal management unit in a hospital that has a (~~((detoxification))~~) withdrawal management provider agreement with the agency to perform these services and the services are approved by the division of behavioral health and recovery (DBHR) within the (~~((department of social and health services (DSHS))~~) health care authority (HCA); or

(b) In an acute hospital and all the following criteria are met:

- (i) The hospital does not have a (~~((detoxification))~~) withdrawal management specific provider agreement with DBHR;
- (ii) The hospital provides the care in a medical unit;
- (iii) Nonhospital-based (~~((detoxification))~~) withdrawal management is not medically appropriate for the client;
- (iv) The client does not require medically necessary inpatient psychiatric care and it is determined that an approval from (~~((a behavioral health organization (BHO) or a DBHR))~~) the agency or the agency's designee as an inpatient stay is not indicated;
- (v) The client's stay qualifies as an inpatient stay;
- (vi) The client is not participating in the agency's chemical-using pregnant (CUP) women program; and

(vii) The client's principal diagnosis meets the agency's medical inpatient ((detoxification)) withdrawal management criteria listed in the agency's published billing instructions.

(6) The agency covers medically necessary dental-related services provided to an eligible client in a hospital-based dental clinic when the services:

(a) Are provided under chapter 182-535 WAC; and

(b) Are billed on the American Dental Association (ADA) or health care financing administration (HCFA) claim form.

(7) The agency pays a hospital for covered dental-related services, including oral and maxillofacial surgeries, that are provided in the hospital's operating room, when:

(a) The covered dental-related services are medically necessary and provided under chapter 182-535 WAC;

(b) The covered dental-related services are billed on a UB claim form; and

(c) At least one of the following is true:

(i) The dental-related service(s) is provided to an eligible ((WAH)) apple health client on an emergency basis;

(ii) The client is eligible under the division of developmental disability program;

(iii) The client is age eight or younger; or

(iv) The dental service is prior authorized by the agency.

(8) For inpatient voluntary or involuntary psychiatric admissions, see WAC 182-550-2600.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2014 c 225. WSR 16-06-053, § 182-550-1100, filed 2/24/16, effective 4/1/16. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-18-065, § 182-550-1100, filed 8/27/15, effective 9/27/15. WSR 11-14-075, recodified as § 182-550-1100, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 07-14-053, § 388-550-1100, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. WSR 01-16-142, § 388-550-1100, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090. WSR 01-02-075, § 388-550-1100, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-1100, filed 12/18/97, effective 1/18/98.]

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-1400 Covered and noncovered revenue codes categories and subcategories for inpatient hospital services. Subject to the limitations and restrictions listed, this section identifies covered and noncovered revenue code categories and subcategories for inpatient hospital services.

(1) The medicaid agency pays for an inpatient hospital covered service in the following revenue code categories and subcategories when the hospital provider accurately bills:

(a) "Room & board - Private (one bed)," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";

- (b) "Room & board - Semi-private (two bed)," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";
- (c) "Room & board - Semi-private - (three and four beds)," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";
- (d) "Room & board - Deluxe private," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";
- (e) "Nursery," only subcategories "general classification," "newborn - level I," "newborn - level II," "newborn - level III," and "newborn - level IV";
- (f) "Intensive care unit," only subcategories "general classification," "surgical," "medical," "pediatric," "intermediate ICU," "burn care," and "trauma";
- (g) "Coronary care unit," only subcategories "general classification," "myocardial infarction," "pulmonary care," and "intermediate CCU";
- (h) "Pharmacy," only subcategories "general classification," "generic drugs," "nongeneric drugs," "drugs incident to other diagnostic services," "drugs incident to radiology," "nonprescription," and "IV solutions";
- (i) "IV therapy," only subcategories "general classification," "infusion pump," "IV therapy/pharmacy services," "IV therapy/drug/supply delivery" and "IV therapy/supplies";
- (j) "Medical/surgical supplies and devices," only subcategories "general classification," "nonsterile supply," "sterile supply," "pacemaker," "intraocular lens," and "other implant";
- (k) "Oncology," only subcategory "general classification";
- (l) "Laboratory," only subcategories "general classification," "chemistry," "immunology," "nonroutine dialysis," "hematology," "bacteriology & microbiology," and "urology";
- (m) "Laboratory pathology," only subcategories "general classification," "cytology," "histology," and "biopsy";
- (n) "Radiology - Diagnostic," only subcategories "general classification," "angiocardiography," "arthrography," "arteriography," and "chest X-ray";
- (o) "Radiology - Therapeutic and/or chemotherapy administration," only subcategories "general classification," "chemotherapy administration - injected," "chemotherapy administration - oral," "radiation therapy," and "chemotherapy administration - IV";
- (p) "Nuclear medicine," only subcategories "general classification," "diagnostic," "therapeutic," "diagnostic radiopharmaceuticals," and "therapeutic radiopharmaceuticals";
- (q) "CT scan," only subcategories "general classification," "head scan," and "body scan";
- (r) "Operating room services," only subcategories "general classification" and "minor surgery";
- (s) "Anesthesia," only subcategories "general classification," "anesthesia incident to radiology," and "anesthesia incident to other diagnostic services";
- (t) "Administration, processing and storage for blood and blood component," only subcategories "general classification" and "administration";
- (u) "Other imaging services," only subcategories "general classification," "diagnostic mammography," "ultrasound," and "positron emission tomography";

- (v) "Respiratory services," only subcategories "general classification," "inhalation services" and "hyperbaric oxygen therapy";
- (w) "Physical therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";
- (x) "Speech therapy - Language pathology," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";
- (y) "Emergency room," only subcategories "general, urgent care classification" and "urgent care";
- (z) "Pulmonary function," only subcategory "general classification";
- (aa) "Cardiology," only subcategories "general classification," "cardiac cath lab," "stress test," and "echocardiology";
- (bb) "Ambulatory surgical care," only subcategory "general classification";
- (cc) "Outpatient services," only subcategory "general classification";
- (dd) "Magnetic resonance technology (MRT)," only subcategories "general classification," "MRI - Brain (including brainstem)," "MRI - Spinal cord (including spine)," "MRI-other," "MRA - Head and neck," "MRA - Lower extremities," and "MRA-other";
- (ee) "Medical/surgical supplies - Extension," only subcategories "supplies incident to radiology," "supplies incident to other diagnostic services," and "surgical dressings";
- (ff) "Pharmacy-extension," only subcategories "single source drug," "multiple source drug," "restrictive prescription," "erythropoietin (EPO) less than ten thousand units," "erythropoietin (EPO) ten thousand or more units," "drugs requiring detailed coding," and "self-administrable drugs";
- (gg) "Cast room," only subcategory "general classification";
- (hh) "Recovery room," only subcategory "general classification";
- (ii) "Labor room/delivery," only subcategory "general classification," "labor," "delivery," and "birthing center";
- (jj) "EKG/ECG (Electrocardiogram)," only subcategories "general classification," "holter monitor," and "telemetry";
- (kk) "EEG (Electroencephalogram)," only subcategory "general classification";
- (ll) "Gastro-intestinal services," only subcategory "general classification";
- (mm) "Treatment/observation room," only subcategories "general classification," "treatment room," and "observation room";
- (nn) "Extra-corporeal shock wave therapy (formerly lithotripsy)," only subcategory "general classification";
- (oo) "Inpatient renal dialysis," only subcategories "general classification," "inpatient hemodialysis," "inpatient peritoneal (non-CAPD)," "inpatient continuous ambulatory peritoneal dialysis (CAPD)," and "inpatient continuous cycling peritoneal dialysis (CCPD)";
- (pp) "Acquisition of body components," only subcategories "general classification," "living donor," and "cadaver donor";
- (qq) "Miscellaneous dialysis," only subcategory "ultra filtration";
- (rr) "Other diagnostic services," only subcategories "general classification," "peripheral vascular lab," "electromyelogram," and "pregnancy test"; and
- (ss) "Other therapeutic services," only subcategory "general classification."

(2) The agency pays for an inpatient hospital covered service in the following revenue code subcategories only when the hospital provider is approved by the agency to provide the specific service:

- (a) "All-inclusive rate," only subcategory "all-inclusive room & board plus ancillary";
- (b) "Room & board - Private (one bed)," only subcategory "psychiatric";
- (c) "Room & board - Semi-private (two beds)," only subcategories "psychiatric," "~~((detoxification))~~ withdrawal management," "rehabilitation," and "other";
- (d) "Room & board - Semi-private three and four beds," only subcategories "psychiatric" and "~~((detoxification))~~ withdrawal management";
- (e) "Room & board - Deluxe private," only subcategory "psychiatric";
- (f) "Room & board - Ward," only subcategories "general classification" and "~~((detoxification))~~ withdrawal management";
- (g) "Room & board - Other," only subcategories "general classification" and "other";
- (h) "Intensive care unit," only subcategory "psychiatric";
- (i) "Coronary care unit," only subcategory "heart transplant";
- (j) "Operating room services," only subcategories "organ transplant-other than kidney" and "kidney transplant";
- (k) "Occupational therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate" and "evaluation or reevaluation";
- (l) "Clinic," only subcategory "chronic pain clinic";
- (m) "Ambulance," only subcategory "neonatal ambulance services";
- (n) "Behavioral health treatment/services," only subcategory "electroshock treatment"; and
- (o) "Behavioral health treatment/services - Extension," only subcategory "rehabilitation."

(3) The agency pays revenue code category "occupational therapy," subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation" when:

- (a) A client is in an acute PM&R facility;
- (b) A client is age twenty or younger; or
- (c) The diagnosis code is listed in the agency's published billing instructions.

(4) The agency does not pay for inpatient hospital services in the following revenue code categories and subcategories:

- (a) "All-inclusive rate," subcategory "all-inclusive room and board";
- (b) "Room & board - Private (one bed)" subcategories "hospice," "~~((detoxification))~~ withdrawal management," "rehabilitation," and "other";
- (c) "Room & board - Semi-private (two bed)," subcategory "hospice";
- (d) "Room & board - Semi-private - (three and four beds)," subcategories "hospice," "rehabilitation," and "other";
- (e) "Room & board - Deluxe private," subcategories "hospice," "~~((detoxification))~~ withdrawal management," "rehabilitation," and "other";
- (f) "Room & board - Ward," subcategories "medical/surgical/gyn," "OB," "pediatric," "psychiatric," "hospice," "oncology," "rehabilitation," and "other";

- (g) "Room & board - Other," subcategories "sterile environment," and "self care";
- (h) "Nursery," subcategory "other nursery";
- (i) "Leave of absence";
- (j) "Subacute care";
- (k) "Intensive care unit," subcategory "other intensive care";
- (l) "Coronary care unit," subcategory "other coronary care";
- (m) "Special charges";
- (n) "Incremental nursing charge";
- (o) "All-inclusive ancillary";
- (p) "Pharmacy," subcategories "take home drugs," "experimental drugs," and "other pharmacy";
- (q) "IV therapy," subcategory "other IV therapy";
- (r) "Medical/surgical supplies and devices," subcategories "take home supplies," "prosthetic/orthotics devices," "oxygen - take home," and "other supplies/devices";
- (s) "Oncology," subcategory "other oncology";
- (t) "Durable medical equipment (other than renal)";
- (u) "Laboratory," subcategories "renal patient (home)," and "other laboratory";
- (v) "Laboratory pathology," subcategory "other laboratory - pathological";
- (w) "Radiology - Diagnostic," subcategory "other radiology - diagnostic";
- (x) "Radiology - Therapeutic," subcategory "other radiology - therapeutic";
- (y) "Nuclear medicine," subcategory "other nuclear medicine";
- (z) "CT scan," subcategory "other CT scan";
- (aa) "Operating room services," subcategory "other operating room services";
- (bb) "Anesthesia," subcategories "acupuncture," and "other anesthesia";
- (cc) "Blood and blood components";
- (dd) "Administration, processing and storage for blood and blood components," subcategory "other processing and storage";
- (ee) "Other imaging services," subcategories "screening mammography," and "other imaging services";
- (ff) "Respiratory services," subcategory "other respiratory services";
- (gg) "Physical therapy," subcategory "other physical therapy";
- (hh) "Occupational therapy," subcategory "other occupational therapy";
- (ii) "Speech therapy - Language pathology," subcategory "other speech-language pathology";
- (jj) "Emergency room," subcategories "EMTALA emergency medical screening services," "ER beyond EMTALA screening," and "other emergency room";
- (kk) "Pulmonary function," subcategory "other pulmonary function";
- (ll) "Audiology";
- (mm) "Cardiology," subcategory "other cardiology";
- (nn) "Ambulatory surgical care," subcategory "other ambulatory surgical care";
- (oo) "Outpatient services," subcategory "other outpatient service";

(pp) "Clinic," subcategories "general classification," "dental clinic," "psychiatric clinic," "OB-gyn clinic," "pediatric clinic," "urgent care clinic," "family practice clinic," and "other clinic";

(qq) "Free-standing clinic";

(rr) "Osteopathic services";

(ss) "Ambulance," subcategories "general classification," "supplies," "medical transport," "heart mobile," "oxygen," "air ambulance," "pharmacy," "telephone transmission EKG," and "other ambulance";

(tt) "Home health (HH) skilled nursing";

(uu) "Home health (HH) medical social services";

(vv) "Home health (HH) - Aide";

(ww) "Home health (HH) - Other visits";

(xx) "Home health (HH) - Units of service";

(yy) "Home health (HH) - Oxygen";

(zz) "Magnetic resonance technology (MRT)," subcategory "other MRT";

(aaa) "Medical" "medical/surgical supplies - extension," subcategory "FDA investigational devices";

(bbb) "Home IV therapy services";

(ccc) "Hospice services";

(ddd) "Respite care";

(eee) "Outpatient special residence charges";

(fff) "Trauma response";

(ggg) "Cast room," subcategory "other cast room";

(hhh) "Recovery room," subcategory "other recovery room";

(iii) "Labor room/delivery," subcategories "circumcision" and "other labor room/delivery";

(jjj) "EKG/ECG (Electrocardiogram)," subcategory "other EKG/ECG";

(kkk) "EEG (Electroencephalogram)," subcategory "other EEG";

(lll) "Gastro-intestinal services," subcategory "other gastro-intestinal";

(mmm) "Specialty room - Treatment/observation room," subcategory "other specialty rooms";

(nnn) "Preventive care services";

(ooo) "Telemedicine";

(ppp) "Extra-corporeal shock wave therapy (formerly lithotripsy)," subcategory "other ESWT";

(qqq) "Inpatient renal dialysis," subcategory "other inpatient dialysis";

(rrr) "Acquisition of body components," subcategories "unknown donor," "unsuccessful organ search - donor bank charges," and "other donor";

(sss) "Hemodialysis - Outpatient or home";

(ttt) "Peritoneal dialysis - Outpatient or home";

(uuu) "Continuous ambulatory peritoneal dialysis (CAPD) - Outpatient or home";

(vvv) "Continuous cycling peritoneal dialysis (CCPD) - Outpatient or home";

(www) "Miscellaneous dialysis," subcategories "general classification," "home dialysis aid visit," and "other miscellaneous dialysis";

(xxx) "Behavioral health treatments/services," subcategories "general classification," "milieu therapy," "play therapy," "activity therapy," "intensive outpatient services - psychiatric," "intensive outpatient services - ((~~chemical dependency~~)) substance use disorder (SUD)," "community behavioral health program (day treatment)";

(yyy) "Behavioral health treatment/services" - (extension), sub-categories "rehabilitation," "partial hospitalization - less intensive," "partial hospitalization - intensive," "individual therapy," "group therapy," "family therapy," "bio feedback," "testing," and "other behavioral health treatment/services";

(zzz) "Other diagnostic services," subcategories "general classification," "pap smear," "allergy test," and "other diagnostic service";

(aaaa) "Medical rehabilitation day program";

(bbbb) "Other therapeutic services," subcategories "recreational therapy," "cardiac rehabilitation," "drug rehabilitation," "alcohol rehabilitation," "complex medical equipment - routine," "complex medical equipment - ancillary," and "other therapeutic services";

(cccc) "Other therapeutic services - extension," subcategories "athletic training" and "kinesiotherapy";

(dddd) "Professional fees";

(eeee) "Patient convenience items"; and

(ffff) Revenue code categories and subcategories that are not identified in this section.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-18-065, § 182-550-1400, filed 8/27/15, effective 9/27/15. WSR 11-14-075, recodified as § 182-550-1400, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 07-14-018, § 388-550-1400, filed 6/22/07, effective 8/1/07. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. WSR 03-19-045, § 388-550-1400, filed 9/10/03, effective 10/11/03. Statutory Authority: RCW 74.08.090. WSR 01-02-075, § 388-550-1400, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-1400, filed 12/18/97, effective 1/18/98.]

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-2400 Inpatient chronic pain management services.

(1) The medicaid agency pays a hospital that is specifically approved by the agency to provide inpatient chronic pain management services, an all-inclusive per diem facility fee. The agency pays professional fees for chronic pain management services to performing providers under the agency's fee schedule.

(2) A client qualifies for inpatient chronic pain management services when all the following apply:

(a) The client has had pain for at least three months and has not improved with conservative treatment, including tests and therapies;

(b) At least six months have passed since a previous surgical procedure was done concerning the pain problem; and

(c) A client with active substance abuse must have completed a (~~detoxification~~) withdrawal management program, if appropriate, and must be free from drugs and/or alcohol for at least six months.

(3) The agency:

(a) Covers inpatient chronic pain management training to assist eligible clients to manage chronic pain.

(b) Pays for only one inpatient hospital stay, up to a maximum of twenty-one consecutive days, for chronic pain management training per a client's lifetime.

(c) Does not require prior authorization for chronic pain management services.

(d) Does not pay for services unrelated to the chronic pain management services that are provided during the client's inpatient stay, unless the hospital requests and receives prior authorization from the agency.

(4) All applicable claim payment adjustments for client responsibility, third party liability, medicare crossover, etc., apply to the agency.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-18-065, § 182-550-2400, filed 8/27/15, effective 9/27/15. WSR 11-14-075, recodified as § 182-550-2400, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 07-14-018, § 388-550-2400, filed 6/22/07, effective 8/1/07. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-2400, filed 12/18/97, effective 1/18/98.]

AMENDATORY SECTION (Amending WSR 16-06-053, filed 2/24/16, effective 4/1/16)

WAC 182-550-2650 Base community psychiatric hospitalization payment method for medicaid and CHIP clients and nonmedicaid and non-CHIP clients.

(1) Effective for dates of admission from July 1, 2005, through June 30, 2007, and in accordance with legislative directive, the agency implemented two separate base community psychiatric hospitalization payment rates, one for medicaid and children's health insurance program (CHIP) clients and one for nonmedicaid and non-CHIP clients. Effective for dates of admission on and after July 1, 2007, the base community psychiatric hospitalization payment method for medicaid and CHIP clients and nonmedicaid and non-CHIP clients is no longer used. (For the purpose of this section, a "nonmedicaid or non-CHIP client" is defined as a client eligible under the medical care services (MCS) program, as determined by the agency.)

(a) The medicaid base community psychiatric hospital payment rate is a minimum per diem for claims for psychiatric services provided to medicaid and CHIP covered patients, paid to hospitals that accept commitments under the Involuntary Treatment Act (ITA).

(b) The nonmedicaid base community psychiatric hospital payment rate is a minimum allowable per diem for claims for psychiatric services provided to indigent patients paid to hospitals that accept commitments under the ITA.

(2) For the purposes of this section, "allowable" means the calculated allowed amount for payment based on the payment method before adjustments, deductions, or add-ons.

(3) To be eligible for payment under the base community psychiatric hospitalization payment method:

(a) A client's inpatient psychiatric voluntary hospitalization must:

(i) Be medically necessary as defined in WAC 182-500-0070. In addition, the agency considers medical necessity to be met when:

(A) Ambulatory care resources available in the community do not meet the treatment needs of the client;

(B) Proper treatment of the client's psychiatric condition requires services on an inpatient basis under the direction of a physician;

(C) The inpatient services can be reasonably expected to improve the client's condition or prevent further regression so that the services will no longer be needed; and

(D) The client, at the time of admission, is diagnosed as having an emotional/behavioral disturbance as a result of a mental disorder as defined in the current published Diagnostic and Statistical Manual of the American Psychiatric Association. The agency does not consider (~~detoxification~~) withdrawal management to be psychiatric in nature.

(ii) Be approved by the professional in charge of the hospital or hospital unit.

(iii) Be authorized by the appropriate division of behavioral health and recovery (DBHR) designee prior to admission for covered diagnoses.

(iv) Meet the criteria in WAC 182-550-2600.

(b) A client's inpatient psychiatric involuntary hospitalization must:

(i) Be in accordance with the admission criteria in chapters 71.05 and 71.34 RCW.

(ii) Be certified by a DBHR designee.

(iii) Be approved by the professional in charge of the hospital or hospital unit.

(iv) Be prior authorized by the (~~behavioral health organization (BHO)~~) agency or (~~its~~) the agency's designee.

(v) Meet the criteria in WAC 182-550-2600.

(4) Payment for all claims is based on covered days within a client's approved length of stay (LOS), subject to client eligibility and agency-covered services.

(5) The medicaid base community psychiatric hospitalization payment rate applies only to a medicaid or CHIP client admitted to a non-state-owned free-standing psychiatric hospital located in Washington state.

(6) The nonmedicaid base community psychiatric hospitalization payment rate applies only to a nonmedicaid or CHIP client admitted to a hospital:

(a) Designated by the agency as an ITA-certified hospital; or

(b) That has an agency-certified ITA bed that was used to provide ITA services at the time of the nonmedicaid or non-CHIP admission.

(7) For inpatient hospital psychiatric services provided to eligible clients for dates of admission on and after July 1, 2005, through June 30, 2007, the agency pays:

(a) A hospital's department of health (DOH)-certified distinct psychiatric unit as follows:

(i) For medicaid and CHIP clients, inpatient hospital psychiatric services are paid using the agency-specific nondiagnosis related group (DRG) payment method.

(ii) For nonmedicaid and non-CHIP clients, the allowable for inpatient hospital psychiatric services is the greater of:

(A) The state-administered program DRG allowable (including the high cost outlier allowable, if applicable), or the agency-specified non-DRG payment method if no relative weight exists for the DRG in the agency's payment system; or

(B) The nonmedicaid base community psychiatric hospitalization payment rate multiplied by the covered days.

(b) A hospital without a DOH-certified distinct psychiatric unit as follows:

(i) For medicaid and CHIP clients, inpatient hospital psychiatric services are paid using:

(A) The DRG payment method; or

(B) The agency-specified non-DRG payment method if no relative weight exists for the DRG in the agency's payment system.

(ii) For nonmedicaid and CHIP clients, the allowable for inpatient hospital psychiatric services is the greater of:

(A) The state-administered program DRG allowable (including the high cost outlier allowable, if applicable), or the agency-specified non-DRG payment method if no relative weight exists for the DRG in the agency's payment system; or

(B) The nonmedicaid base community psychiatric hospitalization payment rate multiplied by the covered days.

(c) A nonstate-owned free-standing psychiatric hospital as follows:

(i) For medicaid and CHIP clients, inpatient hospital psychiatric services are paid using as the allowable, the greater of:

(A) The ratio of costs-to-charges (RCC) allowable; or

(B) The medicaid base community psychiatric hospitalization payment rate multiplied by covered days.

(ii) For nonmedicaid and non-CHIP clients, inpatient hospital psychiatric services are paid the same as for medicaid and CHIP clients, except the base community inpatient psychiatric hospital payment rate is the nonmedicaid rate, and the RCC allowable is the state-administered program RCC allowable.

(d) A hospital, or a distinct psychiatric unit of a hospital, that is participating in the certified public expenditure (CPE) payment program, as follows:

(i) For medicaid and CHIP clients, inpatient hospital psychiatric services are paid using the methods identified in WAC 182-550-4650.

(ii) For nonmedicaid and non-CHIP clients, inpatient hospital psychiatric services are paid using the methods identified in WAC 182-550-4650 in conjunction with the nonmedicaid base community psychiatric hospitalization payment rate multiplied by covered days.

(e) A hospital, or a distinct psychiatric unit of a hospital, that is participating in the critical access hospital (CAH) program, as follows:

(i) For medicaid and CHIP clients, inpatient hospital psychiatric services are paid using the agency-specified non-DRG payment method.

(ii) For nonmedicaid and non-CHIP clients, inpatient hospital psychiatric services are paid using the agency-specified non-DRG payment method.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2014 c 225. WSR 16-06-053, § 182-550-2650, filed 2/24/16, effective 4/1/16. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-019, § 182-550-2650, filed 7/24/14, effective 8/24/14. WSR 11-14-075, recodified as § 182-550-2650, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 07-14-053, § 388-550-2650, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.08.090, 74.09.500, and 2005 c 518, § 204, Part II. WSR 07-06-043, § 388-550-2650, filed 3/1/07, effective 4/1/07.]

AMENDATORY SECTION (Amending WSR 19-04-004, filed 1/23/19, effective 3/1/19)

WAC 182-550-3000 Payment method. (1) The medicaid agency uses the diagnosis-related group (DRG) payment method to pay for covered inpatient hospital services, except as specified in WAC 182-550-4300 and 182-550-4400.

(2) The agency assigns a DRG code to each claim for an inpatient hospital stay using 3M™ software (AP-DRG or APR-DRG) or other software currently in use by the agency. That DRG code determines the method used to pay claims for prospective payment system (PPS) hospitals. For the purpose of this section, PPS hospitals include all in-state and border area hospitals, except both of the following:

(a) Critical access hospitals (CAH), which the agency pays per WAC 182-550-2598; and

(b) Military hospitals, which the agency pays using the following payment methods depending on the revenue code billed by the hospital:

- (i) Ratio of costs-to-charges (RCC); and
- (ii) Military subsistence per diem.

(3) For each DRG code, the agency establishes an average length of stay (ALOS). The agency may use the DRG ALOS as part of its authorization process and payment methods as specified in this chapter.

(4) An inpatient claim payment includes all hospital covered services provided to a client during days the client is eligible. This includes, but is not limited to:

(a) The inpatient hospital stay;

(b) Outpatient hospital services, including preadmission, emergency department, and observation services related to an inpatient hospital stay and provided within one calendar day of a client's inpatient hospital stay. These outpatient services must be billed on the inpatient hospital claim;

(c) Any hospital covered service for which the admitting hospital sends the client to another facility or provider during the client's inpatient hospital stay, and the client returns as an inpatient to the admitting hospital.

(5) The agency's claim payment for an inpatient stay is determined by the payment method. The agency pays hospitals for inpatient hospital covered services provided to clients using the following methods:

Payment Method	General Description of Payment Formula	WAC Reference
DRG (Diagnostic Related Group)	DRG specific relative weight times hospital specific DRG rate times maximum service adjustor	182-550-3000
Per Diem	Hospital-specific daily rate for the service (psych, rehab, (detox) withdrawal management, or CUP) times covered allowable days	182-550-2600 and 182-550-3381
Fixed Per Diem for Long Term Acute Care (LTAC)	Fixed LTAC rate per day times allowed days plus ratio of cost to charges times allowable covered ancillaries not included in the daily rate	182-550-2595 and 182-550-2596
Ratio of Costs-to-Charges (RCC)	RCC times billed covered allowable charges	182-550-4500

Payment Method	General Description of Payment Formula	WAC Reference
Cost Settlement with Ratio of Costs-to-Charges	RCC times billed covered allowable charges (subject to hold harmless and other settlement provisions of the Certified Public Expenditure program)	182-550-4650 and 182-550-4670
Cost Settlement with Weighted Costs-to-Charges (WCC)	WCC times billed covered allowable charges subject to Critical Access Hospital settlement provisions	182-550-2598
Military	Depending on the revenue code billed by the hospital: • RCC times billed covered allowable charges; and • Military subsistence per diem.	182-550-4300
Administrative Day	Standard administrative day rate times days authorized by the agency combined with RCC times ancillary charges that are allowable and covered for administrative days	182-550-3381

(6) For claims paid using the DRG method, the payment may not exceed the billed amount.

(7) The agency may adjust the initial allowable calculated for a claim when one or more of the following occur:

- (a) A claim qualifies as a high outlier (see WAC 182-550-3700);
- (b) A claim is paid by the DRG method and a client transfers from one acute care hospital or distinct unit per WAC 182-550-3600;
- (c) A client is not eligible for a Washington apple health program on one or more days of the hospital stay;
- (d) A client has third-party liability coverage at the time of admission to the hospital or distinct unit;
- (e) A client is eligible for Part B medicare, the hospital submitted a timely claim to medicare for payment, and medicare has made a payment for the Part B hospital charges;
- (f) A client is discharged from an inpatient hospital stay and, within fourteen calendar days, is readmitted as an inpatient to the same hospital or an affiliated hospital. The agency or the agency's designee performs a retrospective utilization review (see WAC 182-550-1700) on the initial admission and all readmissions to determine which inpatient hospital stays qualify for payment. The review may determine:
 - (i) If both admissions qualify for separate reimbursement;
 - (ii) If both admissions must be combined to be reimbursed as one payment; or
 - (iii) Which inpatient hospital stay qualifies for individual payment.
- (g) A readmission is due to a complication arising from a previous admission (e.g., provider preventable condition described in WAC 182-502-0022). The agency or the agency's designee performs a retrospective utilization review to determine if both admissions are appropriate and qualify for individual payments; or
- (h) The agency identifies an enhanced payment due to a provider preventable condition, hospital-acquired condition, serious reportable event, or a condition not present on admission.

(8) In response to direction from the legislature, the agency may change any one or more payment methods outlined in chapter 182-550 WAC for the purpose of achieving the legislature's targeted expenditure levels. The legislative direction may take the form of express lan-

guage in the Biennial Appropriations Act or may be reflected in the level of funding appropriated to the agency in the Biennial Appropriations Act. In response to this legislative direction, the agency may calculate an adjustment factor (known as an "inpatient adjustment factor") to apply to inpatient hospital rates.

(a) The inpatient adjustment factor is a specific multiplier calculated by the agency and applied to existing inpatient hospital rates to meet targeted expenditure levels as directed by the legislature.

(b) The agency will apply the inpatient adjustment factor when the agency determines that its expenditures on inpatient hospital rates will exceed the legislature's targeted expenditure levels.

(c) The agency will apply any such inpatient adjustment factor to each affected rate.

(9) The agency does not pay for a client's day of absence from the hospital.

(10) The agency pays an interim billed hospital claim for covered inpatient hospital services provided to an eligible client only when the interim billed claim meets the criteria in WAC 182-550-2900.

(11) The agency applies to the allowable for each claim all applicable adjustments for client responsibility, any third-party liability, medicare payments, and any other adjustments as determined by the agency.

(12) The agency pays hospitals in designated bordering cities for allowed covered services as described under WAC 182-550-3900.

(13) The agency pays out-of-state hospitals for allowed covered services as described under WAC 182-550-4000.

(14) The agency's annual aggregate payments for inpatient hospital services, including payments to state-operated hospitals, will not exceed the estimated amounts that the agency would have paid using medicare payment principles.

(15) When hospital ownership changes, the agency's payment to the hospital will not exceed the amount allowed under 42 U.S.C. Section 1395x (v) (1) (O).

(16) Hospitals participating in the apple health program must annually submit to the agency:

(a) A copy of the hospital's CMS medicare cost report (Form 2552 version currently in use by the agency) that is the official "as filed" cost report submitted to the medicare fiscal intermediary; and

(b) A disproportionate share hospital (DSH) application if the hospital wants to be considered for DSH payments. See WAC 182-550-4900 for the requirements for a hospital to qualify for a DSH payment.

(17) Reports referred to in subsection (16) of this section must be completed according to:

(a) Medicare's cost reporting requirements;

(b) The provisions of this chapter; and

(c) Instructions issued by the agency.

(18) The agency requires hospitals to follow generally accepted accounting principles.

(19) Participating hospitals must permit the agency to conduct periodic audits of their financial records, statistical records, and any other records as determined by the agency.

(20) The agency limits payment for private room accommodations to the semiprivate room rate. Room charges must not exceed the hospital's usual and customary charges to the general public as required by 42 C.F.R. Sec. 447.271.

~~(21) ((For a client's hospital stay that involves regional support network (RSN)-approved voluntary inpatient or involuntary inpa-~~

~~tient hospitalizations, the hospital must bill the agency for payment. When the hospital contracts directly with the RSN, the hospital must bill the RSN for payment.~~

(22)) For psychiatric hospitals and psychiatric hospital units, when a claim groups to a DRG code that pays by the DRG method, the agency may manually price the claim at the hospital's psychiatric per diem rate.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-04-004, § 182-550-3000, filed 1/23/19, effective 3/1/19; WSR 18-11-074, § 182-550-3000, filed 5/16/18, effective 7/1/18; WSR 15-24-096, § 182-550-3000, filed 12/1/15, effective 1/1/16. Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-12-047, § 182-550-3000, filed 5/29/14, effective 7/1/14. WSR 11-14-075, recodified as § 182-550-3000, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 2009-11 Omnibus Operating Budget (ESHB 1244). WSR 09-12-063, § 388-550-3000, filed 5/28/09, effective 7/1/09. Statutory Authority: RCW 74.08.090 and 74.09.500. WSR 07-14-055, § 388-550-3000, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 05-11-077, § 388-550-3000, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 42 U.S.C. 1395 x(v), 42 C.F.R. 447.271, 447.11303, and 447.2652. WSR 99-06-046, § 388-550-3000, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-3000, filed 12/18/97, effective 1/18/98.]

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

WAC 182-550-4300 Hospitals and units exempt from the DRG payment method.

(1) Except when otherwise specified, inpatient services provided by hospitals and units that are exempt from the diagnosis-related group (DRG) payment method are paid under the ratio of costs-to-charges (RCC) payment method described in WAC 182-550-4500, the per diem payment method described in WAC 182-550-3000, the per case rate payment method described in WAC 182-550-3000, or other payment methods identified in this chapter (e.g., long term acute care (LTAC), certified public expenditure (CPE), critical access hospital (CAH), etc.). Inpatient services provided by hospitals and units are exempt from the DRG payment method only if they qualify for payment methods specifically mentioned in other sections of this chapter or in this section.

(2) The agency exempts the following hospitals, units, and services from the DRG payment method for inpatient services provided to clients eligible for Washington apple health:

(a) Hospitals participating in the agency's certified public expenditure (CPE) payment program (see WAC 182-550-4650);

(b) Hospitals participating in the agency's critical access hospital program (see WAC 182-550-2598);

(c) Rehabilitation services. All rehabilitation services are paid through the per diem payment method except as indicated in (a), (b), and (d) of this subsection (see WAC 182-550-3000);

(d) Military hospitals when no other specific arrangements have been made with the agency. The agency, or the military hospital, may

elect or arrange for one of the following payment methods in lieu of the RCC payment method:

- (i) Per diem payment method; or
- (ii) DRG payment method; and

(e) Psychiatric services. All psychiatric services are paid through the per diem payment method except as indicated in (a), (b), and (d) of this subsection (see WAC 182-550-3000). ~~((A mental health))~~ An agency designee that arranges to directly pay a hospital and/or a designated distinct psychiatric unit of a hospital may use the agency's payment methods or contract with the hospital to pay using different methods. ~~((Claims not paid directly through a mental health designee are paid through the agency's payment system.))~~

(3) Inpatient psychiatric services, Involuntary Treatment Act services, and ~~((detoxification))~~ withdrawal management services provided in out-of-state hospitals are not covered or paid by the agency or the agency's ~~((mental health))~~ designee. The agency does not cover or pay for other hospital services provided to clients eligible for those services in the following programs, when the services are provided in out-of-state hospitals that are not in designated bordering cities:

- (a) Medical care services; and
- (b) Other state-administered programs.

(4) The agency has established an average length of stay (ALOS) for each DRG classification and publishes it on the agency's website. The agency uses the DRG ALOS as a benchmark to authorize and pay inpatient hospital stays exempt from the DRG payment method. When an inpatient hospital stay exceeds the agency's DRG ALOS benchmark or prior authorized LOS:

(a) For a psychiatric inpatient stay, the hospital must obtain approval for additional days beyond the prior authorized days from the ~~((division of behavioral health and recovery (DBHR)))~~ agency or the ~~((mental health))~~ agency's designee who prior authorized the admission. See WAC 182-550-2600;

(b) For an acute physical medicine and rehabilitation (PM&R) or a long term acute care (LTAC) stay, the hospital must obtain approval for additional days beyond the prior authorized days from the agency unit that prior authorized the admission. See WAC 182-550-2561 and 182-550-2590;

(c) For an inpatient hospital stay for ~~((detoxification))~~ withdrawal management for a chemical using pregnant (CUP) client, see WAC 182-550-1100;

(d) For other medical inpatient stays for ~~((detoxification))~~ withdrawal management, see WAC 182-550-1100 and subsection (5) of this section;

(e) For an inpatient stay in a certified public expenditure (CPE) hospital, see WAC 182-550-4690; and

(f) For an inpatient hospital stay not identified in (a) through (e) of this subsection, the agency may perform retrospective utilization review to determine if the LOS was medically necessary and at the appropriate level of care.

(5) If subsection (4)(d) of this section applies to an eligible client, the agency will:

(a) Pay for three-day ~~((detoxification))~~ withdrawal management services for an acute alcoholic condition; or

(b) Pay for five-day ~~((detoxification))~~ withdrawal management services for acute drug addiction when the services are directly related to ~~((detoxification))~~ withdrawal management; and

(c) If WAC 182-550-1100 (5)(b) applies, extend the three- and five-day limitations when the following are true:

- (i) The days are billed as covered;
- (ii) A medical record is submitted with the claim;
- (iii) The medical record clearly documents that the days are medically necessary; and
- (iv) The level of care is appropriate according to WAC 182-550-2900.

[Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-12-047, § 182-550-4300, filed 5/29/14, effective 7/1/14. WSR 11-14-075, recodified as § 182-550-4300, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500 and 2005 c 518. WSR 07-14-051, § 388-550-4300, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 06-08-046, § 388-550-4300, filed 3/30/06, effective 4/30/06. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 05-12-132, § 388-550-4300, filed 6/1/05, effective 7/1/05. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. WSR 01-16-142, § 388-550-4300, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-4300, filed 12/18/97, effective 1/18/98.]

AMENDATORY SECTION (Amending WSR 19-04-004, filed 1/23/19, effective 3/1/19)

WAC 182-550-4400 Services—Exempt from DRG payment. (1) Inpatient services are exempt from the diagnosis-related group (DRG) payment method only if they qualify for payment methods specifically mentioned in other sections of this chapter or in this section.

(2) Subject to the restrictions and limitations in this section, the agency exempts the following services for medicaid and CHIP clients from the DRG payment method. This policy also applies to covered services paid through medical care services (MCS) and any other state-administered program, except when otherwise indicated in this section. The exempt services are:

(a) (~~Alcohol or other drug detoxification~~) Withdrawal management services when provided in a hospital having a (~~detoxification~~) withdrawal management provider agreement with the agency to perform these services.

(b) Hospital-based intensive inpatient (~~detoxification~~) withdrawal management, medical stabilization, and drug treatment services provided to chemical-using pregnant (CUP) women by a certified hospital. These are medicaid program services and are not covered or funded by the agency through MCS or any other state-administered program.

(c) Acute physical medicine and rehabilitation (acute PM&R) services.

(d) Psychiatric services. (~~A mental health~~) An agency designee that arranges to pay a hospital directly for psychiatric services may use the agency's payment methods or contract with the hospital to pay using different methods. (~~Claims not paid directly through a mental health designee are paid through the agency's payment system.~~)

(e) Chronic pain management treatment provided in a hospital approved by the agency to provide that service.

(f) Administrative day services. The agency pays administrative days for one or more days of a hospital stay in which an acute inpatient or observation level of care is not medically necessary, and a lower level of care is appropriate. The administrative day rate is based on the statewide average daily medicaid nursing facility rate, which is adjusted annually. The agency may designate part of a client's stay to be paid an administrative day rate upon review of the claim or the client's medical record, or both.

(g) Inpatient services recorded on a claim grouped by the agency to a DRG for which the agency has not published an all-patient DRG (AP-DRG) or all-patient refined DRG (APR-DRG) relative weight. The agency will deny payment for claims grouped to DRG 469, DRG 470, APR DRG 955, or APR DRG 956.

(h) Organ transplants that involve heart, intestine, kidney, liver, lung, allogeneic bone marrow, autologous bone marrow, pancreas, or simultaneous kidney/pancreas. The agency pays hospitals for these organ transplants using the ratio of costs-to-charges (RCC) payment method. The agency maintains a list of DRGs which qualify as transplants on the agency's website.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-04-004, § 182-550-4400, filed 1/23/19, effective 3/1/19; WSR 16-04-051, § 182-550-4400, filed 1/28/16, effective 3/1/16. Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-12-047, § 182-550-4400, filed 5/29/14, effective 7/1/14. WSR 11-14-075, recodified as § 182-550-4400, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500 and 2005 c 518. WSR 07-14-051, § 388-550-4400, filed 6/28/07, effective 8/1/07. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-12-022, § 388-550-4400, filed 5/20/05, effective 6/20/05. Statutory Authority: RCW 74.08.090 and 42 U.S.C. 1395x(v), 42 C.F.R. 447.271, .11303, and .2652. WSR 01-16-142, § 388-550-4400, filed 7/31/01, effective 8/31/01. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-4400, filed 12/18/97, effective 1/18/98.]